



Civic Space Report 2023

**FIGHTING FOR
DEMOCRATIC
EMPOWERMENT
AND RESILIENCE**



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About European Civic Forum

European Civic Forum (ECF) is a pan-European network of nearly 100 associations and NGOs across 29 European countries: big federations of associations, national platforms uniting hundreds of thousands of NGOs, and smaller groups working at community level or engaging with the public on local issues. We work to build a democratic and civic Europe that delivers on people's needs.



About Civic Space Watch

Civic Space Watch collects findings and analyses from actors in Europe on the conditions for civil society to operate, capturing national and trans-European trends in civic space. Through ongoing monitoring of social media and regular contact and interviews with a strong network of members and partners on the ground, we strive to provide easy access to resources and improve information sharing within civil society across Europe with, policy-makers and the media.

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Introduction

“Democracy is under attack”, “We must defend democracy”, “Democracy is a promise!”. These phrases have been frequently heard at the EU level in 2022. President Ursula von der Leyen mentioned “democracy” 21 times in her State of the Union address, which suggests that protecting democracy is at the top of the EU policy agenda¹. The European Commission is aiming to “nurture, strengthen and protect” democracy via its upcoming Defence of Democracy package, which focuses at length on tackling “covert foreign interference”.

To address today’s varied and diverse democratic challenges and identify relevant and efficient solutions, the root causes must first be diagnosed. However the EU’s current approach often fails to tackle root causes. In order to defend democracy, EU institutions should equally recognise the importance of tackling internal threats to democracy and building internal democratic resilience.

What creates democratic resilience?

it is crucial to understand that people evaluate the relevance of democracy based on its outputs - the ability of implemented policies to address their needs, concerns and hopes for the future.

Democratic resilience requires both good *inputs* and good *outputs*. Participatory mechanisms which enable diverse voices to contribute to the democratic debate and a robust rule of law infrastructure are the key tools conducive to developing effective policies and measures. These *inputs* decisively contribute to make good policy-making possible.

However, it is crucial to understand that people evaluate the relevance of democracy based on its *outputs* - the ability of implemented policies to address their needs, concerns and hopes for the future. For many people, the legitimacy of our democratic system rests in its capacity to respond to existing insecurities (including in social, economic, environmental and cultural spheres), to

¹ https://state-of-the-union.ec.europa.eu/state-union-2022_en

collectively face crises and other challenges of our time, and to foster social cohesion and a shared vision for the future.

Today, democracy is facing pressure both on its *inputs*, as democratic backsliding unfolds across the EU, and its *outputs*, as many fear for their future and are increasingly mistrust institutions' ability to deliver policies that will protect them.

When people lose trust in institutions' ability to deliver on their needs and aspirations democracy is at risk

Declining trust in democracy is a well-documented and worrying trend all over the world and Europe is no exception.

Four decades of policy making driven by the agenda of financial capitalism, which has increased inequalities and precarity and extended competition to all aspects of life, have created uncertainty regarding the future.

Many people feel that democratic processes and political representatives do not ensure their needs are addressed or even heard. When democracy does not deliver social and economic cohesion, trust in democratic institutions, which is crucial for the functioning of the rule of law, tends to perish

Rising social, economic and environmental vulnerabilities, combined with a weakening of social protections and growing cultural and demographic divisions, fuel anger and distrust. This contributes to a degradation of cohesion in society. Many people feel that democratic processes and political representatives do not ensure their needs are addressed or even heard. When democracy does not deliver social and economic cohesion, trust in democratic institutions, which is crucial for the functioning of the rule of law, tends to perish.

Regressive forces inside and outside Europe build and gain political capital from this erosion of trust. In addition, the manipulation of information and foreign interference thrive on such dissatisfaction.

Those most affected are groups whose access to rights is frequently denied, including women, LGBTQI+ people, refugees

and asylum seekers, ethnic and religious minorities and crucially people of low socio-economic background.

The deterioration of the rule of law and democratic backsliding observed as systemic in some European Union Member States, and on the rise in many others, falls within this context, which provides a fertile ground for growing political illiberalism and tensions in our societies. Nationalism, xenophobia, and identity politics based on exclusion, which are abused and exacerbated by reactionary and authoritarian leaders and governments, risk becoming substitutes for an inclusive, shared future. Those most affected are groups whose access to rights is frequently denied, including women, LGBTQI+ people, refugees and asylum seekers, ethnic and religious minorities and crucially people of low socio-economic background.

Civil society actors are part of what makes democracy alive, and as a result are targets when democracy is under attack

An open, plural, and vibrant civic space is a condition for democratic, cohesive and resilient societies. It is an integral component of the rule of law as civic actors are vital players in strengthening, implementing and, when needed, defending the rule of law.

Often, civil society finds itself on the frontline - mobilising, responding to social needs, advocating, and defending rights and democratic frameworks, even more so during crises.

Both in its advocacy-oriented and service delivery functions, civil society aims to effectively implement fundamental rights. Additionally, civic and social organisations, through their everyday work on the ground, understand the impact of policies and lack thereof on the wider population and specific groups. Thus, they can be important partners for authorities who want to tackle societal vulnerabilities and environmental concerns and contribute to rebuilding trust in democracy. Often, civil society finds itself on the frontline - mobilising, responding to social needs, advocating, and defending rights and democratic frameworks, even more so during crises. This was evident during both the COVID-19 pandemic and the crisis that has ensued as a result of Russia's full-scale invasion of Ukraine in February 2022.

It is worrying that narratives that legitimise such restrictive legislation and harassment of activists at national level have been echoed by some representatives of the European institutions under the guise of protecting democracy from foreign interference.

Over the last few years, civil society organisations (CSOs), human rights defenders (HRDs) and grassroots movements have raised concerns over the rapid deterioration of democratic processes, civic freedoms and adherence to the rule of law in several EU member states. They play a vital role in responding to the erosion of democratic processes, the breaches of the rule of law and direct attacks on civic freedoms, which usually act together to dismantle fundamental rights. As a result, they have faced measures aimed at shrinking civic space, including restrictive laws, smear campaigns, judicial and administrative harassment and physical and verbal attacks. At the same time, their access to funding, capacity, resources and participation in policy-making processes have also been constrained in several member states. It is worrying that narratives that legitimise such restrictive legislation and harassment of activists at national level have been echoed by some representatives of the European institutions under the guise of protecting democracy from foreign interference.

To defend democracy and the rule of law, the EU needs to invest in its democratic resilience

Strengthening democracy requires a shared commitment of European institutions and member states.

European institutions must recognise democracy, the rule of law, and fundamental rights policies as interlinked with economic and financial ones.

First and foremost, it requires putting in place coherent policies which link economic and social issues to respond to the vulnerabilities and insecurities in our societies such as policies which combat social, cultural or regional inequalities, economic precariousness and redistributive policies aimed at solidarity, inclusiveness, social security and equality. European institutions must recognise democracy, the rule of law, and fundamental rights policies as interlinked with economic and financial ones.

In order to move decisively in this direction, participatory mechanisms must be strengthened at both the EU and national level. True participation means that concerns are listened to and addressed through policy-making. Beyond consultations and citizens' assemblies, there is a need for civil dialogue to be recognised and organised on an equal footing with social dialogue in the EU's policy-making, in all areas of EU action and along all policy cycles. Participation reflecting a diversity of issues considered in policy-making would ensure that EU institutions have a complete view of their responsibilities and avoid excessive influence of corporations. It would improve the quality of impact assessments and create meaningful opportunities for civil and social dialogue. The full social and environmental impacts of national and EU legislation would be better balanced with economic aims, and fundamental rights would be taken into account more adequately when designing legislation and policies. Better and fairer policies would create more fertile ground for trust in democratic institutions.

strong democracies with a functioning rule of law rest on vibrant civic space. It is crucial that civil society actors are supported, protected and empowered and that their inputs are considered fundamental for policy-making

Finally, strong democracies with a functioning rule of law rest on vibrant civic space. It is crucial that civil society actors are supported, protected and empowered and that their inputs are considered fundamental for policy-making. The European Commission must commit to a European Civil Society Strategy towards open civic space and resilient civil society, giving genuine political recognition to the crucial role played by CSOs². It should empower civil society to act collectively, in its full capacity and independence, including to monitor authorities and policy-making decisions, by providing monitoring, support and protection. It should also clearly link monitoring and reporting tools to EU enforcement mechanisms (such as infringement procedures and rule of law conditionality) to ensure timely and effective follow-up action.

This is crucial in order to rebuild popular support for democracy, protect civic space and restore public trust.

This report looks at developments inside civil space and its dialogue with institutions at the national and EU level in 2022 and puts forward comprehensive recommendations for EU actions in this field. It forms part of ECFs input to the public consultations of the European Commission's 2023 Rule of Law Report and the Defence of Democracy package.

² https://civicspacewatch.eu/wp-content/uploads/2022/05/European-civil-society-strategy-report-2022_European-Civic-Forum.pdf

Methodology

The following report is coordinated and edited by the European Civic Forum (ECF). It is composed of a horizontal analysis looking at pan-European developments in civic space and the enabling environment for civil society in the European Union for 2022 written by the ECF and 14 country reports written by civil society experts on the ground.

The ECF bases its analysis of civic space in Europe on six elements³ that we believe are crucial for an open and vibrant civic space:

1. **A conducive institutional, political and socio-economic landscape:** the historical legacy of political culture, together with socio-economic structures and contingent events, profoundly shape the public's understanding of the role of civil society and the values it embodies, the activities it pursues, thus influencing public trust and support.
2. **The respect of civic freedoms:** a supportive legal and regulatory framework for civic freedoms, in particular freedoms of association, peaceful assembly and expression, and its effective implementation ensure the protection of civil society space.
3. **Safe space and state duty to protect:** public authorities have a duty to protect civil society actors and human rights defenders from physical, verbal and judicial attacks linked to their human rights' work by taking action against perpetrators.
4. **A supportive framework for CSOs' financial viability and sustainability:** supportive legislation on funding, including foreign and international funding, and availability of sufficient and predictable resources are crucial to civil society's capacities, independence and long-term strategic planning.
5. **The dialogue between civil society and governing bodies:** governing bodies must pursue policies and narratives that empower citizens and their organisations to be meaningfully engaged in the public debate and policy-making.
6. **Civil society's resilience to challenges to democracy, rule of law and fundamental rights.**

³ Such categories reflect (I) the European Union Agency for Fundamental Rights (FRA)' methodology analysing challenges facing civil society organisations working on human rights in the EU, (II) the recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lesson learned by the UN Higher Commissioner for Human Rights, and (III) the monitoring matrix elaborated by the Balkan Civic Society Development Network and used by DG NEAR in the European Commission.

On the basis of these pillars, the ECF developed a questionnaire (in annex) to guide the contributors' analysis of their national context. The horizontal analysis also follows the same structure.













The horizontal report by the ECF draws on the findings of the country reports, the ECF's [Civic Space Watch](#) platform and interviews conducted with the following regional organisations: Platform for International Cooperation on Undocumented Migrants ([PICUM](#)), European Roma Grassroots Organisation ([ERGO](#)), International Lesbian, Gay, Bisexual, Trans and Intersex Association ([ILGA Europe](#)), [Greenpeace](#), as well as reports by the International Planned Parenthood Federation European Network ([IPPFEN](#)) and European Network Against Racism ([ENAR](#)). We thank these organisations for their expertise.

In addition, this report also included infographics showcasing data from the [CIVICUS Monitor](#), an online platform which tracks civic space in 197 countries and territories. The Monitor rates countries according to a five-point rating scale: open, narrowed, obstructed, repressed and closed. ECF is one of over 20 research partners which contributes to the CIVICUS Monitor.

Disclaimer: The views expressed in this report are those of the European Civic Forum and do not necessarily reflect the view of CIVICUS or regional organisations.

The country reports are written by 14 member and partner organisations, on the basis of our questionnaire. The authors choose the areas on which to focus on based on their expertise and the relevance of the issues for their national context.

We would like to thank the following organisations and individuals for their contribution to our response to this consultation:

-  Bündnis Für Gemeinnützigkeit (Austria)
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-  Glopolis and NeoN Coalition (Czech Republic)
-  Gong (Croatia)
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-  Civic Alliance Latvia (Latvia)
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-  Center za za informiranje, sodelovanje in razvoj nevladnih organizacij - CNVOS, Center for Information, Cooperation and Development of Non-Governmental Organizations (Slovenia)



International Institute for Nonviolent Action – NOVACT, in cooperation with Omnium Cultural (Spain)



HORIZONTAL ANALYSIS

Institutional, political and socio-economic landscape

Civil society steps up in Solidarity with Ukraine: uneven interactions with authorities

Developments in the European Union in 2022 were partly defined by Russia's ongoing war against Ukraine, which has long-lasting political, economic, social and environmental implications.

Across Europe, civic actors have been stepping up to provide direct humanitarian, legal, psycho-physical support to those crossing the borders in search of safety.

Millions of people fled from Ukraine to neighbouring countries, including EU member states. All over the European Union, we saw large mobilisations against the Russian aggression, in support of Ukraine, for peace, with huge efforts to organise solidarity with the refugees and war victims. Since the first minutes of the war, in Poland, Romania, Moldova, and the other countries at the borders with Ukraine, democratic and independent civil society has been devoting its energy to rescue, welcome, and provide assistance to millions of refugees. For example, in Poland, by the end of 2022, more than 1.5 million had registered in the country and applied for some form of assistance, while 8.5 million had crossed the Polish-Ukrainian border⁴. NGOs and individual activists took it upon themselves to organise and coordinate the entire support system, with highly insufficient help from the government. However, this meant another huge commitment for organisations and activists, which for a long time have not received any government support.

Across Europe, civic actors have been stepping up to provide direct humanitarian, legal, psycho-physical support to those crossing the borders in search of safety. They have collected medication and essential goods to be sent to civilians remaining in the country. They organised and welcomed all refugees fleeing the war in Ukraine over the EU territory, regardless of their ethnic or geographic origin, when possible in close cooperation with authorities. They advocated for and protected refugees rights when in danger. For example, civil society has documented and denounced instances

⁴ <https://data.unhcr.org/en/situations/ukraine>

where people of African and Arab descent have been prevented from crossing borders and were subject to violence and restrictions based on their origin⁵.

Despite the massive role played by CSOs, they were not thoroughly consulted or involved in European Commission and European External Action Service management of the crisis and reconstruction plans, with limited opportunity to interact with decision-makers⁶.

Economic consequences of Russia's aggression risks feeding societal polarisation

The war triggered many direct and indirect economic consequences, one being the energy crisis, which continues today. Europe was also impacted by inflation that started at the end of 2021 and accelerated in the first half of 2022, which fuelled a cost-of-living crisis. Civil society on the ground witnessed how the rising cost of living, including for energy and food, has been the most pressing concern for many in Europe, although with different intensity depending on the country. The standard of living of many had already been reduced due to the consequences of the COVID-19 pandemic, and the consequences of Russia's war of aggression on Ukraine and the cost-of-living crisis only worsened their struggle⁷. An increasing number of people are facing difficulties in paying bills and basic goods. Others who had not yet seen their standard of living reduced fear it will be the case in the near future. The cost-of-living crisis adds to the deep crisis of trust that was developing in previous decades and could threaten social cohesion and feed existing societal polarisation⁸.

The low trust in media and institutions in many countries provides fertile ground for proliferation of disinformation, which also contributes to the spreading of regressive narratives against migrants and other excluded groups. For example, in Bulgaria disinformation messages such as aid to Ukraine would mean Bulgaria entering the war, flooded social media and were repeated by MPs of the Bulgarian Socialist Party and the far-right Revival Party in the Parliament. Several demonstrations in support of Russia's aggression were also staged in several member states. In Czech Republic, conspiracy and pro-Russian followers and the former organisers of the anti-vax protests mobilised thousands of people in Prague as part of the initiative 'Czech Republic First', where they made several demands including, negotiations with Russia on cheap energy supplies, stances against the EU, the resignation of the government, and military neutrality.

⁵ <https://www.enar-eu.org/europe-cannot-abandon-racialised-people-stuck-at-borders-of-ukrainian-conflict/>

⁶ <https://meta.eeb.org/2022/12/13/civil-society-has-the-right-to-have-a-say-in-ukraines-post-war-reconstruction/>

⁷ See here: <https://europa.eu/eurobarometer/surveys/detail/2932>;

<https://www.moreincommon.com/media/ucteuwgy/more-in-common-sept-2022-cost-of-living-survey-comparative.pdf>

⁸ <https://www.edelman.com/sites/g/files/aatuss191/files/2023-02/2023%20Edelman%20Trust%20Barometer%20Global%20Report.pdf>

Discriminated groups remain under pressure

Access to rights, privileges and opportunities for discriminated and excluded groups remain a concern, particularly given that they are left out from policymaking processes at institutional levels but also subject to everyday societal exclusion in practice. 2021 was a **challenging year** for discriminated and excluded groups, including women, LGBTQI+ people, refugees and asylum seekers and ethnic and religious minorities, who were disproportionately impacted by economic, psycho-social and other consequences of the COVID-19 pandemic⁹.

Hate speech, both online and offline, racial and gender-based violence and threats directed at civil society activists and human rights defenders has continued, with negative mental health consequences for those targeted.

These lingering consequences spilled over in 2022, with many CSOs who work with discriminated and excluded groups prioritising direct care and response. In addition, systemic discrimination continues to have an impact on access to justice, social and economic rights of these groups. Hate speech, both online and offline, racial and gender-based violence and threats directed at civil society activists and human rights defenders has continued, with negative mental health consequences for those targeted.¹⁰

There have been positive movements in LGBTQI+ rights, with the Rainbow Europe index by ILGA illustrating improvements in the legal and policy situation of LGBTQI+ people in several member states¹¹. This demonstrates the power of campaigning and advocacy by civil society for LGBTQI+ rights. The biggest improvements, as illustrated by the Index, were seen in Denmark¹², Iceland¹³, France¹⁴, Greece¹⁵, and Latvia¹⁶. Denmark adopted anti-discrimination legislation, while France banned conversion therapy based on sexual orientation and gender identity and appears to have made improvements in implementing an equality action plan. However, LGBTQI+ rights have become

⁹ <https://tgeu.org/wp-content/uploads/2021/01/impact-assessment-covid19-and-trans-people-in-europe-and-central-asia.pdf>

¹⁰ <https://www.enar-eu.org/how-can-rule-of-law-commit-to-tackleracism-across-europe/>

¹¹ <https://www.ilga-europe.org/report/rainbow-europe-2022/>

¹² <https://www.rainbow-europe.org/#8630/0/0>

¹³ <https://rainbow-europe.org/#8638/0/0>

¹⁴ <https://rainbow-europe.org/#8633/0/0>

¹⁵ <https://rainbow-europe.org/#8636/0/0>

¹⁶ <https://rainbow-europe.org/#8642/0/0>

increasingly politicised in the EU, including during elections. For example, in Hungary, Prime Minister Viktor Orbán continued to attack LGBTQI+ people during election rallies, while Italy's far-right leader Giorgia Meloni openly condemned "gender ideology". In Spain the far-right VOX party regularly targeted LGBTQI+ people with smear campaigns to "combat gender ideology"¹⁷.

While there have also been some positive developments on sexual and reproductive health and rights (SRHR) including in countries like Germany, France, Lithuania, Netherlands and Malta, in several member states there is an ongoing backlash against women's rights, with excluded groups such as transgender women and migrant women more impacted. In particular, SRHR remains challenged in member states such as Poland, Hungary and Slovakia. In Poland, Abortion Dream Team activist Justyna Wydrzyńska was charged and found guilty of providing abortion pills to a woman who was in an unwanted pregnancy with an abusive partner. The activist was sentenced to eight months of community service.¹⁸ Recently in Italy, three regressive legislative proposals were tabled in the Italian Senate to introduce laws protecting life from conception¹⁹, to create a "day of unborn life"²⁰ and to introduce mandatory biased counselling prior to abortion²¹. Additionally, misinformation, stigma, and opposition to abortion remains a concern, with activists and those seeking abortion facing online harassment and harassment in front of clinics.

Civil society organisations advocating for racial equality and anti-discrimination, including the rights of ethnic and religious minorities and refugees and asylum seekers, continue to face increasing stigma and hostility.

Civil society organisations advocating for racial equality and anti-discrimination, including the rights of ethnic and religious minorities and refugees and asylum seekers, continue to face increasing stigma and hostility. In particular, patterns of racial profiling, abuse of power, police brutality against

¹⁷ <https://www.ilga-europe.org/files/uploads/2023/01/ILGA-Europe-2023-Rule-of-Law-EC-Submission.pdf>

¹⁸ <https://europe.ippf.org/media-center/poland-ippf-en-appalled-guilty-verdict-case-justyna-wydrzynska>

¹⁹ <https://reproductiverights.us7.list-manage.com/track/click?u=018e91cec9f6208de60023963&id=9e88d4b7b1&e=f8023ecbee>

²⁰ <https://reproductiverights.us7.list-manage.com/track/click?u=018e91cec9f6208de60023963&id=9ca7ae64a9&e=f8023ecbee>

²¹ <https://reproductiverights.us7.list-manage.com/track/click?u=018e91cec9f6208de60023963&id=c3db94dea1&e=f8023ecbee>

ethnic and religious minorities, migrants and refugees, and isolated minors continue within justice and law enforcement systems²².

The rights of Muslim people have also been threatened. In France, associations defending the rights of Muslims and showing solidarity with them have become the target of smear campaigns and sanctions by the public authorities. The smear campaigns are based on three types of accusations: "proselytising" and "undermining secularism"; "separatism" and "communitarian" practices; and finally, association with groups or individuals said to be "radicalised" or threatening the "values of the Republic". Meanwhile in Denmark, mass protests took place after a recent Danish government proposal to ban hijabs in primary schools which was put forward by the 'Danish commission for the Forgotten Women's Struggle'²³.

The situation for Roma people in the EU is characterised by discrimination in all areas of life. The consequences of the COVID-19 pandemic, together with the current economic crisis has majorly impacted Roma civil society. They also face increasing stigma and hostility.

migration itself continues to be criminalised, as individuals crossing borders are treated in an inhumane and undignified manner and targeted through anti-smuggling legislation

Refugees' and asylum seekers' rights remain under threat in the EU often through restrictive policies and worrying narratives by member states. In 2022, member states blatantly showed double standards with regards to enforcing the rights of people on the move based on their country of origin and the colour of their skin: while they welcomed white Ukrainians fleeing from the war, they continued to tighten border security²⁴, use racial profiling and brutally push back²⁵ migrants coming from Africa and the Middle East²⁶, for example, in Bulgaria and Greece, as well as in Belarus. There were also reports that some international students of African descent living in Ukraine were subject to racial discrimination when trying to cross the border²⁷. In addition, migration itself continues to be criminalised, as individuals crossing borders are treated in an inhumane and undignified manner and targeted through anti-smuggling legislation. The trend of harassing human rights defenders and civil

²² <https://www.enar-eu.org/how-can-rule-of-law-commit-to-tackleracism-across-europe/>

²³ <https://monitor.civicus.org/updates/2022/10/28/protests-government-proposes-ban-hijabs-schools/>

²⁴ <https://monitor.civicus.org/updates/2023/01/02/anti-lgbtqi-protest-staged-concern-migrant-pushback-policy/>

²⁵ <https://www.lighthousereports.nl/investigation/frontex-the-eu-pushback-agency/>

²⁶ <https://www.hrw.org/news/2022/07/08/european-court-slams-greece-over-deadly-migrant-pushback>

²⁷ <https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-experts-concerned-reports-discrimination-against-people-african>

society who provide aid to refugees and asylum seekers has also continued (see below section on “criminalisation of solidarity”).



Regulatory environment for civic freedoms

Restrictive laws hampering CSOs

While laws regulating the right to association across the EU generally conform with international human rights standards and do not directly restrict the operation of CSOs, recently passed restrictive laws or proposals continue to hamper CSOs in some member states.

These measures often mark a shift from recognising freedom of association as a means to ensure social cohesion and democracy, to looking at civil society as entities that are presumed guilty of foreign interference, lack of transparency or smuggling and that need to be supervised and, sometimes, restricted under the guise of promoting transparency and security.

These laws have various impacts on civil society: they create additional administrative burdens for organisations draining their capacities and resources, and can result in adverse funding consequences and disproportionate sanctions for non-compliance, which may include dissolution or de-registration.

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The impacts of new laws passed in 2021 are being felt by CSOs in several member states. In Hungary, the 2021 Act on organisations "capable of influencing public life," (i.e. those with an annual budget above 20 million HUF, (roughly €55,000) has been used to create administrative burdens for civil society, after several CSOs received an order from the State Audit Organisation (SAO) to submit

documents – internal financial rules and guidelines – through the agency's online platform within a 10 day deadline in May 2022.

French authorities began implementing the new provisions under the so called "Separatism law" which requires any association applying for public financing to sign a "contract of commitment to Republican principles" and amends the regime governing the dissolution of associations. There have been at least three cases of associations whose funding has been endangered and four decrees by the ministry of interior dissolving associations. While the law was passed to tackle alleged 'separatism' and extremism, its implementation mostly targeted environmental and anti-capitalism organisations using non-violent direct actions and civil disobedience.

In other member states, there are laws that remain in place, despite civil society opposition and criticism from international institutions. In Greece, a 2021 law which criminalises rescue operations, particularly maritime search and rescue operations, has forced organisations to terminate this work due to fear of being prosecuted. Additionally, a 2020 Joint Ministerial Decision which introduced strict requirements for the operation of CSOs working on migration is still in place and has made it difficult for these CSOs to register and carry out their work. For example, in 2021 the government rejected the registration application of the NGO Refugee Support Aegean (RSA) and only accepted a new application by RSA in 2022 after facing criticism. Similarly, the 2020 amendment to the Law on Associations in Cyprus has led to the dissolution of several associations, such as KISA, one of the leading organisations which fights for equality and against discrimination.

In Germany, conflicts between public benefit status, which is regulated by tax law, and its compatibility with civil society's political activity remain, resulting in a chilling effect for CSOs engaging on topics of public relevance. While there are attempts to reform the law on tax-exempt status, civil society believes that these are insufficient. Since 2014, the Association for the Taxation of Financial Transactions and for Citizens' Action (ATTAC), a globalisation-critical network, has been battling to reinstate its charity status after it was withdrawn for its campaigning for tax justice which was deemed "too political". The organisation has now lodged a complaint with the Constitutional Court after exhausting all other legal avenues.

In some member states the imminent threat of restrictive legislation requires CSOs to remain constantly mobilised, draining their resources and capacities to focus on their core mandate. For example, in Poland, amendments to the education law, dubbed "Lex Czarnek" (vetoed by the President of Poland in March 2022) were revived, once again enacted and once again vetoed in December 2022. The proposed bill includes provisions directly regulating the operation of NGOs in schools and introduces certain bureaucratic procedures that in practice make it very difficult for NGOs to function in educational institutions. Additionally, a draft law on foreign funding of NGOs which will lead to stigmatisation and additional burdens on NGOs, is yet to be passed. The proposal is similar to the Hungarian Act on transparency (LexNGO) which the Court of Justice of the European

Union deemed incompatible with EU law²⁸. Similarly, in Bulgaria, a proposal for Foreign Agents Registration Bill, filed in the Parliament, imposes several prohibitions on so-called foreign agents and the natural persons and legal entities related to them, including restrictions on political rights and access to state funding.

Developments at EU level

It is worrying that narratives that legitimise restrictive legislation at national level have been echoed in the European institutions.

It is worrying that narratives that legitimise restrictive legislation at national level have been echoed in the European institutions. On 19 October 2022 the European Parliament adopted a report²⁹ on the draft general budget of the European Union for the financial year 2023, which includes allegations claiming (see article 35) that the European Commission is financing “associations with links to radical religious and political organisations” through its grants and requesting that the beneficiaries of the Citizens Rights Equality and Values Programme (CERV), which supports CSOs actions promoting fundamental values, should sign a “Charter committing them to respect those values before making funds available.” This proposal, tabled by Renew MEPs mostly from France, echoes the above-mentioned “contract of commitment to Republican principles”. It illustrates a shift in narratives from protection of civic actors to suspicion, and is concerning as it follows an attempt by France’s Interior Minister Gérald Darmanin to interfere with the European Commission’s independent process to award funding to a French community organising NGO working with Muslim women³⁰.

Concerning developments have continued in 2023. The corruption scandal known as “Qatargate” involving members of the European Parliament (EP) in corruption, money laundering, and organised crime promoted by the governments of Qatar, Morocco and Mauritania with the aim to influence their parliamentary work, continued to unfold. On 13 February 2023, the right-wing European People’s Party (EPP) promoted a parliamentary debate, which shifted the attention away from the need for accountability and transparency of former and current MEPs and their staff, to the alleged role of NGOs in promoting corruption. The call for a Foreign Agents Registration Act has also emerged

²⁸ <https://helsinki.hu/en/information-note-on-hungarys-lex-ngo-2021/>

²⁹ <https://civicspacewatch.eu/ep-new-report-risks-imposing-new-conditionality-for-the-cerv/>

³⁰ <https://civicspacewatch.eu/old/france-french-minister-of-interior-interfere-with-european-commissions-distribution-of-funding-to-local-ngo/>

in this context and a number of amendments to reports in discussion in the European Parliament have attempted to take additional control of CSOs' funding.

It is important to stress that CSOs abide by strict transparency measures. Under the current Transparency Register rules, CSOs have to provide more detailed funding information than corporate lobbies, despite the fact that they advocate in the common interest while corporate lobbyists promote commercial private interests. Additionally, contracts of project proposals for EU direct funding, assessed by the European Commission and approved on the basis of eligibility and selection criteria, already include a binding section on ethics and values (such as human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities) to which beneficiary organisations must abide. Failing to do so results in reduced or withdrawn grants, or administrative sanctions.

Laws curbing the right to protest

Protests are frequently being used as a tool for people to express their needs and dissatisfaction with issues of the rule of law, democracy and fundamental rights.

Public demonstrations and protests are crucial means for political participation. Protests are frequently being used as a tool for people to express their needs and dissatisfaction with issues of the rule of law, democracy and fundamental rights. These avenues are particularly crucial when institutionalised channels for social and civil dialogue and democratic checks and balances are weakened or broken. In 2022 several protests took place across the EU including against Russia's war and in solidarity with Ukraine, against the rising cost of living and endangered labour rights, and over the environmental and climate emergencies, with many protests led by migrants, LGBTQI+ people, women, and young people..

In recent years, several countries have passed legislation restricting the right to peaceful assembly and toughening sanctions related to assemblies, including the 2019 Security decrees I and II in Italy, the 2019 Anti-rioters' law and 2021 Global Security law in France, the 2016 Law on public assemblies in Poland (introducing 'cyclical assemblies') and the 2020 law on public outdoor assemblies in Greece.

These laws impacted the right to freedom of assembly in 2022. In Spain, despite attempts to reform the so-called 'Gag' Law, following criticisms from civil society, UN special rapporteurs and the Venice Commission, it has remained in place and been used to crack down on protests and freedom of expression. The law contains problematic provisions, such as giving discretionary powers to police

officers and the difficulty to appeal against a sanction. The current reforms proposed do not go far enough and have not addressed several concerns raised by [civil society](#)³¹ and the [Council of Europe](#)³².

Spain also introduced new modifications to the crime of public disorder under the criminal code which may result in the criminalisation of political dissent and the restriction of the right to protest. The changes expand the crime of public disorder, by incorporating the broad concept of “intimidation” and increases the seriousness of a crime if committed by “a well-organised crowd”, with a punishment of three to five years in prison.

In France, a revised version of the 2020 National Plan for the Maintenance of Public Order (SNMO), which regulates the operational modalities of the maintenance of order by all internal security forces in the context of public demonstrations contains worrying provisions for police practices during protest, including the use of kettling, and fails to provide clear and concrete guarantees for rights observers monitoring and reporting on police behaviours during demonstrations. An appeal against SNMO 2 is currently pending before the Council of State.

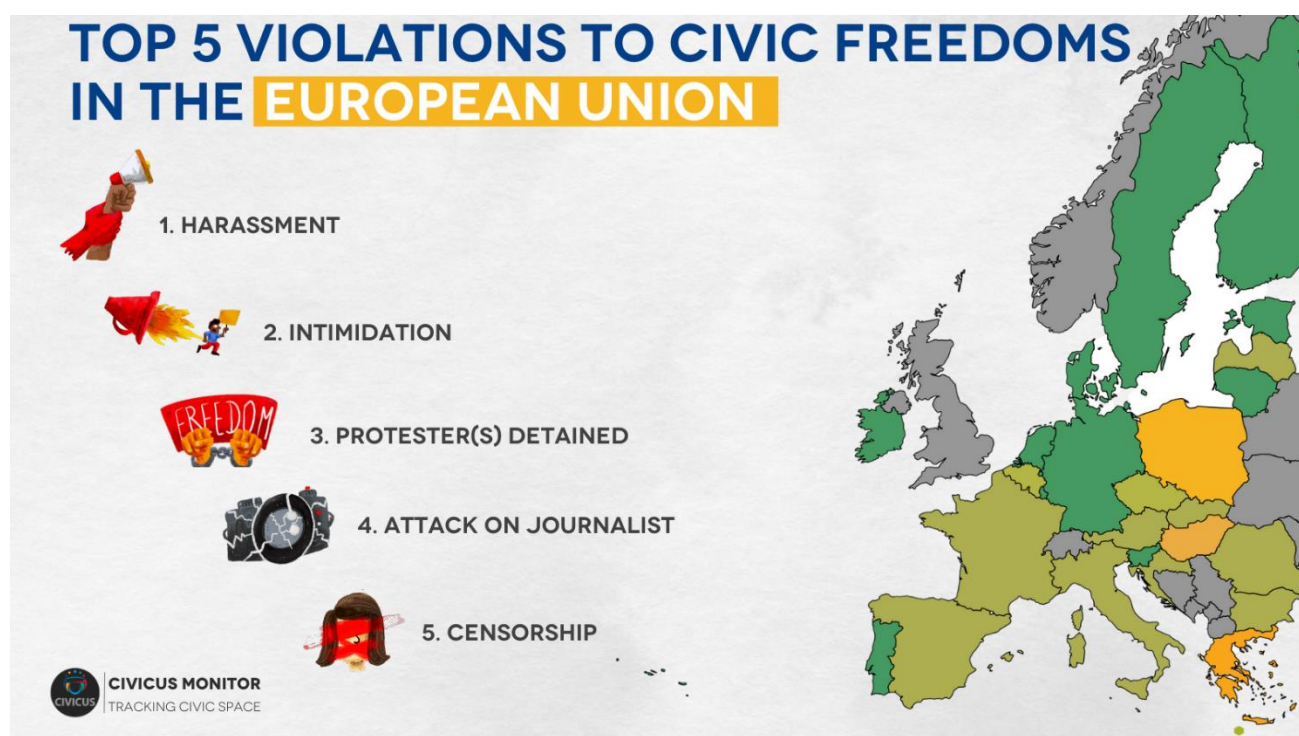
Additionally, draft bills, some of which are still under discussion, risk criminalising environmental defenders – a trend already observed in France, and they seek to broaden repressions against actions disrupting economic activities under the argument of likening them to infringements of fundamental freedoms.

In Romania, civil society has called for reforms to an outdated law on assembly that has led to restrictions on protests. For example, the law contains limitations on where and when one can protest and imposes heavy burdens on organisers, requires advance notification to authorities who routinely deny protests, and prohibits spontaneous protests.

³¹ <https://civicspacewatch.eu/spain-gag-law-under-reform-the-right-to-freedom-of-peaceful-assembly-expression-and-rule-of-law-at-stake-joint-letter/>

³² https://civicspacewatch.eu/wp-content/uploads/2022/02/CommDH20224_Letter-to-the-Spanish-Parliament_EN.pdf

Safe Space: Attacks on civic space



Defenders at risk: smear campaigns, attacks and legal harassment

In several member states, CSOs and individual activists working on democracy, the rule of law and human rights, as well as journalists, have faced smear campaigns, verbal and physical attacks and legal harassment through Strategic Litigation against Public Participation (SLAPPs).

Smear campaigns may be coordinated by the government or politicians together with pro-government media, particularly in countries where media independence and media pluralism have been eroded. For example, in Hungary, CSOs working on human rights and LGBTQI+ rights are routinely targeted³³. In one example, in October 2022, the government-financed think tank Centre

³³ <https://monitor.civicus.org/updates/2022/11/11/economic-crisis-teachers-conditions-spark-mass-protests-fidesz-government-continues-its-battle-eu-funds/>

for Fundamental Rights (Alapjogokért Központ), accused Amnesty International of promoting sex change surgeries in schools due to the organisation's project "Inclusive Spaces" which aims to provide information to teachers and students about LGBTQI+ people and their rights³⁴. Smear campaigns directed at women human rights defenders have also been reported in Poland, while in France CSOs defending the rights of Muslims, as well as those showing solidarity with them, have been targeted.

In some member states, there is a growing culture of impunity when it comes to dealing with physical and verbal attacks against activists. There has been an increasing trend of violence against LGBTQI+ people and organisations in Romania, with LGBTQI+ association MosaiQ receiving several death threats, including disturbing images on multiple channels that include Nazi symbols and detailed ways to kill LGBTQI+ people³⁵. Similarly, in the Czech Republic organisations and activists working to improve the lives of LGBTQI+ people report being targeted by insults, verbal violence, hate speech, and sometimes hate crimes solely due to their work, with attacks coming largely from Czech politicians, including several ministers and other prominent members of the current government.

In Slovenia, the 8 March Institute, which promotes citizen participation and denounced injustices and inequalities, and its director Nika Kovač has repeatedly faced harassment, including physical and online. The Institute's reports to the police have resulted in some arrests and convictions of perpetrators. In France, smear campaigns and other forms of harassment, including withdrawal of funding, have targeted organisations defending Muslim people from Islamophobia.

In several member states there is an increasing use of SLAPPs, aimed at harassing CSOs, activists and journalists by draining their financial and human resources, which can altogether have a chilling effect.

In several member states there is an increasing use of SLAPPs, aimed at harassing CSOs, activists and journalists by draining their financial and human resources, which can altogether have a chilling effect. Frequently, stigmatisation and smear campaigns against activists promote conditions which give rise to SLAPPs and other forms of judicial harassment³⁶.

Several environmental rights groups have been targeted by SLAPPs. In Austria, the municipality of Vienna, threatened to initiate court proceedings against individual protesters - some of them minors,

³⁴ https://www.amnesty.hu/product/tamogasd-a-befogado-oktatast/?fbclid=IwAR0d_N-QqHcVesSATbs0xsiWgul4CiL8PzkSOBPulmGik5FiF5Ay_uETwEU

³⁵ <https://www.mozaiqlgbt.ro/2022/08/comunicat-de-presa-violenta-si-discurs-al-urii-impotriva-lgbtq/>

³⁶ From an ECF interview with Greenpeace.

scientists and CSOs - who were involved in the demonstrations against the 'Lobautunnel' project, which was put on hold by the climate and transport minister following protests. Real estate developers in Romania targeted environmental NGOs with a series of SLAPPs, leading to their closure. According to Greenpeace International, a concerning number of SLAPPs targeting environmental activism have been documented in Italy, Poland, France, Croatia and Malta³⁷.

Over the past few years, the LGBTQI+ campaign Atlas of Hate, which monitors Anti-LGBT resolutions passed by several municipalities in Poland, has faced several SLAPPs. However, several recent judgments have dismissed the cases brought against the activists, with one court acknowledging that the activists were acting in the public interest. In April 2022 the prosecutor's office joined a civil case brought by the commune of Tuszów against LGBTQI+ activist Bart Staszewski for his opposition against their anti-LGBT resolution. In Germany, after a two- and half-year court battle, LGBTQI+ media outlet *queer.de* won a SLAPP lawsuit brought by religious sex education organisation Teenstar, Queer.de and LSVD Saxony over articles which exposed Teenstar's teaching materials that claimed being LGBTQI+ can be cured.³⁸

The trend of using SLAPPs to intimidate journalists continues, including in member states such as Greece and Croatia.

Criminalisation of solidarity

Over the past couple of years, several states have adopted increasingly restrictive legal frameworks for CSOs working on migrants' rights. This phenomenon is well known as "criminalisation of solidarity". Increasingly, all acts around the migration journey can be criminalised, including: steering a boat which is going adrift; rescuing people at sea, providing essential services, basic humanitarian aid, information, a roof or assistance during the asylum procedure; denouncing human rights violations at borders, and helping people in return procedures. At the core of these trends is the criminalisation of migration itself, a denial of human dignity – both in the language and narrative, as well as in the legal framework of several EU member states. According to a study by PICUM, between January 2022 and December 2022, at least 102 human rights defenders faced criminal or administrative proceedings in the EU for acts of solidarity with migrants.³⁹

³⁷ From an ECF interview with Greenpeace.

³⁸ https://www.queer.de/detail.php?article_id=42013

³⁹ https://picum.org/wp-content/uploads/2023/03/More-than-100-people-criminalised-for-acting-in-solidarity-with-migrants-in-the-EU-in-2022_EN.pdf

Across member states there has been a discriminatory, double standard on the part of the authorities and government in terms of their treatment towards refugees from Ukraine versus those from other parts of the world

Across member states there has been a discriminatory, double standard on the part of the authorities and government in terms of their treatment towards refugees from Ukraine versus those from other parts of the world. In Bulgaria this double standard was also reflected in the government's interactions with CSOs and activists: while authorities sought collaboration with the CSOs working with Ukrainian asylum seekers, they prosecuted organisations working on the Bulgarian-Turkish border who primarily help refugees from Africa and the Middle East. A notable case is the ongoing investigation of three CSOs for alleged involvement in migrant smuggling from Türkiye, where staff members, including management and other people affiliated to the organisation's work were questioned by the State Agency for National Security. CSOs in both Poland and Lithuania working with asylum seekers on the border with Belarus have also faced legal harassment.

In Greece there have been several worrying cases, including the well-known case currently ongoing against Sarah Mardini, Seán Binder, Nassos Karakitsos and 21 other aid workers. More recently, in December 2022, the government accused well-known human rights defender (HRD) Panayote Dimitras of "setting up a criminal organisation with the purpose of facilitating the illegal entry and stay in Greece of third-country nationals". Following interrogation, the defender was prohibited from being involved with his organisation the Greek Helsinki Monitor and was issued with a travel ban.⁴⁰

In Croatia, an illegal police raid took place in December 2022 at the facilities of the environmental organisation Zelena akcija/Friends of the Earth Croatia, where five police officers entered the premises searching for "migrants and people of poor financial status" without warrant and probable cause, intimidating the employee present.

More recently in Italy, the government introduced yet another decree for civilian search and rescue vessels, which impedes their operations and puts people who are in distress at sea further at risk⁴¹.

⁴⁰ <https://www.hrw.org/news/2023/01/26/greece-migrant-rights-defenders-face-charges>

⁴¹ <https://www.msf.org/new-decree-obstructs-lifesaving-efforts-sea-and-will-cause-more-deaths>

Repressions on protests: Intimidation, harassment, detentions

In addition to restrictive laws which curb the right to protest, in several member states there have been concerning responses to protests, which include the use of intimidation and harassment against protesters, the detention of protesters and the use of excessive force. For example, the use of excessive force against protesters have been documented in several member states including in Austria, Greece, Spain and Germany.

Increasingly of concern is how authorities respond to excluded groups, including Black people, people of colour, women, migrants and LGBTQI+ persons, religious and ethnic minorities during protests.

In Hungary, 14 teachers at Budapest high schools were fired by the Ministry of Interior, in a seemingly arbitrary manner with a clear goal of deterring others, in the context of protests on their worsening working conditions, after their right to strike was curtailed.

In Germany, police searched the homes of eleven climate activists in relation to actions they staged during which oil pipelines were disrupted in the spring of 2022. Additionally, several climate activists were arrested during these actions.

Increasingly of concern is how authorities respond to excluded groups, including Black people, people of colour, women, migrants and LGBTQI+ persons, religious and ethnic minorities during protests. In Spain, migrants with irregular administrative status risk deportation if they attempt to protest, while migrants with a regular administrative status (such as a residence permit) have expressed that the risk of being sanctioned during a protest prevents them from participating. In one case in 2022, activists Mohamed Said and Amarouch Azbir were unjustifiably arrested and forcibly deported after thirty years of living in Catalonia (with a residence permit), for "radicalism" and "participating in activities contrary to national security" without trial and without being presented with any evidence. Both activists are very active in denouncing institutional racism and pointing out



state Islamophobia. Furthermore, demonstrations organised in Madrid against the deportation of these activists were banned, with police forces racially profiling protesters.

Women human rights defenders and protesters in Poland continue to face charges for their role in the 2020 protests against the near-total abortion ban and for advocating for reproductive justice. Separately, several proceedings were filed against Dominika Przychodzeń from the Warsaw-based activist group "Cień Mgły" for taking part in different protests.

Funding for civil society

In general, the financial sustainability of civil society at national level remains a concern in several states, including Latvia, Croatia, Bulgaria, Hungary and Poland, which threatens the long-term sustainability and resilience of the sector. Rising energy prices and inflation also have negative implications for CSO funding which are likely to worsen in the future.

The availability of public funding for the civic sector to engage in rule of law and fundamental rights issues continues to be a problem in several countries including in Croatia, Latvia, Spain, Bulgaria, Czech Republic and Italy. In many EU member states, funding is mostly distributed to CSOs involved in social care, service provision and sport activities. In the Central and Eastern Europe region, the EEA and Norway grants represent an important source of funding - in many countries the primary source in the field of rule of law and democracy. European funding, especially the Citizens, Equality, Rights and Values (CERV) Programme, can also be a lifeline for many organisations working in the field.

Administrative and bureaucratic burden is an EU wide issue, and for many grassroots organisations with limited staff capacities this makes funding inaccessible.

However, there are some positive developments in Germany, where in early December 2022, the federal government adopted the draft of the Democracy Promotion Act which primarily provides a funding programme for CSOs working for democracy, human rights and the rule of law.

CSOs are also facing challenges of access to funding in several member states. This includes restrictive legislative measures which prevent access to funding to some CSOs (see above), and issues with anti-money laundering and counter-terrorism financing legislation being applied more strictly to civil society than other sectors, such as in Cyprus and Bulgaria.

Lack of transparency in how funds are awarded is also a problem in some countries. In particular, in Hungary and Poland, the institutions and foundations distributing public funding remain centrally controlled by the respective governments, making it nearly impossible for critical organisations to receive support. Nevertheless, issues with transparency in the distribution processes have also been raised in Bulgaria and Croatia.

On the contrary, Slovenia saw improved transparency following the change of government. In the Czech Republic, the Government Council for NGOs established a new expert group on systemic change in the funding of public benefit services to deal with the identified issues of access to funding.

Administrative and bureaucratic burden is an EU wide issue, and for many grassroots organisations with limited staff capacities this makes funding inaccessible. This is particularly challenging for anti-discrimination organisations, including those who may be led by Roma, Muslim, Black or Asian people. Community-based organisations experience difficulties in securing funding due to a lack of capacity internally as they are often run predominantly by volunteers.

Issues with EU funding

As said above, the CERV programme has become a crucial source of financing for CSOs working to foster and protect EU values on the ground. The system of national intermediaries distributing funding at the national level has also been a welcome initiative to overcome politicised access to funding in some countries, which should be extended to other EU funds. Nevertheless, some challenges with this system need to be overcome in order to meet its full potential and to nurture the sector. The opportunities to meaningfully participate in the shaping of the programme both in terms of its thematic priorities and structural functioning (e.g. its application, evaluation and reporting processes) have been limited. As a result, while the programme was set up with the promise to support the long-term development and capacities of the sector, including by facilitating access to funding for grassroots organisations in the field of rights and values, major shortcomings remain. For example, the co-funding requirement is a barrier for small-medium organisations, particularly in the context where the level of national funding for rule of law and democracy is scarce and critical CSOs are cut off from public funding. Additionally, this constraint is particularly important for the intermediary body which is required to raise match-funding both for its operational budget and for the amount to be re-granted to other organisations. The same goes for the regranting scheme under the Framework Partnership agreements for EU networks of associations and NGOs.

The CERV application and reporting obligations are burdensome for organisations and more resource-intensive than the former programme, Europe for Citizens. For example, in the context of application for multi-annual operating grants, which should be aimed at sustaining and developing the operational capacities of organisations, the application process is organised similarly to the one for project grants through action-oriented “work packages” and yearly applications. While this is a multi-annual funding scheme, organisations that secure partnership frameworks for four years still need to undergo a burdensome application and reporting cycle on a yearly basis.

Beyond the CERV, the EU is an important donor for civil society across many fields of action, particularly through the European Structural and Investment Funds (ESI) which supports civil society in the implementation of anti-discrimination, socio-economic and environmental rights as recognised

by the Charter of Fundamental Rights. According to the Partnership Agreement by the **Common Provisions Regulation**, which regulates shared-management of funds, the Member States should involve civil society throughout “the preparation, implementation and evaluation of programmes, including through participation in monitoring committees” and “allocate an appropriate percentage of the resources coming from the Funds for the administrative capacity building of social partners and civil society organisations”.

However, several challenges characterise these funds. First of all, they are extremely cumbersome to access and focus on civil society as providers of services rather than democratic watchdogs. This disadvantages grassroots organisations, especially those from the smallest countries. Additionally, in some member states, like Croatia, lack of transparency has affected access to EU funding. In Bulgaria, state authorities have treated any funding provided to a CSO via the EU-funding programs as state aid, equating CSOs with businesses, and as a consequence limiting their ability to access the funding. Finally, in Poland, the election of Ordo Iuris – an organisation openly active against LGBTQI+ rights, sexual and reproductive health and rights, gender equality and women's rights and EU values – as a member of the Monitoring Committees of national and regional programmes raises concerns over the capacity of the committees to effectively monitor the respect of fundamental rights in the disbursement of funding⁴².

⁴² <https://kph.org.pl/fundamentalisci-nie-powinni-pilnowac-wydatkowania-srodkow-unijnych-piszemy-list-do-komisarzy-ue/>

Civil dialogue and right to participation

Despite existing mechanisms, the implementation of civil dialogue and participation of CSOs in the policy-making at national level is often “ad hoc”, “informal”, or “tokenistic”.

Civil dialogue, which consists of the structured participation of civil society in policy-making from the inception to the implementation and monitoring of public policies, is a crucial component of participatory democracy. In several European countries it is formalised through the creation of committees or councils composed of both representatives of CSOs, elected by the sector, and members of the government, that should regularly contribute to the work of the Council of ministries on general issues or to the relevant ministry for policy development. In some countries, like Italy, the regulatory framework also foresees structured mechanisms for co-designing policies and services. These forms of structured engagement of organised civil society should be complemented by consultation processes that collect feedback on already-made legal or policy proposals as well as avenues for civic participation and citizens' engagement.

Despite existing mechanisms, the implementation of civil dialogue and participation of CSOs in the policy-making at national level is often “ad hoc”, “informal”, or “tokenistic”. In Bulgaria, after years of unlawful stalling, the Council for the Development of the Civil Society (CDCS) to the Council of Ministers was finally created and played a key role in coordinating the joint efforts of the State and civil society to respond to the refugee influx from Ukraine. However, the functioning of the body has been inconsistent. In Croatia, since the changes in the composition and the rules of procedures of the Council for Civil Society Development, this forum - which used to be an important channel of cooperation and information exchange between CSOs and the public sector - no longer enables fruitful input of civil society in the policy-making. In Spain, CSOs describe civic dialogue as “insufficient and opaque”. This was clearly demonstrated during the reform process of the Citizen Security Law (Gag Law), where civil society has had very few opportunities for dialogue with the government in an open and public way to express their demands. A few countries, like Austria and Greece, lack a regulated and systematic framework for civil dialogue.

In Hungary, participation remains non-existent. In an effort to meet the conditionality criteria to access EU funds, an amendment of the law on participation was passed in the summer of 2022,

introducing some new sanctions for non-compliance. But, as CSOs pointed out, it is no more than window-dressing in the absence of the proper implementation of existing rules. Indeed, the Minister of Justice submitted this very amendment to Parliament without any prior consultation.

Public consultations, which are often the main avenue for civil society to provide input on proposed legislation, are considered to be less effective than other mechanisms. Additionally, the timeframe set by legal frameworks are often not respected as reported in Croatia, Greece, Hungary and Slovenia. In Romania, consultations should run for 30 days according to the law, but in 2022 an exception was introduced in urgent cases, meaning that laws could be adopted before the 30-day timeframe. CSOs raised concerns that the government often uses the pretext of urgency to limit consultation.

In contrast to the above, some positive steps have taken place that could lead to improvements in the inclusion of civil society. In Latvia, the Government and Parliament made a political commitment to implement civic dialogue in several policy documents, to strengthen the existing Memorandum Council and give more power in the decision-making process, following proposals from civil society to implement civic dialogue similarly to social dialogue. The Government has also allocated seed money from the European Social Funds to support organisations in engaging in the civic dialogue. In Cyprus, the development of a “National Strategy on Active Citizenship and Participatory Governance” to strengthen participatory, deliberative democracy and the development of a culture of recognition and respect towards the value and role of civil society is expected for 2023. In Czechia, the Government Council for NGOs approved the methodology for the participation of CSOs and instructed the Council Secretariat to ensure pilot testing of the methodology in the ministries. In Slovenia, the new Government reinstated several dialogue working groups and liaison officers for cooperation with CSOs and is drafting new guidelines for cooperation to rebuild dialogue.

European civil dialogue

in the absence of a structured policy framework and guidelines across EU institutions, practices and the level of engagement vary depending on the sensitivity of civil servants.

European civil dialogue is provided for in article 11.2 of the Treaty of the European Union which states that “the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.” However, in the absence of a structured policy framework and guidelines across EU institutions, practices and the level of engagement vary depending on the sensitivity of civil servants. Often civil society is only consulted through stakeholder consultations,

after the direction of policies has been decided, or through informal processes. National civil dialogue on EU issues is also lacking in the vast majority of countries. For more information, see our study [“Towards an open, transparent and structured EU civil dialogue.”](#)⁴³

Excluded groups face further barriers to participation both in national and EU level policy processes. For example, as part of the EU Roma Strategic Framework, the Commission launched national Roma platforms for the participation of all national stakeholders in the development, implementation and monitoring of Roma national strategic frameworks and relevant policy processes. However, according to Roma advocacy groups, NGOs that are more in line with the government are often included in such fora, while critical CSOs face barriers to participation and input.

⁴³ <https://civic-forum.eu/wp-content/uploads/2021/02/Civil-Dialogue-Study.pdf>

CSOs push back in trying times

Despite the shrinking space for civil society across several member states, organisations continue to demonstrate resilience and positive impact.

Despite the shrinking space for civil society across several member states, organisations continue to demonstrate resilience and positive impact.

This was shown in civil society's response to Russia's war against Ukraine. In Bulgaria, more than 900,000 migrants entered the country from Ukraine in 2022. This was met with an unprecedented mobilisation of Bulgarian civil society, with NGOs and volunteers providing information, shelter, food and other services. Similar to the COVID-19 pandemic response, in Hungary, CSOs and church charities were again the first responders providing aid, shelter and support to the waves of Ukrainian refugees, relying almost entirely on popular donations. In Poland, civil society played a crucial role in alleviating crises: whether in dealing with the rule of law crisis, the Polish-Belarusian border crisis, helping refugees from Ukraine or assisting discriminated groups. Civil society in Latvia mobilised and organised a march in support of Ukraine under the slogan "Together for Ukraine! Together against Putin!", with more than 30,000 participants -the biggest demonstration since the 1990s. They also organised support activities and new social initiatives like volunteer coordination, fundraising campaigns, creation and maintenance of various platforms, translation etc. The organiser of the donation drive 'Twitter convoy' from Latvia to Ukraine, Reinis Pozņaks, was named European of the Year 2022 in Latvia by the non-governmental organisation European Movement – Latvia. The Czech Republic saw the largest number of refugees relative to the population, with a total of 470,000 refugees, 44 per 1000 inhabitants. CSOs, citizens initiatives, and informal groups came together to help people from Ukraine, adapt their activities, and balance the missing capacities and procedures of the state. In addition, 'Let's help Ukraine', a joint initiative of CSOs and private sector organisations, was created under the Migration Consortium to coordinate assistance to people from Ukraine.

Civil society continues to find new ways to push back against democratic erosion and hold governments to account.

Civil society continues to find new ways to push back against democratic erosion and hold governments to account. Despite the difficulties - or because of them - civil society in Greece has come up with new initiatives to support people in need and defend democracy and the rule of law, through platforms such as *Golden Dawn Watch*, *Vouliwatch* and *Govwatch*. In recent years, independent investigative media, such as *Reporters United*, *We are Solomon*, and *Lighthouse Reports*, have also emerged to hold authorities accountable. There were several outcomes which demonstrate the positive impact of these actions. For example, reports on pushbacks which drew international attention to these illegal practices, positive court decisions which demonstrated the innocence of migrants accused of smuggling, and student protests which resulted in a temporary halt to the presence of police on campus.

Similarly in Spain, the Network for the Observation of Rights in the Context of Protest was born in Madrid in June 2022, in order to monitor possible violations of rights by state security forces and bodies during protests. The observers are independent volunteers who have been trained by the state Platform Defender a quien Defiende (DqD), a network made up of organisations that work to defend and protect the human rights of civil society actors.

Civil society in Hungary mobilised during the election campaign, engaging both locally and at the national level, especially in voter mobilisation, election monitoring and fraud prevention. This resulted in almost 20,000 volunteers, who served as election observers and vote counters, securing the presence of two independent volunteers in each polling station for the first time ever. A significant victory was achieved by CSOs and LGBTQI+ rights organisations during the election when the results of the anti-LGBT referendum were declared invalid.

Recommendations for EU action on civic space

Promoting a thriving European civic space requires a shared commitment of European institutions and member states. In order to do so and respond to the challenges and gaps described above, the European Institutions should launch a proactive European strategy towards open civic space and resilient civil society.

The European Civil Society Strategy should give genuine political recognition to the crucial role played by CSOs in giving substance to EU's democratic values by: Integrating all existing tools; filling monitoring, support and protection gaps clearly linking monitoring and reporting tools to EU enforcement mechanisms (such as infringement procedures and rule of law conditionality) to ensure timely and effective follow-up action. Additionally, the Strategy should set a long-term vision on how to develop European civil society and expand civic space.

The mandate of the Commission Vice President responsible for civic space and dialogue with civil society should include appropriate means to oversee the implementation of the Strategy at the European and national level, ensuring coherence between EU actions that aim to expand civic space, and enabling civil society participation in different policy areas. It should also include proactive diplomatic support to civic actors under pressure and timely follow-up on civil society complaints on ongoing attacks and negative developments registered on the EU mechanism platform, via public and diplomatic means at their disposal, in dialogue with civil society organisations.

Such European Civil Society Strategy should include the pillars outlined below, which were developed in a participatory process over two days, involving civil society actors from across Europe as well as donors and representatives of European and international institutions⁴⁴.

Regulatory environment for civic freedoms

European Institutions must ensure that the regulatory environment for civic freedoms is in line with EU values enshrined in article 2 & 11 TEU, rights protected by the Charter of Fundamental Rights and international human rights standards.

⁴⁴ European Convening on Civic Space - European Civic Forum (civic-forum.eu). Find the full recommendations here: <https://civic-forum.eu/wp-content/uploads/2023/02/Recommendations-European-Convening-on-civic-space.pdf>.

- 🔍 **Statute for cross-border associations:** EU institutions should set out a clear commitment to propose legislation on the Statute for cross-border associations – a legal instrument enabling the cross-border work, cooperation, movement and relocation of civil society organisations within the EU - and harmonise standards for non-profit organisations across the EU based on best practices and enabling frameworks. These upwards harmonisation standards, which should be developed together with CSOs, should comply fully with the freedom of association, expression and assembly as enshrined in international law and in the EU Charter of Fundamental Rights, and take into account the different realities of CSOs, including their watchdog and advocacy functions.
- 🔍 **Qatargate:** EU institutions must ensure that any next steps (via the Special committee on foreign interference) that emerge to deal with the so-called ‘Qatargate’ scandal do not disproportionately target civil society through creating more stringent and burdensome reporting requirements for CSOs, who are already subject to strict reporting obligations.
- 🔍 **Impact assessment of EU legislation:** The European Commission must ensure that narratives and policies adopted, in particular in relation to migration and counter-terrorism, including the upcoming Defence of Democracy package, are in line with human rights standards and do not contribute to creating suspicion on and restricting the action of civil society organisations and human rights defenders.
- 🔍 **Rule of law report:** The European Commission must ensure that the rule of law report includes strong and measurable recommendations on the enabling environment for civil society embedded in international human rights law.

Safe Space

The EU institutions should protect civil society and human rights defenders against attacks by developing an EU mechanism platform to allow civil society to report on attacks and negative developments on an ongoing basis. The mechanism should be built on protectdefenders.eu, the existing mechanism developed by DG IntPA to support civil society in the External Action, the Council of Europe Platform for the safety of journalists and the UN Special Procedures. The mechanism should ensure:

- 🔍 **Prevention:** monitor early warning signs which should feed into the European Commission’s Rule of law reports and lead to country-specific recommendations.
- 🔍 **Direct Assistance:** enable rapid response to support human rights defenders (HRDs) that face immediate risk through a 24/7 hotline, run by independent civil society organisations on behalf of and financed by the EU institutions. Assistance must include a range of measures, including legal representation, medical costs, protection measures, communication and psychological support, and relocation.

- 🔍 **Accountability:** through providing space for Member States to react publicly to complaints registered on such a platform and explaining measures adopted to address the complaints.

Foster real dialogue and meaningful participation

Beyond consultations, we call for civil dialogue to be recognised and organised on an equal footing to social dialogue in EU policy-making, in all areas of EU action and along all policy cycles and EU institutions.

- 🔍 **Co-programming⁴⁵ and participatory designing of public policies:** The European Commission should develop a Commission staff working document on the functioning and potential of European civil dialogue to bring coherence in the engagement practices across different DGs.⁴⁶ Civil society should be involved in the assessment of the needs of general interest to be addressed by sectoral EU policies and programmes, the identification of appropriate policy solutions and in the preparation of the European Commission work programme. Such involvement is already happening at the national level through supervisory committees involving civil society organisations, among other partners⁴⁷. Civil society should also be involved throughout the policy cycle, including policies' design, implementation and assessment. For this purpose, permanent civil dialogue structures should be established in each European Commission DG mirroring examples of positive practices such as in DG EMPL, DG Trade and DG AGRI. One member of the cabinet of the President of the European Commission should be responsible for cross-sectoral dialogue, and there should be a dedicated unit within the Secretariat General to coordinate the civil society (or civil dialogue) units within each DG and reporting to the Commission President and Vice President in charge of civic space and civil dialogue.
- 🔍 **Sectoral dialogue:** The Commission should engage in dialogue with civil society before submitting policy proposals on the possible direction of Union action and on the content of the envisaged proposal, similarly to the social partners, as well as the feasibility and impact assessment.
- 🔍 **Cross-sectoral dialogue:** The EU should establish an annual summit enabling civil society to contribute to the political dialogue on the direction of EU action and policies, in the context, for example, of the state of the union.
- 🔍 **Interinstitutional coordination on the implementation of article 11.2 TEU:** The EU institutions should coordinate to ensure the structured involvement of civil society across




⁴⁵ See, for example, coprogrammazione and coprogettazione in Italy: <https://www.cantiereterzosettore.it/la-co-programmazione/>

⁴⁶ On the example of the COMMISSION STAFF WORKING DOCUMENT on the functioning and potential of European sectoral social dialogue.

⁴⁷ Following Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014

all phases of the policy cycle. For this purpose, permanent civil dialogue structures should be established in the European Parliament and European Council, regulated by a coherent policy framework.

Ensure the proactive involvement of grassroots organisations and associations led by excluded groups:

-  **Diverse participation:** Associations representing people who are affected by the policies, especially grassroots organisations and excluded groups, including people with a precarious or insecure residence status, should actively be involved in the process of designing policies. Civil servants in the EU institutions should be trained to proactively engage with these groups to gain knowledge on how to empower their active participation.
-  **European Social Funds:** The European Commission should encourage the use of the European Social Funds to support national civil society, grassroots and under-represented groups to engage in civil dialogue, including in shaping the national position on EU legislation. To this end, it should also ensure access to information on legislation reaching the national discussion via the European Commission representations in member states, and provide technical assistance.
-  **Strengthen multi-stakeholder partnership approach** to policy-making involving the public and private sectors and civil society organisations to tackle societal issues.

Build the resilience of the civic sector through truly empowering funding policies

Truly empowering funding policies aim to shift the power to communities and those representing them, to ensure they respond to and meet real needs. EU funding policies for civil society should embed human rights grant-making principles⁴⁸ and learn from other funders' best practices such as trust-based philanthropy⁴⁹, "funding for real change"⁵⁰ and participative grantmaking⁵¹ to ensure real empowerment and strengthening of civil society.





⁴⁸ <https://www.hrfn.org/wp-content/uploads/2016/11/Principles-English-Sept-2020.pdf>


⁴⁹ <https://www.trustbasedphilanthropy.org/>

⁵⁰ <https://www.fundingforrealchange.com/>




⁵¹ https://okotars.hu/sites/default/files/epa_grantmaking_final_web.pdf

Inclusive and participatory funding and budgeting:

-  The negotiations on the multiannual financial framework and the definition of key funding programmes both at the EU and national level and towards third countries should include civil society through structured dialogue.
-  Funding policies, including thematic priorities, accessibility, reporting and evaluation should be designed together with civil society and involve grassroots organisations.
-  A bi-annual structured dialogue should be put in place between relevant European Commission DGs and beneficiaries of EU funding, who should have a say on the agenda of the meetings, in order to provide space for feedback and adjustments of funding programmes (i.e. in face of crises, inflation...). Best practices of such dialogues are already taking place through the Humanitarian Partnership Watch Group between European Commission, DG ECHO and humanitarian CSOs⁵², as well as through the Programming Committee on Youth at the Council of Europe⁵³.
-  The European Commission should monitor and assist Member States in the application of the partnership principle and inclusion of CSOs in the preparation, implementation and evaluation of the shared management programmes, including the National Recovery and Resilience Plans, to enable their watchdog role to guarantee that EU funds are properly spent to meet the goals and the ambitions of the plans, as foreseen in the Common Provisions Regulation. It should also extend this principle to all EU funding to Member States.

 **Review the CERV to unlock its full potential:** While CERV has been a huge positive step forward, its functioning and accessibility needs urgent review, in partnership with civil society organisations, to overcome existing challenges including bureaucracy, unrealistic unit costs and lump sums, too high co-funding rates for intermediaries, language barriers, effects of inflation, project-grant management applied to core funding and core funding vs project funding. This also requires ensuring the participation of civil society in the review of the Multiannual Financial Framework and Financial regulations.

Ensure the accessibility of funding by grassroots organisations by

-  ensuring the funding, especially the shared management funds, is not used to fund anti-rights and anti-choice NGOs,
-  simplifying the application and reporting procedures, for instance by introducing 2-step application procedures and differentiated co-funding levels and administrative procedures based on the type of applicants and the size of grants,
-  enabling the dissemination, application and review process to happen in national languages.

⁵² <https://voiceeu.org/humanitarian-partnership-watch-group>

⁵³ <https://www.coe.int/en/web/youth/programming-committee>

- 🔍 Expand the funding disbursement through CSO intermediary beyond the CERV to other funding programmes that can support the development and strengthening of CSOs capacities and infrastructures, such as the structural funds, in order to overcome government interference.
- 🔍 Support organisational development, fair salaries (including by raising personnel costs in project funding) and good working conditions (including eligibility of sick and maternal payments, severance and other payments if necessary) so that self-care and community care are at the heart of internal working cultures⁵⁴.
- 🔍 Cover the full and fair costs of administration and financial management, including in project grants (at least 20% overheads).
- 🔍 Move towards truly multi-annual, flexible core funding practices⁵⁵ by overcoming the yearly application and reporting cycle for multiannual funding which is counterproductive for multi year commitments, costly and resources consuming.
- 🔍 Reduce the administrative burden and cost of reporting for NGOs: Simplify written reporting and invest in evaluation approaches focused on dialogue and learning. The level of administrative procedures required should be proportionate to the amount funded and the annual budget of the organisation.
- 🔍 Ensure flexibility to support NGOs in crisis situations, as is the case in the EU's external action (emergency grants etc.). Civil society organisations should be supported in investing in forecasting, foresight and risk management.
- 🔍 Set recommendations towards harmonising tax incentives for CSOs across Member States.
- 🔍 Ensure that illiberal governments through their position of power in negotiations do not compromise and prevent access to the Active Citizens Fund, which is one of the main sources of funding for civil society organisations working on democracy, rule of law and human rights in many countries. Within the EEA and Norway Financial Mechanisms, the budget for the Active Citizens Fund should be increased from 10% to 20%.

⁵⁴ <https://www.hrfn.org/wp-content/uploads/2016/11/Principles-English-Sept-2020.pdf>

⁵⁵

https://static1.squarespace.com/static/607452f8ad01dc4dd54fc41f/t/629e7f6e63704d64040cc554/1654554478550/6+Grantmaking+Practices+of+TBP_June+2022.pdf

Civil society resilience

🔍 **EU institutions should contribute to building resilience:** Civil society organisations and HRDs should be supported through activities such as

- 🔍 capacity and knowledge building on existing protection mechanisms,
- 🔍 training on risks, protection, strategic litigation and legal defence,
- 🔍 public awareness campaigns and capacity building on the use of neuroscience in framing messages on fundamental rights and values,
- 🔍 facilitating cooperation with national human rights institutions,
- 🔍 training on organisational and individual resilience, organisational development and digital and physical security,
- 🔍 investing in the creation and consolidation of regional networks for peer exchange and peer learning.

🔍 **Ensure thematic priorities and funded activities cover civil society's needs including:**

- 🔍 Services for the protection and care of activists (i.e. access to psychologists, and lawyers costs, training on digital, physical and psychological safety...)
- 🔍 Networking and coalition building
- 🔍 Strategic litigation
- 🔍 Capacity building for 1) organisational development and impact evaluation, 2) wellness, burnout prevention and resilience, 3) Tackling disinformation, 4) skills for alliance building with grassroots and social movements, 5) gender mainstreaming, diversity and inclusion policies, 6) Narrative building, 7) inclusive leadership, 8) Civic engagement and constituency building.



COUNTRY REPORTS



Civic Space Report 2023

AUSTRIA

BÜNDNIS FÜR
GEMEINNÜTZIGKEIT

INTERESSENVERTRETUNG
DES GEMEINNÜTZIGEN SEKTORS &
DER FREIWILLIGENORGANISATIONEN



Key Developments

- 🔍 Situation for CSOs positive, but funding and civic dialogue need improvement
- 🔍 Climate activists face harassment
- 🔍 Declines in press freedom concerning; independence of media questioned

Overall civic space in Austria is rated as “open”⁵⁶, with a significant shift in the environment for civil society taking place after the ÖVP and the Green party coalition government came to power at the end of 2019.

Despite the European Commission's recommendation in its 2022 Rule of Law report on Austria to “advance with the reform on access to official information taking into account the European standards on access to official documents,”⁵⁷ this has not yet been implemented by the government. Civil society notes that there is room for general improvement, especially when it comes to transparency, access to information, the fight against corruption, civic dialogue and the recognition of the important role of civic actors, expressed in the amount of moral and financial support by public and private institutions. There are several other concerning developments which require attention. Police violence during protests has particularly affected climate activists staging actions. Additionally, there are concerns about press freedom: with the oldest newspaper Wiener Zeitung being forced to move online and investigations exposing collusion between government officials and editors-in-chiefs.

⁵⁶ <https://monitor.civicus.org/country/austria/>

⁵⁷ https://commission.europa.eu/system/files/2022-07/46_1_194005_coun_chap_austria_en.pdf

Institutional, political and socio-economic landscape

After the resignation of chancellor Sebastian Kurz, since the end of 2021 the former Minister of Interior Karl Nehammer (ÖVP) has led the coalition government with the ÖVP and the Green party. Austria is facing various challenges: Climate change, the still ongoing pandemic, the return of war to Europe, the highest inflation since the 1950s and never-ending allegations of corruption are affecting the political, socio-economic situation.

According to the Austrian Democracy Monitor⁵⁸ the Austrian population is considerably losing trust in democracy. This is mainly but not only due to the "ÖVP-corruption affair" as 59 per cent of respondents to this representative survey agreed with the statement that "Politics and the media are in cahoots". System trust plummeted in the middle and upper echelons of society. Satisfaction with the political system and trust in institutions have declined in all population groups. One question asked in 2022 was whether there should be a "strong leader" who doesn't have to worry about parliament or elections. Currently, only 46 per cent disagree, down 10 per cent from the previous year's survey.

Stronger measures against corruption are demanded by civil society, i.e. the Austrian "Antikorruptionsvolksbegehren" (popular petition against corruption) was signed by 307,629 voters

Due to the various corruption scandals at federal (i.e. ÖVP-corruption-affair) or at the regional level (i.e. FPÖ-Graz⁵⁹) defects have been identified by civil society actors⁶⁰ and public institutions at the

⁵⁸ <https://www.demokratiemonitor.at/>

⁵⁹ https://www.kleinezeitung.at/steiermark/graz/6104323/Neue-Erkenntnisse_Die-Causa-FPOeGraz-wird-zum-MillionenSkandal

⁶⁰ <https://antikorruptionsbegehren.at/der-inhalt/>

institutional level.⁶¹ While transparency is often being used as a catchword by politicians to tackle corruption, the Freedom of Information Act was not yet implemented in favour of official secrecy. Transparency and control of systems are the most urgent issues across all pillars. The situation of the past few months in particular makes it clear how important effective measures would be, states the Austrian Democracy-Monitor.⁶²

Stronger measures against corruption are demanded by civil society, i.e. the Austrian "Antikorruptionsvolksbegehren" (popular petition against corruption) was signed by 307,629 voters for improvements in various fields to prevent corruption.⁶³

The situation of independent media and quality-journalism seems to be deteriorating as well. Government plans to discontinue the oldest newspaper of the world Wiener Zeitung (publicly owned) and to reduce it to an online format⁶⁴; while a public radio station known for its high-quality broadcasts has to make savings to the amount of 900,000 euros⁶⁵. Additionally, the independence of media is being justifiably doubted by the public, since collusion between government officials and editors-in-chief⁶⁶ and owners of major media houses⁶⁷ have become public knowledge. In order to strengthen the democratic public sphere, independent journalism and civil society organisations should be enhanced through better funding opportunities. Recent drafts for new media funding have been criticised by NGOs and independent media.⁶⁸

The right to vote is dependent on Austrian citizenship, which leads to the fact that in Vienna almost 30 per cent of residents have no right to vote.

⁶¹ <https://www.kleinezeitung.at/politik/innenpolitik/6217798/Insbesondere-von-der-OeVP-Rechnungshofpraesidentin-Margit-Kraker>

⁶² <https://demokratieindex.at/>

⁶³ <https://antikorruptionsbegehren.at/>

⁶⁴ <https://www.wienerzeitung.at/nachrichten/kultur/medien/2163974-Wiener-Zeitung-Regierung-stellt-Print-Produkt-weitgehend-ein.html>

⁶⁵ https://www.falter.at/zeitung/20221005/erscheinung/_fdea0581be

⁶⁶ <https://www.derstandard.at/story/2000140754514/konsequenzen-aus-der-chat-affaere-rainer-nowak-verlaesst-die-presse>

⁶⁷ <https://www.derstandard.at/story/2000135263231/gericht-laesst-beschwerden-gegen-razzien-in-umfrageaffaere-abblitzen>

⁶⁸ <https://www.suedwind.at/presseaussendungen/2022/medienfoerderung-neu-unabhaengige-medien-fordern-demokratiepolitische-kurskorrektur/>

Rights and freedoms can be exercised independently from religion, gender, LGBTQI+ or ethnic background, whereas residence-title and citizenship matter for exercise of voting rights, access to the labour market and social services. The right to vote is dependent on Austrian citizenship, which leads to the fact that in Vienna almost 30 per cent of residents have no right to vote. Non-Austrian EU citizens can only vote in local elections.⁶⁹

Another aspect concerning human dignity is the fact that asylum-seekers needed to sleep in tents during winter months 2022, which was criticised by NGOs, such as the Katholische Aktion Österreich.⁷⁰ While Chancellor Nehammer and Minister of Interior Gerhard Karner (both ÖVP) justified their recent vetoing of the accession of Romania and Bulgaria to Schengen with an ongoing and increasing “asylum crisis”, CSOs active in the field argued in an open letter to the government that the issue was not an asylum crisis, but a “housing crisis”, caused by a lack of coordination between federal and provincial political and administrative entities.⁷¹

On a positive note, the government has issued several measures in order to mitigate the impact of inflation on the population and on the economy, e.g. by capping the unit cost of electricity and by the payment of subsidies in cash to every resident, including third-country nationals.⁷²

⁶⁹ <https://www.derstandard.at/story/2000120139512/wien-wahl-knapp-jeder-dritte-wiener-darf-nicht-waehlen>

⁷⁰ <https://www.katholisch.at/aktuelles/140888/asylwerber-in-zelten-scharfe-kritik-der-katholische-aktion>

⁷¹ <https://www.asyl.at/de/info/news/offenerbriefzurunterbringungskrisevonschutzsuchendenmenschen/>

⁷² <https://www.bmf.gv.at/public/informationen/energiekosten-abfederung.html>

Regulatory environment for civic freedoms

In Austria, NPOs are of great importance to political culture and economic development, and they affect many peoples' lives. Compared to other more authoritarian countries, the legal framework conditions are rather NPO-friendly in Austria as civil rights and democracy are relatively well developed.⁷³

Amnesty International and other civil society organisations (CSOs) are criticising the regular use of facial recognition technology that was introduced in 2020 to law enforcement operations. This raised concerns regarding its potentially discriminatory impact on ethnic and racial minorities, as well as the rights to privacy, freedom of expression and peaceful assembly.⁷⁴

One result of the breadth of content and practice of NPOs is that large, traditional and established organisations stand in contrast to a large number of "small" ones, this also results in differences in the challenges faced by NGOs and NPOs.

No major changes in legal framework for association

The Austrian constitution's legal regulations guarantee the right to freedom of association. Freedom of association applies to natural persons and legal entities. An association, club or society is an association of two or more people with the objective of achieving a common, non-material goal. The registered office of the association has to be located inland. According to the Associations Act, an association may not be profit-oriented, and the association funds may only be used in pursuit of the associations' original purpose⁷⁵

If an association wants to acquire public-benefit status and associated tax benefits for the purpose of the federal tax code ("Bundesabgabenordnung" BAO), it has to pursue a public-benefit purpose and its statutes have to make sure that the association funds will be used exclusively for equal or similar non-profit purposes in the event of dissolution of the legal entity. As seen from the

⁷³ https://gemeinnuetzig.at/wp-content/uploads/2018/06/Austria_CSI_RA_final_en.pdf

⁷⁴ <https://www.amnesty.at/mitmachen/kampagnen/dein-gesicht-gehoert-dir-stoppt-gesichtserkennung-in-oesterreich/>

⁷⁵ RIS - Vereinsgesetz 2002 - Bundesrecht konsolidiert, Fassung vom 23.01.2023 (bka.gv.at).

perspective of Austrian lawyers and CSO representatives, establishing associations or allying in another legal form is unproblematic in Austria.

There is a bureaucratic legal framework for the establishment of associations, foundations and other kinds of non-profit (NPO) or non-governmental organisations with social, political, cultural or other aims, but it is neither obstructive nor restrictive.⁷⁶

A suggestion for improvement is to transfer the responsibility for keeping the register of associations from the Federal Ministry of Internal Affairs to the courts (where the commercial register is already kept). No major changes have been made in 2022.

Multi-faceted handling of peaceful assemblies

Freedom of peaceful assembly in Austria is regulated by law in the “Versammlungsgesetz”⁷⁷. In 2017, however, some changes led to restrictions. The legal framework for spontaneous assemblies and counter-assemblies has deteriorated. The notification period for assemblies was increased from 24 to 48 hours. In addition, the possibility of prohibiting assemblies that serve other countries has been extended. There is a lot of room for interpretation here, which increases the possibility of arbitrary state action.

In practice, the handling of demonstrations during the pandemic in Austria was very multi-faceted and also strongly criticised.

Further, protected areas for parallel assemblies have been identified. Amnesty International Austria suggested in its statement to refrain from a general minimum protection area and to establish protection areas only if necessary. Otherwise, assemblies could be prevented by the reporting of sham assemblies.⁷⁸

⁷⁶ *ibid*, p.30

⁷⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000249>

⁷⁸ https://www.parlament.gv.at/PAKT/VHG/XXV/SN/SN_00481/imfname_628592.pdf (quote according to: Simsa, R., Mayer, F., Muckenhuber, S., & Schweinschwaller, T. (2021). Framework Conditions of Austria's Civil

Society. (Opuscula, 153). Berlin: Maecenata Institut für Philanthropie und Zivilgesellschaft. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-73928-5>, page 40)

In practice, the handling of demonstrations during the pandemic in Austria was very multi-faceted and also strongly criticised. During the pandemic, several demonstrations were banned, but in some cases, they took place without permission. Amnesty International Austria criticised that it was not always comprehensible why some demonstrations were banned or restricted and others not. Thus, every intervention in the freedom of peaceful assembly needs a differentiated and transparent justification in each individual case. This must be clearly communicated in advance.⁷⁹

On the other hand, some COVID-19-demonstrations posed a threat to journalists. Asked by Georg Bürstmayr (member of national council / Green party) about the threat to journalists at these demonstrations, the Minister of the Interior informed that there had been a security conference with the media houses in December. In addition, the police had been instructed to intervene in cases of intimidation, threats or violence against journalists. In addition, media contact officers are deployed at demonstrations and training courses on threatening situations are held for media representatives. Representatives of the Social Democrats could not recognise any strategy of the police against violence-ready COVID-19 demonstrators. The Minister of Interior emphasised that freedom of peaceful assembly is a high democratic good that must be protected. In principle, however, the operations are particularly challenging, because a wide variety of people, from violent groups to families with children, take part in the demonstrations.⁸⁰

In February 2022 the Green Party demanded an independent body to investigate allegations of police violence. While the government announced the establishment of such a body already in 2020, the implementation is still outstanding⁸¹. One of the main reasons behind the demand is assumed police-violence at a climate protest in Vienna: activists of the climate protection movement "LobauBleibt" protested in Vienna Donaustadt against the clearing of trees for the construction of the city highway. The protest was cleared by police officers. In the course of this eviction, some activists were arrested and taken to the police detention center (PAZ) Rossauer Lände. As it became known afterwards, one activist was injured during his detention by external force of one or more police officers and sustained a broken rib. Unfortunately, too many cases of excessive police violence against climate activists were reported in the past few years.⁸² An independent body to investigate police-violence was also demanded by the Social Democrats.⁸³ They were referring to the excessive use of pepper spray during the Vienna Pride in June 2022, during which a counter protest was also staged.⁸⁴

⁷⁹ <https://www.amnesty.at/presse/amnesty-fordert-klare-kriterien-und-einzelfallentscheidung-bei-demo-verboten/>

⁸⁰ https://www.ots.at/presseaussendung/OTS_20220112_OTS0013/menschenrechtsausschuss-diskutiert-themenbereiche-antisemitismus-asylverfahren-sowie-corona-kontrollen

⁸¹ <https://www.derstandard.at/story/2000142305993/versprochene-unabhaengige-beschwerdestelle-zu-polizeigewalt-bleibt-ausstaendig>

⁸² https://www.ots.at/presseaussendung/OTS_20220223_OTS0098/gruene-fordern-von-polizei-volle-aufklaerung-im-fall-des-verletzten-klimaschutz-aktivisten (translated by DeepL)

⁸³ https://www.ots.at/presseaussendung/OTS_20220725_OTS0069/spoe-einwallner-unabhaengige-polizeibeschwerdestelle-muss-rasch-kommen

⁸⁴ <https://wien.orf.at/stories/3160386/>

Concerns over declines in press freedom

Media ownership remains highly concentrated, particularly in the provinces, and the government exerts some influence on the state broadcaster, the Austrian Broadcasting Corporation

The federal constitution and the Media Law of 1981 provide the basis for free media in Austria. Media ownership remains highly concentrated, particularly in the provinces, and the government exerts some influence on the state broadcaster, the Austrian Broadcasting Corporation (ORF).⁸⁵ CSOs raised concerns over a decline in press freedom in the end of 2021: Fifteen civil society organisations condemned the criminal prosecution of Julian Hessenthaler, who played a key role⁸⁶ in the making of the so-called “Ibiza video” which exposed alleged high-level corruption. Hessenthaler was convicted in March 2022 of cocaine trafficking and receiving, passing on or possessing false or forged specially protected documents and document forgery. Hessenthaler is considered to be one of the producers of the Ibiza video showing then-FPÖ leader and vice-chancellor Heinz-Christian Strache and FPÖ parliamentary group chairman Johann Gudenus in a villa in Ibiza talking to an alleged oligarch niece. By going to the European Court of Human Rights, Hessenthaler now wants to appeal to a court outside of Austria, which is to examine the entire investigation and court proceedings to determine whether Hessenthaler had a fair trial in the sense of the Human Rights Convention.⁸⁷

⁸⁵ <https://freedomhouse.org/country/austria/freedom-world/2022>

⁸⁶ <https://www.derstandard.at/story/2000140074376/ogh-wies-nichtigkeitsbeschwerde-von-ibiza-detektiv-zurueck>

⁸⁷ <https://www.amnesty.org/en/location/europe-and-central-asia/austria/report-austria/>

Safe Space

Climate activists threatened by SLAPPs

In December 2021, after long and intense protests by climate organisations and scientists, the 'Lobautunnel' project was put on hold by climate and transport minister Leonore Gewessler. The entire project, which is part of a larger traffic concept for a fast-growing Viennese district, will be re-evaluated in the light of its climate impact.⁸⁸

the Municipality of Vienna threatened to initiate court proceedings against individual protesters - some of them minors - scientists and CSOs involved in the demonstrations against 'Lobautunnel'.

Nonetheless, the Municipality of Vienna threatened to initiate court proceedings against individual protesters - some of them minors - scientists and CSOs involved in the demonstrations against 'Lobautunnel'. Amnesty International, Greenpeace and other organisations called on the City of Vienna, Mayor Michael Ludwig and City Councilor Ulli Sima to immediately withdraw the intimidation letters and issue an apology to those affected.⁸⁹ The activists explained that they see such letters as an act of intimidation which aims to silence them.

⁸⁸ <https://www.derstandard.at/story/2000139533260/lobautunnel-bleibt-trotz-pruefung-weiter-als-teil-der-s1-imstrassengesetz>

⁸⁹ <https://www.amnesty.at/presse/klimaschutz-und-menschenrechtsbewegung-sowie-wissenschaftlerin-verurteilen-klagsdrohungen-der-stadt-wien-als-menschenrechtsverletzung/>

Funding for civil society

Inflation worsens CSOs funding situation

CSOs in Austria have relatively good access to financing but are severely affected by inflation. Some associations have had to accept significant declines in donations due to economic crisis and inflation since springtime 2022. In particular, humanitarian hotspots outside Ukraine and other international issues have fallen by the wayside.⁹⁰

Many organisations are already facing precarious funding situations due to longstanding funding decreases, some of which threaten their very existence, as well as the consequences of COVID-19. Inflation is further worsening the situation. In many cases, there are no reserves and retention funds, as the accumulation of reserves by funding agencies or financial administration is prohibited by law or very severely restricted. Since current revenues cannot usually be reallocated by the organisations, they have little opportunity to counteract this themselves internally. In a recent survey by the civil society umbrella organisation Bündnis für Gemeinnützigkeit 4 out of 5 organisations said they were severely affected by inflation.⁹¹

Bündnis für Gemeinnützigkeit developed proposals to the government with necessary measures for short-term support in the current crisis and a set of proposals for the necessary reduction of NPO-specific inflation.

- 🔍 Inclusion of non-profit organisations in the Corporate Energy Cost Subsidy Act (UEZG): Non-profit organisations must be explicitly included in the subsidy guidelines and eligibility criteria adapted to NPOs (for example, support from energy costs starting with minimum 1 per cent of annual turnaround, instead of 3 per cent for corporations). The term must be extended to 2023.
- 🔍 Further use of the support fund for non-profit organisations: Not all non-profit organisations will fall under the eligibility criteria of the first measure above. In addition, for many NPOs, general inflation is also difficult to sustain (see below for an explanation). Therefore, in addition to or instead of Measure 1, the continuation of the Support Fund for NPOs as it was established during the COVID-19 pandemic was recommended.⁹²

⁹⁰ <https://www.fundraising.at/fva-spendenbericht-2022/>

⁹¹ https://gemeinnuetzig.at/wp-content/uploads/2022/09/Ergebnisse_Mitgliederbefragung_Teuerung270922.pdf

⁹² <https://gemeinnuetzig.at/2021/12/npo-unterstuetzungsfonds-vorlaeufige-bilanz-und-ausblick/>

- 🔍 Short- and medium-term promotion of concrete projects for the ecological change of the non-profit sector.

The public sector plays a decisive role in the financing of CSOs. In the long-term development of funding, slightly more than half of the total income of NPO's has always been provided by the federal government, the provinces or the municipalities.⁹³

⁹³ Pennerstorfer, A., Schneider, U., and Badelt, C. (2013). 'Der Nonprofit Sektor in Österreich', in R. Simsa, M. Meyer, & C. Badelt (eds.), Handbuch der Nonprofit Organisationen. Strukturen und Management. Stuttgart: Schäffer-Poeschel Verlag, 55-75 quoted according to: Simsa, R., Mayer, F., Muckenhuber, S., & Schweinschwaller, T. (2021). Framework Conditions of Austria's Civil Society. (Opuscula, 153). Berlin: Maecenata Institut für Philanthropie und Zivilgesellschaft. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-73928-5> ,

Civil dialogue and right to participation

More systematic approach needed for civic dialogue

After a severe deterioration in dialogue and participation under the ÖVP-FPÖ-government the “cooperation with politicians has in fact tended to improve since the change of government in 2020” according to CSO-representatives.⁹⁴ Particularly dialogue between Green Party politicians and civil society actors were emphasised as good.⁹⁵

CSOs are in dialogue with the government in various areas and they are involved in some legislative processes. Nevertheless, the dialogue is strongly dependent on the culture / openness of the respective departments in ministries in charge - a more systematic and regulated approach like a civil dialogue framework or civil dialogue legislation is desired. This lacking framework was also one of the reasons why usually well-established dialogue between ministries and CSOs deteriorated quickly under the Kurz I-government (end of 2017 to May 2019). Clear regulations are missing and the consultation of civil society depends on the goodwill of people in charge.

Five years ago, IGO conducted a survey together with the Vienna University of Economics and Business Administration on civil society's experiences and needs with participation processes in Austrian legislation. The focus was on the pre-parliamentary law-making process - the period from the draft law to the decision of the Council of Ministers. At that time 83.8 per cent of the organisations said that they are not satisfied with the current participation opportunities and almost 70 per cent do not feel integrated in the pre-parliamentary phase. Only one quarter of respondents rate the perceived deadlines in public reviews (Begutachtungsprozesse) as sufficient for careful processing of statements (Stellungnahmen). In the open part of the survey, the main demand expressed was for sufficient deadlines and transparent and, above all, timely information to be included in a functioning system that is accessible to all interested parties. Since then, no major changes in legislation or regulation have taken place.

After 2019, high hopes have been placed in the new government with the Green Party and according to the CSO representatives interviewed, cooperation with politicians has in fact tended to improve

⁹⁴ Simsa, R., Mayer, F., Muckenhuber, S., & Schweinschwaller, T. (2021). Framework Conditions of Austria's Civil Society. (Opuscula, 153). Berlin: Maecenata Institut für Philanthropie und Zivilgesellschaft. <https://nbn-resolving.org/urn:nbn:de:0168-ssaoar-73928-5>, page 26

⁹⁵ *ibid*, page 27f

since the change of government in 2020. "Relations have improved, especially with those positions held by the Green government partner."⁹⁶

Participation: climate assembly & stakeholder processes

Particularly the Climate-Ministry has set various initiatives for more participation. One of the most prominent ones was the "Climate Assembly" (citizen assembly). From January to June 2022, 100 randomly selected citizens from all regions of Austria and from all parts of society dealt with the question of what we need to do today to live in a climate-friendly future tomorrow. Together they formed the Climate Assembly. As a kind of "mini-Austria", they developed measures to actively shape the country's climate future. Over six weekends, the participants of the Climate Assembly developed answers to central questions about the future. The assembly participants were supported by experts from various disciplines who contributed to the current state of research. The goal is a climate-friendly Austria - and thus net zero - by 2040. 93 proposals have been developed.⁹⁷

Stakeholder-processes were increasing, i.e., the Circular Economy Strategy in the Climate-Ministry⁹⁸ or the Corporate Sustainability Due Diligence Directive.⁹⁹ The Ministry of Social Affairs started a participatory stakeholder-process with volunteers and their coordinators, respectively organisations concerning the reform of the Austrian Volunteers Act, via an e-participation platform.¹⁰⁰

The City of Vienna has implemented the Vienna Climate Teams, a combination of crowdsourcing and citizen juries as well as participatory budgets for youth and various districts¹⁰¹. Vienna is intensifying their work with digital tools. In general Austria has been - in comparison with other countries in the European Union - rather reluctant to work with innovative democratic tools like participatory budgeting.

⁹⁶ *ibid.*

⁹⁷ <https://klimarat.org/>

⁹⁸ https://www.bmk.gv.at/themen/klima_umwelt/abfall/Kreislaufwirtschaft/strategie.html

⁹⁹ https://wien.arbeiterkammer.at/interessenvertretung/eu/infobrief/Ausgabe22_2_Infobrief/IB22_2_Artikel01_EU-LieferkettengesetzAmStart.html

¹⁰⁰ <https://freiwilligenpolitik.mitgestalten.jetzt/>

¹⁰¹ <https://mitgestalten.wien.gv.at/de-DE/>

Recommendations

To the government of Austria:

- 🔍 Implement the Freedom of Information Act
- 🔍 Implement the demands of the “Anti-corruption-petition”

Safe Space

- 🔍 Introduce an independent body to investigate allegations of police violence;
- 🔍 Refrain from harassing climate activists through legal and other means and respect the right to peaceful assembly
- 🔍 Ensure that public funding of media should not be at the disadvantage of quality (print) media and protect press and media freedoms.

The right to participation and dialogue between the sector and governing bodies

- 🔍 Develop a more systematic and regulated approach towards participation like a civil dialogue framework or civil dialogue legislation;
- 🔍 Ensure that participation and consultation with civil society actors is open, transparent and inclusive

The framework for civic organisations' financial viability and sustainability

- 🔍 Routinely extend all inflation mitigation measures for the corporate sector to the non-profit sector, including all measures aiming at the short- and medium-term adaptation of the sector and its actors to ecological change

About the contributor

BÜNDNIS FÜR GEMEINNÜTZIGKEIT
("Alliance for non-profit") with its more than 3000 direct and indirect members is the largest network of non-profit and voluntary

organizations and THE representative of the interests of the sector in the country. Members are associations as well as umbrella organizations, charitable foundations and non-profit corporations. They range from small and local associations to large organizations like the Austrian branches of Red Cross, Caritas, Amnesty International, WWF, Transparency International or Birdlife and cover all areas of civil society – from the environment to human rights or inclusion, from culture to social issues and humanitarian aid.

BÜNDNIS FÜR
GEMEINNÜTZIGKEIT

INTERESSENVERTRETUNG
DES GEMEINNÜTZIGEN SEKTORS &
DER FREIWILLIGENORGANISATIONEN



Civic Space Report 2023

BULGARIA



**BULGARIAN CENTER
FOR NOT-FOR-PROFIT
LAW**



Key Developments

- 🔍 Foreign Agents Registration Bill, similar to Russia's NGO law, filed in Parliament
- 🔍 CSOs and volunteers at the forefront of solidarity with Ukraine, but those supporting migrants from Africa and the Middle East face smear campaigns and prosecution
- 🔍 Council for the Development of the Civil Society is finally created after years of stalls, but its work is irregular

Since early 2021 Bulgaria has been in an ever-deepening political crisis leading to a deadlock negatively affecting the rule of law and any possibility of progress on human rights protection. Russia's war in Ukraine also dominated Bulgaria's public debate deepening the societal divisions, which have benefited far-rights parties.

In 2022, Bulgaria also faced the biggest influx of migrants in the country's recent history due to Russia's war in Ukraine. CSOs and volunteers were at the forefront of the solidarity response, despite the lack of public financial support, proving the importance of civil society in times of crisis. On the other hand, migrants from Africa and the Middle East still face severe discrimination, while rights defenders and journalists involved in investigations of those violations and support are targeted by smear campaigns and prosecution. Civic space is narrowed¹⁰², while freedom of association and assembly are protected by law, issues of implementation persist. In 2022, the most significant attack against freedom of association, expression and media as well as against civic space in Bulgaria was the Foreign Agents Registration Bill, filed in the Parliament by a group of MPs from the far-right Revival Party. The Bill would impose on so-called foreign agents and the natural persons and legal entities related to them several prohibitions including restrictions on political rights and access to state funding. Bulgaria still needs to fully protect the LGBT+ community and ensure a safe space for its organisations and public participation. With regards to the right to participation, the Council for the Development of the Civil Society to the Council of Ministers was finally created following unlawful delay of two years. The Council played a key role in coordinating solidarity with Ukrainians, but its functioning remains irregular.

¹⁰² CIVICUS Monitor rating: <https://monitor.civicus.org/>

Institutional, political and socio-economic landscape

Political deadlock affects the rule of law and human rights protection

Since early 2021, Bulgaria has had three snap elections and only one regular government, which was in power for less than seven months until June 2022. As of the end of January 2023, Bulgaria is still governed by a caretaker government. Following failed attempts to form a government, the next snap elections are expected to take place in spring 2023. This unprecedented political crisis paved the way for the caretaker governments to overstep their primary duty to organise the next parliamentary elections and to make major political and economic decisions. Additionally, those governments are appointed by the President and are not subject to control by the Parliament, which raises serious concerns for compliance with the separation of powers principle and the effectiveness of the institutional check and balances mechanisms.

Additionally, the lack of a stable government and parliament hinders the legislative process. As a result, advancing reforms for human rights protection is nearly impossible. In that regard, the European Commission has launched several infringement proceedings against Bulgaria¹⁰³ – for failing to transpose the “Whistleblower” Directive,¹⁰⁴ for failing to transpose Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Other pressing human rights issues such as improving the legal and institutional protection of victims of violence against women and domestic violence,¹⁰⁵ are also being postponed.

¹⁰³ https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=0&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=BG&title=&submit=Search

¹⁰⁴ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, available here: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

¹⁰⁵ [Bulgaria: improve protection from violence against women and domestic violence](#)

Russia's war in Ukraine intensifies societal polarisation

Russia's war in Ukraine was the major international factor dictating the political scene in Bulgaria in 2022. The early months of the war were marked by the biggest influx of asylum seekers in Bulgaria's post-Second World War history. More than 900,000 migrants¹⁰⁶ entered the country in 2022 in contrast to the average of 30,000 entries per year in the period 2013-2017.¹⁰⁷ The migration influx was met by an unprecedented mobilisation of the Bulgarian civil society with NGOs and volunteers providing information, shelter, food and other services to the arrivals from Ukraine. Additionally, a number of demonstrations were organised in support of the Ukrainian people and called for Russia to stop its war throughout the year.¹⁰⁸

However, the war in Ukraine failed to unite Bulgarian society and politicians to firmly oppose the act of aggression. Illustrative of that fact are the repeated claims by the Minister of Defence Stefan Yanev that the war is a "limited military operation" and "military intervention".¹⁰⁹ Following his dismissal from the position, he established a new conservative political party, Bulgarian Rise, which managed to win seats in the Parliament after the elections in October 2022.

Disinformation claims such as that Bulgarians were burned alive in 2014 in Odessa, the sizable Bulgarian ethnic minority in Ukraine was attacked and discriminated by the local authorities, and that any aid to Ukraine would mean Bulgaria entering the war, flooded social media and repeated by MPs of the Bulgarian Socialist Party and the far-right Revival Party in the Parliament.¹¹⁰ Small pro-Russian demonstrations took place from the beginning of the war and grew through the year with the increase of the economic impact of the war and supported by certain CSOs¹¹¹ and political stunts from the Revival Party.¹¹²

The societal division on Russia's military aggression also impacted the public debate on Bulgaria's geo-political orientation. In early November 2022 Eurosceptic political actors and volunteers started to mobilise their efforts and call for a referendum to postpone indefinitely the adoption of the Euro planned for 2024.¹¹³ Another major setback in Bulgaria's full integration to the EU came later in the

¹⁰⁶ Information up to date 16.12.2022. Available here: <https://ukraine.gov.bg/>

¹⁰⁷ Митове и легенди. Защо мигрантите се увеличават, а статистиката не вижда това

¹⁰⁸ Шествие в София в подкрепа на Украйна

¹⁰⁹ "Ужасно неадекватно". Защо името на Стефан Янев вече върви заедно с думата "оставка"

¹¹⁰ Politicheck: "Вкарват ни във война", "запалени българи в Одеса" и още неверни твърдения от парламентарната трибуна

¹¹¹ Майки срещу войната" внасят подписи в НС

¹¹² Livestreamed by the Revival Party:
https://www.facebook.com/watch/live/?ref=watch_permalink&v=304684168499214

¹¹³ Пускат подписка за референдум срещу въвеждане на еврото

year when, in December, Austria and the Netherlands vetoed Bulgaria's accession to the Schengen zone, reinforcing the narrative adopted by the far-right that Bulgaria is controlled by the major EU countries rather than being their partner.

The division in society is also reflected in the perception of the general public of the CSOs. A survey shows that approval of NGOs among Bulgarians grew from 22.9% in 2018 to 34.6% in 2022, while the disapproval also increased – from 26.5% in 2018 and a mere 17.7% in 2020 to 32.1% in 2022.¹¹⁴

Far-right forces gain ground

The political deadlock, societal polarisation and socio-economic impact of Russia's war led the way for Eurosceptic, far-right and more recently - pro-Russian narratives to gain traction. In line with this trend, the nationalistic political party Revival increased its results from 2.45% in the elections in April 2021¹¹⁵ to 10.18% in the October 2022 snap elections¹¹⁶ making it the fourth political power in the country. Analysis shows that the Revival Party has completely dominated the social media presence in the months preceding the October 2022 elections compared to other political parties.¹¹⁷ The party stance is characterised by opposition to COVID-19 measures, the adoption of the Euro and providing military support to Ukraine. The Revival Party is also actively engaged in smear campaigns against CSOs¹¹⁸ including by proposing a Foreign Agents Registration Act¹¹⁹ similar to the oppressive Russian "foreign agents" legislation.¹²⁰

¹¹⁴ ОБЩЕСТВЕНИ НАГЛАСИ КЪМ ДЕЙНОСТТА НА ГРАЖДАНСКИТЕ ОРГАНИЗАЦИИ, see also: Paradox - positive attitudes towards CSOs are increasing, but the influence of negative suggestions, propaganda and fake news is also growing.

¹¹⁵ <https://results.cik.bg/pi2021/rezultati/index.html>

¹¹⁶ <https://results.cik.bg/ns2022/rezultati/index.html>

¹¹⁷ with 37% of all interactions on Facebook, the most popular platform in Bulgaria, connected to Bulgarian political parties or politicians shown to be connected to Revival. See Кампанията във Facebook: Партия "Възраждане" и всички останали

¹¹⁸ "ВЪЗРАЖДАНЕ" СЪС СИГНАЛ ДО ПРОКУРАТУРАТА ЗА КОРУПЦИОННАТА ДЕЙНОСТ НА ФОНДАЦИЯ "АМЕРИКА ЗА БЪЛГАРИЯ"

¹¹⁹ Proposal to adopt a Foreign Agents Registration Act in Bulgaria - when a legislative initiative is used for political propaganda and an attack on civil rights

¹²⁰ Russia: New Restrictions for 'Foreign Agents'

The regulatory environment for civic freedoms

Freedom of association

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. Steps towards further improvement of the legislation were undertaken in 2022. A Bill proposing the introduction of clear rules on participation in online assemblies of the supreme bodies of the NGOs was filed by multi-partisan group of MPs in the Parliament in November 2022.¹²¹ Despite the support by both state actors and NGOs, the Bill is likely not to be passed before the new snap elections.

While the general legislation on the registration and operation of NGOs remains in line with international standards, there are still issues concerning its implementation which need to be addressed. The information provided by the State Registration Agency shows that the number of registration refusals remains high – e.g. the newly registered NGOs in 2021 were 1379 and the issued refusals for initial registration were 1055.¹²² This means that the state authorities need to step in and improve the accessibility of the administrative procedures in the State Registration Agency, including by carrying out awareness campaigns for the correct implementation of the applicable rules and regulations.

On the other hand, the increasingly popular non-formal groups, meaning forms of associations who have not been officially established as legal persons, remain “invisible” for the legal order in Bulgaria.¹²³ This puts at risk nonformalised initiatives and groups, gathering mainly online, when fundraising *ad hoc* as their members might be sanctioned by the tax authorities. Certain legal

¹²¹ Bill available here: <https://www.parliament.bg/bg/bills/ID/164482>

¹²² Data provided to BCNL by the State Registration Agency. Data for 2022 would be available in 2023.

¹²³ With the exception of nonformal youth groups who enjoy limited legal recognition for the purposes of carrying out projects in the scope of the national youth programs. See DIRECTIVE No. 1 of 10.06.2022 on the conditions and procedures for funding projects under national youth programmes issued by the Minister for Youth and Sport, available here: <https://www.lex.bg/bg/mobile/ldoc/2137223812>

recognition of nonformal groups should be considered and adopted to regulate those *de facto* existing social relations and provide the needed legal certainty.

Anti-money laundering/terrorist financing (AML/TF) legislation overburdens the sector

A major issue of the legal framework concerning NGOs remains the anti-money laundering/terrorist financing (AML/TF) legislation. Despite the advocacy efforts of the CSOs sector¹²⁴, the current AML/TF legislation still does not fully comply with the international standards set by FATF regarding the nonprofit organisations:

- 🔍 All NGOs in Bulgaria are subjected to extensive obligations, including collecting information about their donors and beneficiaries. This approach is not risk based as the [conclusions of the National Risk Assessment published in 2019](#)¹²⁵ show medium risk of the CSO sector linked to religious organisations that are excluded from the scope of the law.
- 🔍 The NGOs with a relatively modest annual turnover of BGN 20,000 (roughly \$10,700) or more and those NGOs who consider that there is a risk for their activities to be abused for the purposes of TF have additional administrative duties – they are obliged to carry out a risk assessment and to adopt internal rules. In many cases this is an unjustified administrative burden diverting resources from the main activities of already small organisations.

In 2022, the first Sectoral Risk Assessment of the NGO Sector in connection to AML/TF was started by the Bulgarian supervisory authority. The Assessment is carried out with the assistance of NGOs¹²⁶ and the results are expected to be published in early 2023.

The AML/TF measures also affect the access of NGOs to bank services. There is a tendency amongst banks in Bulgaria to require excessive information¹²⁷ (i.e. submitting donations contracts, submitting copies of personal documents of members of their supreme governing body, etc.) and forms not tailored to the CSOs sector's specifics (i.e. shareholders information, obligatory information about the economic activities of the legal entity etc.) in order to conduct a background check of an NGO using or wishing to use the services of a bank. Some banks also demand a fee for reviewing the

¹²⁴ See e.g. [74 organizations supported a statement on the project of the Measures against Money Laundering Act \(MAMLA\)](#).

¹²⁵ Conclusions of the National Risk Assessment available here:
https://dans.bg/images/stories/FID/NOR/Riskovi_sabitiya.pdf

¹²⁶ BCNL is part of the working group on the Sectoral Risk Assessment

¹²⁷ BCNL was informed with more than 30 such cases

application and conducting a background check for opening an account of an NGOs which often do not take into account the legal specificities of these entities and are not proportional to the amount of funds which need be deposited to the account. Results of the background checks are not shared with the concerned party and there are no adequate mechanisms set up for challenging decisions of the banks to deny service, block or close an existing account.

Freedom of assembly

The Bulgarian legislation ensures the enjoyment of the freedom of assembly and protest in line with international standards.¹²⁸ The law does not require permission from the authorities for a protest or assembly to take place in public and does not introduce other unreasonable restrictive conditions. No major incidents connected to police violence were reported in 2022. Nonetheless, there are still some cases of abuse of power by the authorities and misleading practices.

- 🔍 In February 2022, three minors were arrested while attempting to write "Save Ukraine" on the Soviet Army Monument in Sofia as a form of protest against Russia's aggression against Ukraine.¹²⁹ The authorities, however, condemned the arrest and one policeperson was fired.¹³⁰ In May 2022, the Bulgarian court also ruled the arrest to be unlawful confirming the existing jurisprudence of the ECtHR on similar cases against Bulgaria, namely – Handzhiyski v. Bulgaria (decision from 06.07.2021)¹³¹ and Genov and Sarbinska v. Bulgaria (decision issued on 28.02.2022).¹³²
- 🔍 In December 2022, the mayor of Sofia ordered the dispersion of a relatively small demonstration which was openly supporting the authoritarian regime in Russia. The actions of the mayor were clearly motivated by pressure from the public and not lawfully justified reasons as the demonstration – although spreading an unacceptable message for many – was peaceful.¹³³
- 🔍 There are also indications that some municipalities do not fully accommodate the right to peaceful protest. For example, during the process of notifying authorities of an ecological protest taking place in November 2022 near a small rural town, a CSO received on multiple occasions misleading information by the administration of the local municipality requiring,

¹²⁸ See: [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#)

¹²⁹ Трима младежи са били арестувани при опит да напишат Save Ukraine на "Съветската армия"

¹³⁰ Един полицай е уволнен заради ареста на деца, протестирали със "Save Ukraine"

¹³¹ Judgment available here: <https://hudoc.echr.coe.int/eng?i=001-209033>

¹³² Judgment available here: <https://hudoc.echr.coe.int/eng?i=001-213520>

¹³³ Йорданка Фандъкова прекрати шествие в подкрепа на Русия в столицата

in breach of the law, the organisers to seek a permission for a short road blockade from the State Road Agency and to inform themselves the Ministry of Interior for the upcoming protest.¹³⁴

Freedom of expression

In 2022 Bulgaria had a significant improvement of its ranking in the RSF's World Press Freedom Index leaping from 112th to 91st place. However, this improvement was attributed mainly to the change of power in the country¹³⁵ and not to legislative changes or any particular policy undertaken by the authorities. Bulgaria remains the second lowest EU country in the index following Greece.

According to Art. 148 of the Bulgarian Penal Code, when insult or slander is directed at a public official during or in connection with the fulfilment of his/her duties or function, the penalty for insult is increased to a fine of BGN 3,000 to BGN 10,000 and the punishment for slander is increased to a fine of BGN 5,000 to BGN 15,000. Public censure may also be ordered. This provision of the Penal Code is commonly instrumentalised for SLAPPs against journalist despite several decisions of the ECtHR against Bulgaria.¹³⁶ For instance, in the case *Kasabova v. Bulgaria* (decision issued 19.07.2011)¹³⁷ the ECtHR held that a criminal defamation conviction, which resulted in a journalist being required to pay, in fines and damages, the equivalent of thirty-five times her monthly salary violated the right to freedom of expression. In its decision on the case *Bozhkov v. Bulgaria*, issued 19.07.2011, the ECtHR also explicitly explains that treating the defamation of a public official as an aggravating circumstance contradicts the well-established jurisprudence of the Court: *"It should also be observed that the individuals mentioned in the article were public officials, whom the Court has found as a rule to be subject to wider limits of acceptable criticism than private individuals... However, the national courts were unable to take that into account and were instead bound to punish the applicant more severely ... because Article 148 §§ 1 (3) and 2 of the Penal Code treats the official capacity of the victim of an alleged defamation as an automatic aggravating circumstance..."*¹³⁸.

In 2022, the Ministry of Justice proposed a Bill to amend the Penal Code in light of the ECtHR's decisions by abolishing the official capacity of the victim of an alleged defamation as an aggravating

¹³⁴ Information obtained by BCNL in the scope of a legal consultation provided to the CSO.

¹³⁵ Europe - Central Asia Polarisation to the west, war & propaganda to the east

¹³⁶ See among others *MARINOVA AND OTHERS v. BULGARIA* available here: <https://hudoc.echr.coe.int/eng?i=001-164668>; *KARZHEV v. BULGARIA* available here: <https://hudoc.echr.coe.int/eng?i=001-176816>

¹³⁷ Decision available here: <https://hudoc.echr.coe.int/eng?i=001-104539>

¹³⁸ Decision available here: <https://hudoc.echr.coe.int/eng?i=001-104541>

circumstance and significantly decreasing the size of the fines for defamation and insult. By the end of 2022, the Bill passed the first of two voting procedures in the Parliament.¹³⁹

In 2022, there were multiple instances of politicians blatantly disrespecting journalists and the principles of freedom of media and expression.

- 🔍 In January 2022, an MP from We Continue the Change Party – the biggest party in the ruling majority at that time, proposed during a parliamentary commission the introduction of criminal liability for journalists arguing that this is necessary due to the high amount of fake news in the media.¹⁴⁰ The proposition was not further discussed in the Parliament.
- 🔍 In March the then Minister of Interior Boyko Rashkov harassed a journalist during a briefing and demanded her to leave.¹⁴¹
- 🔍 The leader of the Revival Party also harassed journalists on multiple occasions in 2022. In October he refused to start an open to the public press conference until representatives of certain media outlets left. He justified his decision by stating: *"Our morals, principles and values do not allow us to communicate with such yellow-brown sewers of the American embassy."*¹⁴² In December he also announced on his Facebook page that he was collecting nominations from the public for journalists who were worthy of the "awards" in the following categories "Grantmaker of the Year" and "Servant of the Year" as well as for media outlets in the category "Comprehensive Contribution to National Treason"¹⁴³ provoking his nearly 300 000 followers to actively participate in a smear campaign.

The freedom of media is also threatened by SLAPPs¹⁴⁴ and pressure from different governmental or regulatory bodies. For instance, the Data Protection Commission pressured a journalist to disclose her sources¹⁴⁵ and, later in the year, information was revealed that the same journalist was also

¹³⁹ Bill available here: <https://www.parliament.bg/bg/bills/ID/164367>

¹⁴⁰ Statement by Antonia Dimitrova, the record of the parliamentary commission available here: <https://www.parliament.bg/bg/parliamentarycommittees/2966/steno/6518>

¹⁴¹ НА ЖИВО: Бойко Рашков с опит да изгони Ива Николова от преконференцията си

¹⁴² Костадинов се разгневи на журналисти, изгони ги от пресконференция и сам си тръгна

¹⁴³ See here:

<https://www.facebook.com/kostadin.eu/posts/pfbid026pCYREKxnUcAyVdxtLzRUXYnuvihxoShPmzw4sFPgq9uLCESkPhMQYsDAq4yX1aI>

¹⁴⁴ See: Осъдителното решение срещу журналисти и Медиапул показва дълбок порок в българската съдебна система; and АЕЖ призовава депутата Лъчезар Иванов и адвокат Менко Менков да оттеглят жалбите си срещу автори от BIRD.bg

¹⁴⁵ ГДБОП и КЗЛД не трябва да се опитват да разкриват журналистически източници

questioned about her sources this time from the Ministry of Interior.¹⁴⁶ Another unacceptable interference was observed in December when a member of the Council of Electronic Media – the media regulatory authority, published a post on social media mocking and undermining the work of a journalist as well as the NGOs she is affiliated to¹⁴⁷ because of the journalist's participation in an international investigation consortium which exposed severe human rights violations against migrants on the Bulgaria-Turkish border.¹⁴⁸

Another serious concern for the freedom of expression and access to information is the non-transparent content moderation practices of social media platforms. For examples, Facebook often blocks the advertisement of posts by official Facebook pages of NGOs which the platform arbitrary deems as political.¹⁴⁹ As the process to contest such content moderation decisions is slow and unclear, this effectively prevents many NGOs to disseminate information on their activities and events before a wider audience. Tensions with the use of Facebook in Bulgaria – the most popular social media platform in the country, also rose in 2022 when an investigative website found that a branch of a major international company provides services to Meta in connection to the content moderation of Facebook.¹⁵⁰ The website claimed that the company moderates the Bulgarian Facebook content in a manner favourable to the Russian propaganda banning the profiles of journalists commenting the war in Ukraine and criticising Putin. The claims made by the investigative journalists seem to be unfounded and not properly backed by proves, however, neither the branch of the international company nor Meta provided any adequate information to address the raised concerns about transparency of the content moderation processes. Meanwhile, the Bulgarian authorities fail to establish any mechanisms to regulate the services provided by big companies such as Meta in the country.

Foreign Agents Registration Bill attacks freedom of association, expression and media

In 2022, the most significant attack against freedom of association, expression and media as well as against civic space in Bulgaria was the Foreign Agents Registration Bill.¹⁵¹ The Bill was filed in the

¹⁴⁶ Продължава недопустимият натиск на властта за разкриване на източниците на журналистическо разследване

¹⁴⁷ АЕЖ настоява за оставка на Соня Момчилова от председателския пост в СЕМ

¹⁴⁸ Des vidéos attestent d'un tir à balle réelle sur un réfugié, à la frontière entre la Bulgarie et la Turquie

¹⁴⁹ Experience of BCNL with its Facebook page and information shared by other NGOs.





¹⁵⁰ See: Случаят с BIRD и Telus: Модерацията във Facebook е счупена, но моля, без линчове

¹⁵¹ Foreign Agents Registration Bill available here: <https://www.parliament.bg/bg/bills/ID/164424>

Parliament on 27 October 2022 by a group of MPs from the far-right Revival Party and provoked an immediate reaction from international organisation and the Bulgarian CSOs sector. In November, the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), the International Press Institute (IPI) and OBC Transeuropa (OBCT) issued a joined statement against the Bill¹⁵² and in December 180 Bulgarian CSOs signed a joined statement in protest of the Bill which was sent to the relevant Bulgarian authorities as well as to the EU institutions and the Council of Europe.¹⁵³

The Bill, as submitted, is filled with internal contradictions and vague definitions that allow for a number of hypotheses that could negatively affect not only civil organisations and media outlets, but also every Bulgarian citizen.

In brief, the Bill:

-  Defines a foreign agent as "that natural person or legal entity, civil association or political party which receives money or other material benefits from foreign sources. The same shall be domestic entities with foreign financial assistance" (§1, .2 of the Bill). At the same time, according to Art. 1 in conjunction with Art. 6 of the Bill, all legal entities, or natural persons, except religious organisations, sports clubs and the types of commercial companies explicitly listed in Art. 3, para. 2, which have received funds exceeding BGN 1,000, material benefits estimated to be at least BGN 1,000 or covering the costs of participation in "trainings, seminars and educational courses and programs, social activities or projects of the equivalent of at least BGN 1,000 in a fiscal year" from "foreign governments or foreign state-owned enterprises, foreign natural persons, foreign companies, foreign foundations, not-for-profit organisations, foreign civil societies and other unifications of people" excluding funds received from commercial transactions, gambling or from the European Union.
-  Defines "legal persons associated with foreign agents" as "the founders, directors, participants, or employees of organisations defined as foreign agents", which means virtually anyone who has a connection to a particular civic organisation (not only employees, but also members, donors, and volunteers).
-  Creates a de facto blacklist of foreign agents, maintained by the Ministry of Justice and introduces sanctions if the persons concerned, in accordance to the vague definitions in the Bill, fail to declare their inclusion in it. The condition for a person to be removed from this list is not to receive funding from abroad for a period of 5 years.
-  Introduces an obligation for every "foreign-assisted entity" to indicate that it is a "foreign agent" on printed publications and other publications as well as on photographs, address

¹⁵² Available here: [Bulgarian far-right party's 'foreign agent' bill sparks media freedom concerns](#)

¹⁵³ Available here: [180 civil society organizations said NO to the law on foreign agents](#)

cards, print samples, engravings, etc. (the list of forms of expression to which the rule applies is long and is contained in Article 12 of the Bill). It is also envisaged that foreign agents would be subject to a mandatory annual financial audit, and it is not clear how this could be carried out in respect of natural persons deemed to be a foreign agent.



Provides several prohibitions on foreign agents and the natural persons and legal entities related to them for implementing activities in schools, kindergartens, the Bulgarian Academy of Science, etc., as well as restrictions on political rights and access to state funding and participation in public procurement procedures. One of the many internal contradictions in the Bill is that under Art. 11, para. 3 prohibits foreign agents from "engaging in political activities," and Article 7, para. 2, item 3 requires them to file "a detailed declaration of any activity of a political nature that the declarant is carrying out or intends to carry out."¹⁵⁴

The Bill resembles the Russian foreign agent legislation and is promoted in a similar manner. It is well established fact that the Russian foreign agent legislation is used to repress civic actors, journalists and human rights defenders.¹⁵⁵ The legislation is also deemed to contradict international standards by comprehensive analyses carried out by the Venice Commission.¹⁵⁶ The European Court of Justice has also ruled that measures introduced by the Hungarian Transparency Law similar to (although less restrictive than) the Russian legislation are in contradiction to the EU *acquis* and fundamental rights.¹⁵⁷

Therefore, given the severe breaches of the Bulgarian Constitution and International Treaties to which Bulgaria is a party, it is highly unlikely for the Foreign Agents Registration Bill to be adopted. Nevertheless, the Bill itself has a deteriorating effect on the civic space in Bulgaria by reinforcing a smear campaign against the CSO sector and media and introducing on a parliamentary level the stigmatising term "foreign agent."

Given the anti-democratic nature of the Foreign Agents Registration Bill it needs to be condemned by wide range of high-ranking officials and institutions both in Bulgaria and on an international level. So far only two major political parties in Bulgaria have expressed a clear public position against the

¹⁵⁴ See also: [Proposal to adopt a Foreign Agents Registration Act in Bulgaria - when a legislative initiative is used for political propaganda and an attack on civil rights](#)

¹⁵⁵ See: <https://www.amnestyusa.org/press-releases/russias-foreign-agents-law-is-shutting-down-prominent-ngos/>

¹⁵⁶ See Opinion No. 1014 / 2020 available here: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)027-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)027-e)

¹⁵⁷ Judgment on Case C-78/18, available here:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=227569&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5849357>

Bill,¹⁵⁸ whilst most of the political actors in the country have made sure that the repressive narrative built around it enjoys the comfort of the spiral of silence.

¹⁵⁸ Две партии засега се обявиха против проекта на "Възраждане" за чуждестранните агенти

Safe space

Homophobic hate crimes remain unaddressed by legislation

In 2020 and 2021 Bulgaria was the scene of numerous attacks on LGBT+ organisations, activists and members or perceived members of the LGBTI community.¹⁵⁹ This negative trend seems to have been mitigated in 2022 as reports of such severe violations are lacking. Nonetheless, Bulgaria is still failing to fully protect the LGBT+ community and ensure safe space for its organisations and public participation. A major issue remains the lack of adequate prosecution of hate crimes. In 2022 the court sanctioned Boyan Rasate, presidential candidate of a small far-right party in 2021, to pay a BGN 3,000 (€1,500) fine for breaking into an LGBTI community centre Rainbow Hub in 2021, during which he vandalised the facility and assaulted an activist.¹⁶⁰ Rasate was cleared of charges of assault and the court failed to recognise his homophobic motives as aggravating circumstances.¹⁶¹ This shortcoming of the Bulgarian legislation and jurisprudence was found to be a human rights violation by the ECtHR in its 2022 decision on the case *Stoyanova v. Bulgaria*¹⁶² stating that: *"Bulgaria had to ensure that violent attacks (in particular, those resulting in the victim's death) motivated by hostility towards the victim's actual or presumed sexual orientation were in some way treated as aggravated in criminal-law terms, in full compliance with the requirement that criminal law was not to be construed extensively to the detriment of the accused."*

In late 2022, Bulgaria undertook some steps to amend its legislation to address hate crimes by including homophobic motives as aggravating circumstances of certain crimes. Two Bills containing identical amendments in that regard were filed in Parliament – one filed by MPs and one filed by the Council of Ministers. The Bills propose an extensive reform introducing a mechanism for holding the Prosecutor General accountable. The Bills are pending in the Parliament with no prospects to be adopted due to the expected snap elections in 2023.¹⁶³ Another step towards resolving this issue was

¹⁵⁹ POLITICAL TURBULANCES AFFECTS CIVIC SPACE

¹⁶⁰ Bulgaria: Presidential candidate must be investigated and held accountable after attack on LGBTI centre

¹⁶¹ Съдът оправда Расате по обвинението, че е ударил момиче в ЛГБТ център

¹⁶² Available here: <https://hudoc.echr.coe.int/fre?i=002-13685>

¹⁶³ Bills available here: <https://www.parliament.bg/bg/bills/ID/164590> and <https://www.parliament.bg/bg/bills/ID/164330>

undertaken by the Prosecution Office by organising an international “Stop Hate Speech” conference, which brought together for the first time NGOs, LGBT+ activists, representatives of the major religious denominations and high ranking officials to discuss hate crimes and hate speech. During the conference and in media appearances afterwards the Prosecutor General spoke for the first time publicly and openly about the need to address crimes motivated by homophobia.¹⁶⁴

Solidarity with Ukrainian refugees is praised, with non-European migrants criminalised

In 2022, Bulgarian CSOs and volunteers have been praised for their capacity to self-organise in response to the influx of asylum seekers from Ukraine, next to local businesses and some local authorities. Hundreds of support initiatives have been quickly developed, offering humanitarian help, free housing, psychological support, job opportunities and much more.¹⁶⁵ Authorities were also open to actively collaborate with CSOs and support and reinforce the wave of solidarity. A government-run online platform, ukraine.gov.bg, was quickly set up providing information for the Ukrainian asylum seekers, including regarding services and initiatives provided by NGOs. The Civil Society Development Council to the Council of Ministers was also included in the coordination efforts of the government with the NGOs on the ground.¹⁶⁶ Despite of the joint efforts, state funding was allocated only to the hotels providing shelter for the refugees while the CSOs and volunteers providing crucial services were not supported financially.

On the other hand, the response to the influx of Ukrainian asylum seekers clearly demonstrated the systematic discrimination and double standard¹⁶⁷ faced by refugees coming from Africa and the Middle East. In contrast to the people coming from Ukraine, they cannot enter Bulgaria regularly without a visa and are usually deprived of freedom upon arrival by being forcefully put in detention centres¹⁶⁸. In addition, they are often victims of human smuggling and trafficking, illegal

¹⁶⁴ "НА ЖИВО": Международна конференция „STOP HATE SPEECH“, събитие на Прокуратурата на Република България

¹⁶⁵ https://ec.europa.eu/migrant-integration/news/bulgaria-takes-first-steps-welcome-those-fleeing-ukraine_en

¹⁶⁶ Information available here:

https://www.facebook.com/permalink.php?story_fbid=pfbid0onqAUumZPup8Ur9jiwC6FtSdfYayACoqKKyjimU1tEKsQ9uyRNRoX7ivFcKaefFul&id=100079732634358

¹⁶⁷ ДВОЙНИ СТАНДАРТИ ОТНОСНО КРИЗАТА В УКРАЙНА: ПРОМЕНИ ЛИ СЕ РЕАКЦИЯТА НА ЕВРОПА КЪМ БЕЖАНЦИТЕ?

¹⁶⁸ БЕЖАНЦИТЕ ЗАСЛУЖАВАТ ЗАКРИЛА, НЕ ЗАТВОР

pushbacks¹⁶⁹, violence and inhuman treatment¹⁷⁰ perpetrated by the border authorities and prosecution for illegal border crossing¹⁷¹ despite the lack of opportunity to apply for international protection at the state border. This discriminatory attitude of the authorities to the refugees coming through Türkiye was also clearly demonstrated by the then Prime Minister Kiril Petkov in his statement from February 2022:

“These are not the refugees we are used to. As the Austrian chancellor said, these are our relatives, family. These are Europeans, intelligent, educated people, some of them are programmers. We, like everyone else, are ready to welcome them. This is not the usual refugee wave of people with an unclear past. None of the European countries is worried about them.”

The double standard set for refugees based on their origin also reflected on CSOs and activists - authorities sought collaboration with the NGOs working with Ukrainian asylum seekers and prosecuted those organisations working on the Bulgarian-Turkish border who helped primarily refugees from Africa and the Middle East. A notable case is the ongoing investigation of three NGOs for migrant smuggling from Türkiye. The investigation started after a complaint filed by the State Agency for Refugees. Multiple staff members, members of the management and other affiliated people to the work of the organisations were questioned by the State Agency for National Security.¹⁷²

Additionally, the negative perception of the migrants arriving through Türkiye by the public was reinforced by a couple of incidents involving smuggling attempts which occurred throughout 2022, two of them resulting in the deaths of police personnel.¹⁷³ To capitalise on the public opinion two political parties – GERB¹⁷⁴ and Revival¹⁷⁵, failed in the Parliament identical Bills to amend the crime of human smuggling in the Penal Code. The Bills propose to reform the existing legal definition of the crime of human smuggling by removing the specific purpose of obtaining a financial or other material benefit for oneself or another. The adoption of such amendments would be a clear diversion from the internationally recognised definition of human smuggling as set in the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (2000) and would have a chilling effect on NGOs and volunteers working with refugees as they will be under threat of criminal prosecution.

¹⁶⁹ Bulgaria: Migrants Brutally Pushed Back at Turkish Border

¹⁷⁰ Investigation exposes 'cage-like' migrant detention sites in Eastern Europe

¹⁷¹ 81 чужденци са осъдени в Кюстендил от 1 януари за незаконно преминаване на границата

¹⁷² Държавната агенция за бежанците обвини Фондация „Мисия Криле“ в съпричастие с каналджийство

¹⁷³ See: Two police officers dead after migrant bus ploughs through roadblock and Bulgarian policeman shot dead patrolling Turkish border for migrants

¹⁷⁴ Bill available here: <https://www.parliament.bg/bg/bills/ID/164514>

¹⁷⁵ Bill available here: <https://www.parliament.bg/bg/bills/ID/164509>

Civil dialogue and right to participation

Positive developments advance civil dialogue but more efforts are still needed

Despite the political crisis, 2022 was marked by two important developments advancing the civic dialogue and civic participation of CSOs in Bulgaria.

In February 2022, the Council for the Development of the Civil Society (CDCS) to the Council of Ministers was finally created. The CDCS is a body comprised of NGOs elected directly by other NGOs and chaired by a Deputy Prime Minister with competences set in the Non-profit Legal Persons Act. These competences are primarily connected with the development of the civic sector in Bulgaria. The CDCS is an important and unique participatory mechanism for Bulgaria thanks to its democratic mechanism for electing the members, its decision-making powers (which go beyond the usual consultative functions) and the fact that it is part of the Council of Ministers administration – the highest level of the executive power branch.

Nevertheless, its creation has been delayed unlawfully and without any formal explanation by the government since 2020 when the election for the first ever CDCS was held. The undue delay of the creation of the CDCS continues to have negative impact on its functioning: there is still no website of the Council providing the needed transparency of its work and there is still no administrative secretariate allocated by the Council of Ministers to serve the needs of the CDCS. Additionally, there is no Strategy for the Development of Civil Society adopted by the Council of Ministers, for which the CDCS should adopt the execution plan.

The political and international crises also had their effect on the normal functioning of the CDCS. In the first months of Russia's war in Ukraine, the CDCS was tasked to coordinate the joint efforts of the State and civil society to respond to the refugee influx from Ukraine and, later in the year, the CDCS was not functioning for a couple of months due to change of governments. Therefore, the CDCS is still to establish itself as a well-recognised platform for dialogue between the civic sector and the executive power and to meaningfully contribute to the development of the civic space.¹⁷⁶

¹⁷⁶ Source: BCNL's observations as a member of the CDCS

In July 2022, Bulgaria also adopted its 4th National Action Plan in the scope of the Open Government Partnership Initiative (OGP).¹⁷⁷ The adoption of the Plan came with a four-year delay and after a decision of the Steering Committee of OGP from March 2022 to designate Bulgaria as inactive in the OGP.¹⁷⁸ Fortunately, after the adoption of the National Plan Bulgaria is once more an active member of OGP and can move forward with the fulfilment of the commitments made. It is important to note that all commitments taken with the National Plan are to be carried out in close partnership between different governmental bodies and NGOs. To monitor the execution of the plan, a Multistakeholder Forum was formed with the participation of both state and non-state actors.¹⁷⁹ The Forum held its first meeting in December 2022.

A survey amongst more than 300 Bulgarian NGOs conducted in 2022, however, shows that, according to civic organisations, the main priority for the development of the civic society is the development of effective mechanisms for civic participation.¹⁸⁰ This clearly showcases the need of extra efforts to be made for existing mechanisms of dialogue and consultations to be more effective and visible to the public as well as for new ones to be developed. A notable field in which the public dialogue is falling behind is the development of the digital democracy technology and processes.

¹⁷⁷ Available here: https://www.opengovpartnership.org/wp-content/uploads/2022/07/Bulgaria_Action-Plan_2022-2024_EN.pdf

¹⁷⁸ [Resolution of the OGP Steering Committee Regarding the Participation Status of Bulgaria in OGP](#)

¹⁷⁹ More information here: <https://www.strategy.bg/Articles/View.aspx?lang=bg-BG&categoryId=&Id=41&y=&m=&d=>

¹⁸⁰ See here: <https://www.ngo.vote/news/27-09-22>

Funding for civil society

The financial sustainability remains a main challenge faced by the CSOs sector in Bulgaria. According to the CSO Sustainability Index¹⁸¹ the financial viability of CSOs in Bulgaria is in decline since 2014 and this indicator has been consistently the lowest score compared to the others.

According to the latest CSO Sustainability Index report on Bulgaria¹⁸² the main issue with the financial sustainability of the Bulgarian CSOs is the lack of diversification of the sources of funding. Certain important fields of work of the CSOs, namely human rights, rely nearly exclusively on few foreign donors. Meanwhile, state funding schemes for supporting democracy and rule of law work are lacking, and the existing ones are not transparent and often subject to abuse. Notable example is the National Program for the Implementation of Youth Activities under Article 10a of the Gambling Act, which is a mechanism for funding youth projects as part of the implementation of the national youth policy with a budget exceeding 5 million BGN per year.¹⁸³ The National Program is constantly criticised by youth organisations for its procedures lacking transparency, allocation of funds to organisations with unclear history and lack of impact assessment and accountability of funded projects.¹⁸⁴

The access of Bulgarian NGOs to EU funding provided by the European Structural and Investment Funds is also limited. For years, the Bulgarian State authorities have treated any funding provided to a CSO via the EU-funding programs as state aid without the needed analysis required by Regulation (EU) 651/2014.¹⁸⁵ This means that all EU funding received by Bulgarian CSOs falls under the *de minimis*¹⁸⁶ rule, a measure aimed at protecting the fair market competition from favourable treatment of certain companies by the state. As a result, a CSO could only access 200 000 euro over

¹⁸¹ Available here: <https://csosi.org/>

¹⁸² Available here:

<http://bcnl.org/uploadfiles/documents/%D0%98%D0%BD%D0%B4%D0%B5%D0%BA%D1%81%20%D0%B7%D0%B0%20%D1%83%D1%81%D1%82%D0%BE%D0%B9%D1%87%D0%B8%D0%B2%D0%BE%D1%81%D1%82%20%D0%BD%D0%B0%20%D0%9D%D0%9F%D0%9E%20%D0%B2%20%D0%91%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F%20%D0%B7%D0%B0%202021%D0%B3.pdf>

¹⁸³ See: <https://nism.bg/en/nacionalna-programa-za-izp-lnenie-na-mladezki-dejnosti-po-cl-10a-ot-zakona-za-hazarta>

¹⁸⁴ See: [Позиция на Национален младежки форум относно НПИМД](#) and [Програма без посока – Част 2](#)

¹⁸⁵ Available here: <http://data.europa.eu/eli/reg/2014/651/oj>

¹⁸⁶ See here: <https://eur-lex.europa.eu/EN/legal-content/summary/de-minimis-rule-exemption-of-small-amounts-of-state-aid-from-notification.html>

a 3-year period, even though it is not a company operating in the market economy. This unjust treatment further limits the access to funding of the CSO sector.

Bulgaria also fails to create new financial mechanisms to support the civic sector. A notable example of that is the grant scheme under art. 4 of the Non-profit Legal Persons Act. According to the law adopted in 2018, the CDCS oversees the redistribution of funding to support civil society. However, due to the delayed creation of the CDCS, this mechanism has never been realised. Although following the creation of the CDCS in 2022, the drafting of the needed regulatory framework for the mechanism was delayed due to the refugee crisis and the inconstant work of the CDCS as a consequence of the change of power in the country. It is expected that the first-ever financial mechanism under art. 4 of the Non-profit Legal Persons Act to be kickstarted in 2023.

While state funding for CSOs is lacking and underdeveloped, especially for work regarding human rights and rule law, foreign funding and foreign-funded organisations are constantly targeted by smear campaigns led by far-right political actors. In 2022 those smear campaigns were led predominantly by the Revival Party. In August, they announced that they were filing a complaint to the public prosecution for “corruption” against one of the largest donors in Bulgaria operating with funds from abroad and its grantees. Once the content of this complaint was made public it showed nothing more than a compilation of the publicly available database of the donor organisation and the information about the grantees derived from the Public Registry of the Not-for-Profit Legal Persons.¹⁸⁷ As part of this smear campaign the Revival Party filed in the Parliament the highly controversial Foreign Agents Registration Bill described above, while continuously framing Bulgarian CSOs as “foreign agents” and dangerous for the Bulgarian values and independence.

¹⁸⁷ Available here: ["ВЪЗРАЖДАНЕ" СЪС СИГНАЛ ДО ПРОКУРАТУРАТА ЗА КОРУПЦИОННАТА ДЕЙНОСТ НА ФОНДАЦИЯ "АМЕРИКА ЗА БЪЛГАРИЯ"](#)

Recommendations

Freedom of association

- 🔍 The authorities need to make additional efforts to simplify the administrative procedures connected to the registration and accounting of NGOs and engage in awareness raising campaigns in order to make them more accessible.
- 🔍 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 archived 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 at an assembly.”
- 🔍 The anti-money laundering and terrorist financing legislation should be amended in light of the results of the Sectoral Risk Assessment for NPOs and introduce tailored made measures for CSOs who are considered to be in high-risk area (if such appears). Additionally, banks need to be properly instructed how to implement the AML/TF rules when providing services to NGOs to avoid bank de-risking.

Freedom of assembly

- 🔍 Additional training should be provided to police officers and members of the administration for the correct implementation of the freedom of assembly and the freedom of peaceful protest in particular.

Freedom of expression

- 🔍 Legislative measures need to be undertaken to ensure the protection of journalists from SLAPPs. Additionally, a robust policy needs to be adopted to protect the freedom of media and to respond to the numerous smear campaigns undertaken by high-ranking politicians against media representatives.

Foreign Agents Registration Bill

- 🔍 Given the anti-democratic nature of the Foreign Agents Registration Bill, it needs to be condemned by high-ranking officials and institutions both in Bulgaria and on an international level. The developments of the bill should be stopped.

Safe space

- 🔍 The Bulgarian Penal Code should be amended in order to criminalise hate crimes by including xenophobic, racist and homophobic or transphobic motives as aggravating circumstances of certain crimes. Additionally, the judiciary should also step in and clearly acknowledges when a crime was motivated by hate in line with the ECtHR's case law.
- 🔍 The authorities should refrain from any amendments to the Penal Code in connection to the crime of human smuggling which could breach the international standards and criminalise the help provided by NGOs or volunteers to refugees. Any arbitrary investigations of NGOs helping refugees should be ceased and authorities should further develop their cooperation with the CSOs working with refugees and, specifically, with asylum seekers entering the country irregularly.

The right to participation and dialogue between the civic sector and governing bodies

- 🔍 The Civil Society Development should be provided with administrative resources to expand its work and kick off the process of drafting a Strategy for the Development of Civil Society
- 🔍 A mechanism of structured civic dialogue should be developed in the field of digital democracy.

Civic organisations' financial viability and sustainability

- 🔍 Additional public funding mechanisms provided by the government need to be adopted to support human rights protection and development of the civic space. Additionally, existing mechanisms need to be reformed to ensure transparency of the procedures.
- 🔍 Authorities need to revise the implementation practices of the *de minimus* rule in a manner which does not discriminate NGOs when EU funding is distributed

About the contributor

The Bulgarian Center for Not-for-Profit Law (BCNL) founded in 2001 is a public-benefit foundation and is part of the network of the International Center for Not-for-Profit Law (ICNL) and of the European Center for Not-for-Profit Law (ECNL) which operate in over 100 countries worldwide with the aim to protect the right to association and develop the legal framework for civil organisations.





Civic Space Report 2023

CROATIA



Key Developments

- 🔗 Lack of policy framework to develop the civic sector and unfit funding policies leave civil society drained
- 🔗 Changes to the Council for Civil Society Development weaken civil society participation
- 🔗 SLAPPs, criminalisation, harassment, and smear campaigns target critical CSOs and journalists

Civic space in Croatia remains narrowed¹⁸⁸. Civil society is characterised by weak capacities in the context of fragile democracy and rule of law infrastructure.

The lack of policies to develop and strengthen the sector as well as administrative burdens and unpredictable processes to access EU and national funding are among the main reasons for this. The National Strategy for civil society development and the National Program for Protection and Promotion of Human Rights expired in 2016 and virtually no progress has been made towards new policies. Additionally, the participation of NGOs in the decision-making processes has been weakened by changes in the institutions, including the changes to the functioning and representation in Council for Civil Society Development in 2020. As a result, the legitimacy of this body and the ability of CSOs to influence its decisions have been weakened. Over the last years, there have been many episodes of attacks and belittling of CSOs by the highest public officials in Croatia. NGOs which promote human rights, rule of law, and EU values were especially targeted. NGOs and volunteers supporting migrants have been criminalised and harassed. Croatia also made no progress towards addressing the European Commission's recommendation regarding strategic lawsuits against public participation which continue to target journalists.

¹⁸⁸ <https://monitor.civicus.org/country/croatia/>

Institutional, political and socio-economic landscape

“I believe that situation actually deteriorated...and that the dominant approach for the last 4-5 years has been to ignore civil society. At times our actions fail to provoke any kind of response [from the authorities]...not even an angry one, which may create an opening for some form of dialogue...We are no longer perceived by authorities as relevant societal factors, thus we are simply ignored”.

This quote taken from the recent research report¹⁸⁹ published by the Human Rights House Zagreb on the position and challenges faced by human rights defenders all but perfectly summarises the current landscape in which Croatian civil society organisations currently operate.

The primary trend is a dramatic reduction in the influence of civil society organisations in the policy-making sphere. A recent research report¹⁹⁰ published by the Centre for Peace Studies identifies four causes: i) dramatic decrease in the influence of EU institutions on national policy-making compared to the accession period, which represented an advocacy lever CSOs in Croatia utilised particularly well; ii) the long-term effects of the short-lived, but highly influential experience of the government dominated by far-right elements in 2016, which saw a “frontal assault” against watchdog CSOs in Croatia and their supporting ecosystem¹⁹¹; iii) decrease in capacities of public administration to deliver appropriate policy, including progressive initiatives in cooperation with CSOs and iv) generational change in many watchdog-oriented CSOs, with many prominent experts and activists moving either to the private sector or politics, in particular the political platform Možemo/Yes We Can, which is currently 3rd political force in the country. Most of these findings also resonate with the analysis published by Gong back in June 2020 which branded the recent turn in Croatian policy towards civil society as “state assaults”¹⁹². These outcomes discourage many CSOs from pursuing advocacy or watchdog-oriented development, leaving numerous important policy arenas absent effective civic oversight. Corollary, those CSOs still committed to this form of engagement are severely overstretched.

¹⁸⁹ https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP_Tematski-Branitelji-FIN-3.pdf

¹⁹⁰ https://www.cms.hr/system/publication/pdf/175/NOVI_PO_ETAK_-_Podloga_za_raspravu_o_novom_pristupu_pozicioniranju_i_radu_progresivnih_ljudskih_prava_kih_organizacija_u_Hrvatskoj.pdf

¹⁹¹ <https://civic-forum.eu/croatian-governments-triple-attack-on-autonomous-media-civil-society-and-culture/>

¹⁹² https://gong.hr/wp-content/uploads/2021/03/drzavni_udar_na_civilno_drustvo_09062020.pdf

The regulatory environment for civic freedoms

Lack of policy framework to develop the civic sector leaves civil society drained

The Croatian Act on Associations regulating the right to association remains in place and, for the most part, is adequate from the civic space perspective. However, the National policy document outlining support for civil society development expired in 2016 and Croatia remains without a strategy to support civil society's development. A draft developed via a participatory process in 2017 was abandoned¹⁹³ and a new working group was established in February 2022. This now marks the seventh year without a valid policy framework for the support of civil society in Croatia.

In addition, also the National Program for Protection and Promotion of Human Rights - which contains a set of important measures for the support of civil society organisations defending and promoting human rights - expired in 2016 and has not been renewed for six years in a row. As a result of the lack of a policy framework for the sector and increasing administrative demands, civil society in Croatia is characterised by weak capacities, which have drastically deteriorated since 2016. According to the CSO sustainability Index, despite a marginal improvement, most CSOs struggle to have a stable income in order to secure their organisational capacity and, in particular, their ability to maintain permanent paid staff¹⁹⁴.

Freedom of assembly

Freedom of assembly is protected by the Constitution of the Republic of Croatia and regulated by the Public Assembly Act.

Since October 2020, when a young man assaulted with an automatic rifle Banski dvori, which houses the office of the Prime Minister and serves as the meeting place of the government, on St. Mark's Square¹⁹⁵, key democratic institutions are inaccessible - bounded by fences and guarded by police

¹⁹³ <https://civicspacewatch.eu/croatia-civil-society-strategy-in-limbo-puts-at-risk-csos-financial-sustainability/>

¹⁹⁴ <https://storage.googleapis.com/cso-si-dashboard.appspot.com/Reports/CSOSI-Croatia-2021.pdf>

¹⁹⁵ https://en.wikipedia.org/wiki/2020_Zagreb_shooting

forces - under the pretext of security risks¹⁹⁶. Access to the Government, the Croatian Parliament and the Constitutional Court is only possible after registering at the police checkpoints where they record every movement in the protected area of St. Mark square. However, in May 2022, the Ministry of the Interior stated that the police did not keep records of who was passing.¹⁹⁷ Gong sent a letter to the Ministry of the Interior asking for the record of visits to the Parliament and the Government since October 2020, and the response was that these kinds of records are not necessary in order to achieve the goal and purpose of the established measures. According to international human rights standards on the right to peaceful assembly, any restrictions on assemblies in and around places of democratic relevance as courts, parliaments, or other official buildings must be specifically justified and narrowly circumscribed¹⁹⁸. Although it is possible to register a protest, the fact is that the area is barricaded on both sides of St. Mark's Square discourages the organisation of protests.

According to public statements by Prime Minister Andrej Plenković the attack in October 2020 on the Government building was a terrorist act¹⁹⁹, but the public still has no confirmation that this was really the case. In October, a new security assessment was to be carried out in order to determine whether there is still a danger of a new attack due to which the square should remain closed.²⁰⁰ However, no information is available to the public regarding the outcome of the assessment, and the barricades are still standing. Additionally, no special security measures are applied around the building of the National University Library, where Government sessions have been held since the Zagreb earthquake in 2020, raising doubts on the justification of the closure of St. Mark's Square.

Freedom of expression

Freedom of expression is protected by the Constitution of the Republic of Croatia and regulated by the Electronic Media Act, Act on the Implementation of the General Data Protection Regulation, Act on the Right of Access to Information and the Croatian Radiotelevision Act.

¹⁹⁶ <https://antikorupcija.info/hrvatska-gong-trazi-otvaranje-markova-trga-u-zagrebu/>

¹⁹⁷ <https://www.index.hr/vijesti/clanak/gong-mup-nam-kaze-da-ne-vode-evidenciju-kretanja-sticenih-osoba-markovim-trgom/2366717.aspx>

¹⁹⁸ <https://ukraine.un.org/sites/default/files/2021-07/GC37%20ENG.pdf>

¹⁹⁹ <https://www.total-croatia-news.com/politics/47378-zagreb-square-shooting>

²⁰⁰ https://narodne-novine.nn.hr/clanci/sluzbeni/2013_04_46_881.html

Safe space

Attacks and criminalisation of migrants' solidarity

Human rights defenders in Croatia are increasingly facing police harassment and are being subjected to smear campaigns both in public discourse and on social media. The human rights organisation Are You Syrious (AYS) created in 2015 in Croatia supporting migrants on the Balkan migration route has particularly been targeted. The Iraqi partner of Tajana Tadić, the program manager of the organisation, saw his refugee status abruptly terminated by the Ministry of Internal Affairs in May 2020, on allegations that he represents a "threat to national security". Neither he nor his attorney have been given access to a part of his file which has been classified as "secret". He was previously harassed by police in relation to the woman activities for the protection of migrant rights²⁰¹. The appeal process is still ongoing.

In 2021, another AYS activist Dragan Umicevic, who provided support in the asylum-seeking process of the Afghan Hussiny family in 2017, was fined a total of HRK 60,000 (ca EUR 7.968) and made to pay another HRK 1,300 (ca EUR 173) of judicial expenses for *"aiding and abetting illegal border crossing"*²⁰². The Hussiny case drew public criticism because six-year-old Madina Hussiny was killed by a train on November 21, 2017 during the illegal pushback of her family from Croatia into Serbia in the middle of the night. The family was again expelled during the night between the 7th and 8th of March 2018. After entering Croatia for the third time in the night between the 20th and 21st of March 2018, fearing another expulsion, they contacted AYS for assistance in seeking asylum. AYS explained to them that only the police can grant them asylum and referred them to the nearest police checkpoint. Umicevic was asked to go to the border police checkpoint and say that there was a refugee family in their vicinity wishing to apply for asylum. Although he acted in accordance with the law, the Ministry of the Interior had demanded a draconian fine of 320,000 kuna (€42,700) and prison time, as well as a ban on the operation of AYS. A 2021 ruling by the European Court of Human Rights found that as a result of the pushbacks, *"the State had hindered the effective exercise of the applicants' right of individual application by restricting access to their lawyer among other things"*

²⁰¹ https://www.frontlinedefenders.org/sites/default/files/croatia_-_ua_-_tajana_tadic_-_30_oct_2020.pdf

²⁰² <https://n1info.hr/english/news/more-than-e8000-raised-for-ngo-volunteer-who-was-fined-for-helping-migrants/> , <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

²⁰³²⁰⁴. To date, no political or disciplinary actions have taken place against those responsible for the death of Madina.

Finally, in December 2022, an illegal police raid took place in the facilities of the environmental organisation Zelena akcija/Friends of the Earth Croatia. Five police officers entered the premises searching for *"migrants and people of poor financial status"* without a warrant and probable cause, intimidating the employee present²⁰⁵. Gong was among the CSOs who took part in the follow-up press conference, requesting a full investigation into the matter.

SLAPPs threaten freedom of expression

Strategic Lawsuits against public participation (SLAPPs) are an enormous problem for freedom of expression in Croatia, with around a thousand active lawsuits by 2022.²⁰⁶

The most notorious SLAPPs are those filed by judges.

In October 2022, Judge Zvonko Vrban, the president of the County Court in Osijek, was awarded as the biggest judicial "bully" in Europe, due to a series of lawsuits against the Zagreb portal Telegram, its editor-in-chief Jelena Valentić and journalist Drago Hedl, an award-winning Croatian journalist and author of articles investigating suspected ethical misconduct on the part of the judge. The total amount sought in the complaints is around €120,000 in damages. The award is given by CASE - a coalition of non-governmental organisations from across Europe working against the threat posed to public watchdogs by SLAPPs – which identifies the worst SLAPP offenders with the European SLAPP contest. The award, unveiled under the auspices of the European Parliament and with the support of the Council of Europe aims at making the problem of SLAPP lawsuits visible to the general public and the jury composed of members of the European Parliament and of the Parliamentary Assembly of the Council of Europe²⁰⁷.

One of the most recent and high profile cases involves Tris portal journalist Davorka Blažević, one of the most respected and experienced Croatian journalists. She was sued by Supreme Court judge Senka Klarić Baranović for publishing information already known to the public. In the column "Portrait of the week", Mrs. Blažević made a comment regarding all Supreme Court decisions rendered while judge Klarić Baranović was Head of the Supreme Court. Mrs. Blažević was sentenced to a fine of ca 5300 euros²⁰⁸. Considering this event, the Croatian Journalist Association organised

²⁰³ <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

²⁰⁴ <https://www.bbc.com/news/world-europe-59329973>

²⁰⁵ <https://www.zelena-akcija.hr/en/news/the-police-illegally-entered-zelena-akcija>

²⁰⁶ <https://www.hnd.hr/eng/cja-s-poll-at-least-951-active-lawsuits-against-journalists-and-media>

²⁰⁷ <https://www.the-case.eu/campaign-list/the-european-slapp-contest-2022>

²⁰⁸ <https://www.womeninjournalism.org/threats-all/croatia-journalist-davorka-blaevi-found-guilty-in-slapp-case>

crowdfunding for Mrs. Blažević's fine and announced it would start publishing the names of judges who initiate SLAPPs against journalists.

Funding for civil society

Administrative burdens and lengthy processes put in danger the financial viability of the sector

The financial framework remained relatively stable in 2022, but this is hardly a positive development, particularly for watchdog organisations.

The national financing for CSOs is dominated by European Social Fund, which allocate a little less than EUR 95.65 million²⁰⁹ for the specific goal of strengthening the capacities of civil society organisations and social partners in the area of good governance^{210,211}. However, in the ESIF programming for 2021-2027, CSOs are seen primarily as social service providers, not policy-making actors. As a result, it includes virtually no support for critical, advocacy-oriented CSOs. The public granting system for this funding is also characterised by high volatility and unpredictability (in terms of gaps between projected and actual dates of call releases). Additionally, the funding foresees extreme administrative burden (alleviated only marginally by some meaningful innovations, such as simplified cost options)²¹². These obstacles, covered also in the previous ECF report on Croatia²¹³, negatively affect the financial viability of the sector, as the civil society organisations in Croatia experienced financial exhaustion and administrative violence²¹⁴.

Apart from the European Social Fund, the backbone of the financial support system of the Croatian civil sector is the institutional granting by the National Foundation for Civil Society Development. However, available funding has substantially decreased since 2016, when the government attempted to cut 70% of the foundation's sources²¹⁵. While the cuts of this funding did not materialise to the extent announced, the current situation hardly allows for bolstering civic space. A considerable part of institutional funding is also being awarded to substantial number of clerical organisations close to

²⁰⁹ The sum corresponds to the entire 2014-2020 financial perspective.

²¹⁰ <https://gong.hr/wp-content/uploads/2023/01/Missed-chances-and-broken-promises-The-Croatian-model-of-support-to-civil-society-through-the-European-Social-Fund.pdf>

²¹¹ <https://gong.hr/wp-content/uploads/2023/01/The-absolute-worst-How-Croatia-managed-the-European-Social-Fund-in-the-fight-against-corruption.pdf>

²¹² <https://gong.hr/wp-content/uploads/2023/01/The-Analysis-of-Administrative-Burden-of-Applicants-During-EU-Project-Implementation-The-Experience-of-Civil-Society-Organisations.pdf>

²¹³ <https://civicspacewatch.eu/wp-content/uploads/2022/02/Croatia-.pdf>

²¹⁴ <https://gong.hr/wp-content/uploads/2023/01/Missed-chances-and-broken-promises-The-Croatian-model-of-support-to-civil-society-through-the-European-Social-Fund.pdf>

²¹⁵ <https://civic-forum.eu/civic-space/croatian-governments-triple-attack-on-autonomous-media-civil-society-and-culture>

the political right (currently, this is several opposition parties) which in effect work against pluralism and human rights. Among these organisations there is U ime obitelji/In name of the Family, which was the key instigator of the 2013 referendum which led to the introduction of the heteronormative marriage definition in the Croatian constitution. Funding from national sources other than ESF (lottery funding and budget) is highly limited and restricted in scope. The same, and more, apply to funding sources at the local and regional levels.

Taking all this into account it is not surprising that the 2019 research report on CSO access to funding²¹⁶ conducted by Human Rights House Zagreb established that CSOs in Croatia are extremely distrustful towards national, particularly public sector donors.

Access to funding from EU programmes - administered either centrally (for instance CERV) or devolved nationally (primarily Erasmus+) represents a critical lifeline for advocacy-oriented organisations, but these remain highly competitive and in practice available only to highly professionalised organisations. Other important sources of funding - such as EEA/Norway and Swiss grants are also an avenue to support watchdog and other critically oriented CSOs, particularly as they cover thematically relevant areas such as transparency, democratic participation, environmental protection etc. However, this funding is highly sporadic - for instance, Active Citizens Fund administering EEA Grants awarded a total of seven organisational supports each amounting to EUR 60.000 in 2022; but it is highly uncertain if this call will be repeated in 2023.

²¹⁶ https://www.kucaljudskihprava.hr/wp-content/uploads/2021/03/Pristup-financiranju-za-organizacije-civilnog-drustva-u-Hrvatskoj_web.pdf

Civil dialogue and right to participation

Participatory mechanisms have been hollowed out

The key channel for inter-sectoral cooperation between public and civic sector is the Council for Civil Society Development. Prior to 2016, this forum was an important channel of advocacy, but also cooperation and information exchange between CSOs and the public sector. However, since the changes in the composition and the rules of procedures in previous years²¹⁷, it no longer represents a forum for relevant discussion as its work is being rigged by discontinuity and newly established discipline among public administration representatives, who - through their majority in the body - shut down any type of dissenting conclusion. Representatives of public entities tend to vote in a highly coordinated manner, often with the sole objective of countering any risks to the Government's agenda. This among other things entails installing a president of the Council more conducive to Government's positions, voting down any conclusions/recommendations critical towards the Government, and perhaps most importantly, appointing in policy-making bodies CSOs representatives that do not have a watchdog mandate. This prompted Gong to this phenomenon, establishing there is a clear pattern of Council electing CSO representatives with little or no experience in respective policy fields, but often with a clear track record of "good cooperation" with the party in power or some of the coalition partners²¹⁸. This is an emblematic example of how the institutional framework for civil society support and participation in Croatia has been hollowed, while seemingly remaining intact.

There are minor positive developments in the field of human rights and anti-discrimination policy. The Ombudsman Office currently remains the only public institution staunchly pushing for meaningful CSO participation in decision making, which In January 2022, it contributed to the establishment of the Governmental Council for Human Rights, continuously presided by the Vice-President of GoC from the ranks of minority coalition partner Independent Serbian Democratic Party. Although CSO representatives constitute only 3 out of 17 members, thus far this Council fostered a more inclusive, consensus-oriented approach to work compared to the Council for Civil Society Development. However, we wait for a more concrete policy impact of these deliberations.

²¹⁷ <https://civicspacewatch.eu/wp-content/uploads/2022/02/Croatia-.pdf>

²¹⁸ <https://h-alter.org/vijesti/zeton-udruge-oblikuju-zakone-protiv-korupcije/>

Public consultations of various policy documents are an established practice, but from the perspective of CSOs, often highly ineffective. Usually, only online consultations are conducted. Deadlines for submitting comments are cut short of the usual legal provision of 30 days and public bodies commonly ignore the requests of the Commissioner for Information to abide by this rule. More often than not comments of CSOs are summarily rejected or simply ignored by being “taken under consideration”.

Access to information remains challenged and the Commissioner for Information confirms that numerous cases of requests for access to information are unlawfully rejected, as found by Human Rights House. Not only do Commissioner’s requests tend to be ignored by public authorities, but also by the judicial practice of the highest administrative court in Croatia - the Court may force the public body to change their practice in the specific case, but such a ruling will not achieve a change in practice in general. As quoted by the Human Rights House in its 2021 report on the state of human rights in Croatia, the most common reasons for rejecting access to information are i) risk of malicious use (29,82%); ii) protection of personal information (15,8%); iii) lack of access to the requested information (13,03%); iv) business and professional secrecy (9,77%)²¹⁹.

²¹⁹ https://www.kucaljudskihprava.hr/wp-content/uploads/2022/04/KLJP_GI2021-Online_2704.pdf

CSOs push back in trying times

Public trust is low but not all hope is lost

Recent research conducted by the Fundamental Rights Agency, as quoted by the Public Ombudsman in the 2021 annual report, found that 31% of citizens believe that CSOs always or frequently face governmental pressure, while 33% of them believe that CSOs sometimes face governmental pressure²²⁰. Only Hungary shows a worse result. This finding is of course very concerning from the civic space perspective. Research conducted in 2019 by the Institute for Social Science found that 30% of citizens believed that CSOs should “always” be included in policy-making processes, while 45% thought this should happen “occasionally”²²¹.

However,²²² conducted by the Center for Peace Studies on a representative sample of Croatian citizens yielded less favorable results. Only 28% of participants confirmed their general support for the work of CSOs. However, this level of support exceeded the one received by other political organisations and/or institutions, such as the Government (12%), Parliament (7%), political parties (5%), courts (12%), public prosecutors (12%), as well as other important social actors such as trade unions (15%), media (20%) and welfare system organisations (23%). This data show broader mistrust affecting Croat citizens. Other data from the same indicates that citizens in general are not familiar with the work of “progressive CSOs”; with only 17% identifying at least one of them, the highest percentage being 5%. They also demonstrated a relatively poor familiarity with the work of progressive CSOs, heavily favouring their volunteering over professional work, showing reluctance to fund them from public sources (except the EU funds). Additionally, they favour civil society’s advocacy work on politically less controversial issues, such as those related to combating poverty and aiding children in need compared to those focused on preserving democracy and particularly, protecting rights of migrants, refugees and members of the LGBTQ community.

This data also reflects the impact of direct smear campaigns by highest political officials against specific advocacy-oriented CSOs. For instance, in February 2021, President Zoran Milanović stated that one of the most recognisable feminist organisations in Croatia B.a.b.e. “*has a stupid name*” and

²²⁰ <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2021-godinu/?wpdmdl=13454&refresh=63b6d81fee8e01672927263>

²²¹ <https://gong.hr/2019/03/06/gradanike-o-politici-demokraciji-gongu/>

²²² https://www.cms.hr/system/publication/pdf/175/NOVI_PO_ETAK_-_Podloga_za_raspravu_o_novom_pristupu_pozicioniranju_i_radu_progresivnih_ljudsko-prava_kih_organizacija_u_Hrvatskoj.pdf

it is not working for women facing violence but *"only to make noise"*²²³. Similarly, after Gong reported President Milanović and several of his ministers to the Commission for Preventing Conflict of Interest for their attendance at a basement-located illegal bar that was run by a director of a high-profile public firm (currently the defendant in a high-profile corruption case), during a phase of strict Covid-19 restrictions in September and October 2020, Prime Minister Andrej Plenković stated that he is: *"...used to reports being submitted by professional tattletales"*²²⁴.

The fact that watchdog organisations still enjoy a reasonable amount of public support and influence after such attacks indicate certain robustness of civic space in Croatia and social resilience to authoritarian tendencies.

In order to respond to shrinking civic space, nine watchdog organisations created a consortium supported by Civitates Foundation. Gong is a member of this consortium which in 2022 was coordinated by the Center for Peace Studies and in 2023-2024 (upon renewed funding) will be coordinated by Human Rights House Zagreb. Probably the most prominent activity of this cooperation thus far was an international online conference on civic space held in November²²⁵. More ambitious activities, including a public campaign aimed at improving the public image of watchdog CSOs (to be coordinated by Gong), are expected in 2023-2024.

²²³ <https://www.index.hr/vijesti/clanak/milanovic-napao-babe-imaju-glupo-i-neduhovito-ime-one-su-kao-zaboravljene-glumice/2252578.aspx>

²²⁴ <https://www.jutarnji.hr/vijesti/hrvatska/plenkovic-komentirao-potez-gonga-navikao-sam-na-prijave-profesionalnih-prijavljivaca-15022728>

²²⁵ <https://www.cms.hr/en/najave-dogadaja/online-konferencija-borba-protiv-suzavanja-prostora-za-djelovanje-i-stvaranje-poticajnog-okruzenja-za-razvoj-civilnoga-drustva-u-eu>

Recommendations

To the government of Croatia

The regulatory environment for and implementation of civic freedoms

- 🔍 Adopt key policies to develop the capacities of the sector and protect civic space, the National Strategy for the Creation of an Enabling Environment for Civil Society Development and National Program for Protection and Promotion of Human Rights – in a participatory process engaging civil society;

Safe space

- 🔍 Refrain from smearing, harassing and criminalising civil society and journalists and ensure accountability, via independent investigations, of public officials engaging in these actions;
- 🔍 Address the issue of strategic lawsuits against public participation targeted at public watchdogs, including by addressing the abuse of legal provisions on defamation and encouraging awareness, taking into account European standards on the protection of journalists.

The right to participation and dialogue between the sector and governing bodies

- 🔍 Recognize the social value of all CSOs, including advocacy oriented and critical organisations;
- 🔍 Restore the previously functional framework of cooperation between CSOs and public authorities, in particular by reviewing the composition of the Council for Civil Society Development to ensure fair representation of civil society organisations. Even more vital is restoring cooperation standards based on open, critical dialogue and consensus-building;
- 🔍 Appoint competent public servants to key positions in institutions crucial for the civic support ecosystem - namely Government Office for Cooperation with NGOs and National Foundation for Civil Society Development, and ensure their autonomy from political interference
- 🔍 Improve transparency and capacities of the public administration in all aspects of policy cycle

The framework for civic organisations' financial viability and sustainability

- 🔍 Improve the existing system of financial support taking into account different needs of CSOs;
- 🔍 Ensure transparency and predictability in the process of programming, publishing and conducting tenders and evaluating project proposals;
- 🔍 Simplify the administrative requirements of calls for funding to ensure that the process and implementation of projects run smoothly and that funds are spent justifiably and purposefully;
- 🔍 Improve institutional capacities to avoid breaches of contractual obligations towards beneficiaries in implementation of ESF projects.

About the contributor

Gong is a Croatian civil society organisation founded in 1997 focused on enhancing democratic processes and institutions as well as developing democratic political culture and encouraging active and responsible participation of citizens in political processes. The organisation works particularly on issues related to the good governance of public and collective property and the protection and promotion of the rule of law, human rights, and solidarity.





Civic Space Report 2023

CYPRUS



Key Developments

- 🔍 2020 amendment to law on association remains a threat to CSOs
- 🔍 Funding remains a challenge, with national banks treating NGOs accounts as high risk
- 🔍 Some positive developments for civic dialogue and participation

While civic space remains “open” in Cyprus²²⁶, several concerns relating to the environment for civil society exist. As noted by the European Commission in its 2022 Rule of Law report on Cyprus,²²⁷ the de-registration of civil society organisations has continued.

In particular, one of the leading anti-racism CSOs in Cyprus, KISA, is facing significant restrictions as a result of the 2020 amendment to the Law on Associations. Additionally, funding for civil society is a challenge, with national banks treating NGO bank accounts as high risk which has resulted in CSOs facing additional administrative and financial burdens. Some positive moves were noted in the area of participation, including a citizen’s dialogue on strengthening democracy and the passing of a law on transparency on public decision-making.

²²⁶ <https://monitor.civicus.org/country/cyprus/>

²²⁷ https://commission.europa.eu/system/files/2022-07/31_1_194047_coun_chap_cyprus_en.pdf

Institutional, political and socio-economic landscape

According to the World Justice Report, Cyprus was ranked 18th out of 140 countries for adherence to the rule of law in 2022²²⁸. This position shows an improvement compared to the year before when the country ranked 20th.

Pushbacks of refugees have continued. In April 2022, Cyprus authorities denied entry into the country to more than fifty Lebanese refugees travelling by boat and made them return to their port of departure. This violation of refugees' rights was criticised by the UN refugee agency in Cyprus as well as EU human rights commissioner Dunja Mijatovic.²²⁹ Furthermore, in July 2022, two Syrian refugees took the Cyprus government to the European Court of Human Rights to re-examine their situation after they were sent back to Lebanon in September 2020²³⁰.

Another case heading to the ECtHR is that of a young British woman who was prosecuted and convicted on first instance for allegedly reporting a false gang-rape. On appeal, the Supreme Court acquitted the young woman. Despite the woman's acquittal, the Attorney General did not order a re-investigation of the woman's rape claim. Since the Attorney General's decisions of non - investigation and non - prosecution are not subject to appeal, the woman's legal team have turned to the European Court of Human Rights, claiming that there is no available effective remedy offered by Cyprus.²³¹

Major anti-racism organisation KISA has remained subject to dissolution procedures due to a 2020 legislative amendment. The organisation was removed from the registry of associations in December 2020 as a result of a small compliance error. It has filed an appeal with the nation's Supreme Court and, currently, operating with significant restrictions.

In December 2022, the Parliament passed regulations for the operation of the Independent Authority against Corruption²³². This Authority aims to work independently from the Government, as its members are appointed by the President of the Republic of Cyprus, upon recommendation from the President of the Cyprus Bar Association, the President of the Cyprus Academy of Sciences, Literature

²²⁸ <https://cyprus-mail.com/2022/10/27/cyprus-ranked-18th-out-of-140-countries-for-adherence-to-rule-of-law/>

²²⁹ <https://knews.kathimerini.com.cy/en/news/cyprus-turns-refugee-boat-back-to-lebanon>

²³⁰ <https://www.newarab.com/analysis/two-syrian-refugees-fight-make-pushbacks-illegal-eu>

²³¹ <https://cyprus-mail.com/2022/06/14/british-womans-rape-case-to-be-taken-to-echr/>

²³² <https://www-brief-com-cy.translate.googleusercontent.com/translate/kypros/psifistikan-oi-kanonismoi-gia-anexartiti-arhi-kata-diafthoras>

and Art, the President of the Chartered Accountants of Cyprus, one retired Supreme Court Judge, and the President of the Council of the Heads of Universities. However, since the President of the Republic has been the subject of criticisms for allegations of corruption, this method of appointment is likely to be problematic.

The regulatory environment for civic freedoms

2020 amendment to law on association remains a threat to CSOs

The right to freedom of association is guaranteed in the Constitution of the Republic of Cyprus ('RoC') by Article 21. In a similar manner as Article 11 of the European Convention on Human Rights ('ECHR') and Article 22 of the International Covenant on Civil and Political Rights ('ICCPR'), this constitutional right protects the right to form and to join trade unions for the protection of one's interests.

Moreover, this right can only be restricted for the reasons provided in paragraph 3 of Article 21: the restriction must be prescribed by law and absolutely necessary in the interest of security of the RoC, or of the constitutional order, or for public safety or for public order or for public health or for public morals or for the protection of the rights and freedoms guaranteed by the Constitution. It is also prohibited to form an association with the purpose of or acting against the constitutional order.

Similarly, to the ECHR's Article 11 and ICCPR's Article 22, Article 21 (5) of the Constitution does allow the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Furthermore, the establishment and formation of associations, organisations and foundations are governed by the Law of Associations and Foundations and other Relevant Matters of 2017 (104 (I)/2017) ('the Law')²³³. However, in 2020 parliament passed an amendment to the law, specifically Article 56, with provisions which established a new deadline of two months for the submission of administrative data by registered associations. The provision stated that if an NGO fails to meet this deadline to submit an amended constitution that is in conformity with the new regulations or audited accounts, the NGO will be included on the list of the General Registrar of Associations, which would result in the starts of dissolution process of said NGOs. Not only did the provisions seem unclear to NGOs, but the allocated time frame of two months was also deemed inadequate.

The minimum number of proposed members is 20 and an organisation will not be registered for the same reasons provided by the Constitution or if it purports to be a criminal organisation. Moreover, registration may be denied if the founding members or suggested members of the board have been

²³³ http://www.cylaw.org/nomoi/enop/non-ind/2017_1_104/full.html

convicted of a crime, whose constitutional elements contained dishonest or moral obscenity. Lastly, the Law provides for the registration of foreign associations in the RoC.

The Companies Law Chap. 113²³⁴ allows for the establishment of not - for profit companies, so long as the Company is established for the purpose of promoting trade, art, science, religion, charity or any other purpose for the common good.

In practice, the 2020 amendment to the Law on Associations has led to the dissolution of several associations. Local Cypriot civil society organisation, KISA, one of the leading organisations which fights for equality and against discrimination and racism, was removed from the Register of Associations by the Cypriot Minister of Interior. The case was brought before the Administrative Court but rejected on the grounds that the organisation should have provided an amended constitution in order to be compliant with the Government's attempts to bring transparency to how NGOs are funded and operated. As per the Court, this purpose was consistent with the requirement of public and constitutional order. The case was appealed.

The Commissioner for Human Rights of the Council of Europe²³⁵ and several UN Special Rapporteurs²³⁶ condemned the RoC's decision and considered the de-registration of an association for lack of compliance with formal requirements as disproportionate²³⁷.

In more practical challenges for CSOs, information and guidelines about the establishment associations, foundations or federations based on the most recent legal framework, including access to all relevant paperwork, in the relevant Ministry of Interior site²³⁸ is only available in Greek. As a result, non-Greek speaking individuals that wish to be informed about the process rely on information provided by organisations like the NGO Support Centre.

²³⁴ https://www.companies.gov.cy/assets/modules/wgp/articles/201801/49/docs/cap_113_translation_made_july_2014.pdf

²³⁵ <https://rm.coe.int/letter-to-mr-nicos-nouris-minister-of-interior-of-cyprus-by-ms-dunja-m/1680a1c09b>

²³⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26312>

²³⁷ <https://www.omct.org/en/resources/urgent-interventions/cyprus-37-organisations-denounce-the-ongoing-harassment-against-kisa-and-call-on-the-cypriot-authorities-to-reinstate-their-official-registration-as-a-non-governmental-organisation>

²³⁸ http://www.moi.gov.cy/moi/moi.nsf/pagede1_gr/pagede1_gr?OpenDocument

Proposed amendments pose threat to press freedom in the areas not controlled by the Government of the Republic of Cyprus

On 20th May 2022 the executive branch and council of ministers of the areas not controlled by the Government of the Republic of Cyprus published several legislative amendments to the penal code, the law on “noxious publications” and the law on protecting privacy²³⁹. The amendments criminalise anyone who writes an article with “malicious” intent for “mass media”, punishable by up to five years in prison. Malicious is defined as not only “insulting” or inciting “discontent or dissent” towards the president or the state of the areas not controlled by the Government of the Republic of Cyprus but also “ridiculing” them or questioning the alleged sovereignty of the areas not controlled by the Government of the Republic of Cyprus. Other definitions in the amendment are loosely worded and thus open to interpretation and could lead to arbitrary restrictions on free speech. Press freedom groups have raised concerns that the proposal “threatens journalists with arbitrary prosecution under the pretext of tackling online information turmoil”. Turkey is the only country which recognises the legitimacy of the areas not controlled by the Government of the Republic of Cyprus as an independent state.²⁴⁰

²³⁹ <https://basimevi.gov.ct.tr/Portals/6/2022/100.pdf?ver=2022-05-18-194119-853>

²⁴⁰ <https://rsf.org/en/media-bill-poses-major-threat-press-freedom-northern-cyprus>

Funding for civil society

Funding a main challenge for CSOs

In February 2022, the NGO Support Centre launched a survey for mapping the needs and challenges of CSOs in Cyprus, aimed at collecting representative data which would highlight the best ways to support organisations and to maximise their social impact. The survey was directed at CSOs established and active in Cyprus. Results were published in March 2022²⁴¹. When asked to indicate the most important challenges that will significantly affect their sector in the next six months, 72.7 per cent of the respondents identified the acquisition of funding to achieve their organisation's objectives as one of the main challenges. 97 per cent of respondents replied positively to the question "Do you believe that small CSOs face increased difficulties in ensuring funding for the development of their actions?". 80.3 per cent of respondents replied negatively to the question "Do you consider that the existing funding programmes available to CSOs are sufficient for developing their activities and achieving the desired results?".

Banks tend to treat CSO accounts as high risk

NGOs in Cyprus are facing issues with regards to the management of their accounts by national banks, which has affected the financial management of the organisations and their overall viability. Authorities in Cyprus have developed a risk-based monitoring methodology (Risk Based Approach for the monitoring of Money Laundering and Terrorism Financing Risks in the NPO sector) and a monitoring strategy but a complete clear assessment on the sector has yet to be concluded and communicated to the NGOs.²⁴² The administrative requirements of such monitoring place excessive administrative burden to CSOs that are lower risk and/or have limited capacity, due to size and scope of activities, to adhere to the obligations.²⁴³

In 2022 there have been several incidents where banks have shown a tendency to treat NGOs as high-risk entities with a series of actions: bank accounts were kept frozen while performing administrative updates without any prior notice to either the legal representative(s) or staff of the

²⁴¹ <https://ngo-sc.org/wp-content/uploads/2022/04/Mapping-the-Needs-and-Challenges-of-CSOs-in-Cyprus-2022.pdf>

²⁴² <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-cyprus-2022.html>
<https://rm.coe.int/moneyval-2022-17-fur-cy/1680a92582>

²⁴³ <https://rm.coe.int/moneyval-2022-17-fur-cy/1680a92582>

organisations; demonstration of inconsistencies in communicating, in writing, deadlines and procedures that NGOs would need to follow to submit required documents for account updates; refusal to open bank accounts for legally established entities. In 2022, some national banks have also announced the introduction of a fee to be charged for the regular, compulsory administrative update of bank accounts for NGOs imposed by banks²⁴⁴.

In March 2022, a coalition of CSOs, led by Civil Society Advocates and NGO SC sent a private communication to the Association of Cyprus Banks inviting them to a meeting to discuss topics related to the implementation of actions by national banks, based on recommendations by the Central Bank and on the basis of the Financial Action Task Force (FATF) recommendations concerning non-governmental entities. At the meeting with representatives of national banks, organisations expressed concern over the lack of clear communication towards NGOs about the increasingly complex and continuous changes in administrative and financial requirements put in place by banks, which pose an administrative and financial burden on NGOs. No commitment has been made by the Association of Cyprus Banks towards furthering the dialogue on these issues.

Moreover, according to Civil Society Advocates, commercial banks updated their policies on the paperwork needed from NGOs to open and maintain accounts with them. The new rules forbade paying Turkish Cypriots money if they couldn't provide the bank with an energy bill from the Republic of Cyprus. Before the policy was introduced, payments to Turkish Cypriots with Republic of Cyprus IDs could be made by issuing a check that the recipient could deposit in any Turkish Cypriot bank. This practice was discontinued in 2018, and banks now require residency in the Republic of Cyprus in addition to a Cypriot ID. The financial management of bi-communal programs is becoming more difficult as Turkish Cypriots are no longer able to receive public funding for the work they have done.²⁴⁵

NGOs in Cyprus are obliged to pay VAT but are unable to claim it back. This issue along with many other barriers, including absence of funding, lack of timely payments, lack of transparency about the criteria, were addressed at the parliamentary level, however it has not yet been resolved.²⁴⁶

²⁴⁴ Bank of Cyprus refers to this as "File update/ review"

https://www.bankofcyprus.com/globalassets/cyprus/org_methods/commissions--charges-current/eng/72251-boc-catalogue-legal-entities-december-22-eng.pdf | Hellenic Bank refers to this as "Enhanced due diligence"

https://www.hellenicbank.com/portalservice/content/api/contentstream-id/ba122ca0-b615-4054-878e-cf272e6e3254/ce2d2be1-c64d-45fc-b6f5-1092ec1f30d4/Charges/2023/TABLE%20OF%20COMMISSIONS%20AND%20CHARGES%20_ENG-from--02012023.pdf

²⁴⁵ FRA Report on Legal environment and space of civil society organisations in supporting fundamental rights - Cyprus 2021 https://fra.europa.eu/sites/default/files/fra_uploads/franet_cyprus_civic_space_2021.pdf

²⁴⁶ Ibid

Civil dialogue and right to participation

Positive developments for participation

In September 2022, the Office of the Commissioner for the Citizen in Cyprus organised an event²⁴⁷ that launched the vision, priorities and next steps at EU and national level in promoting the participation of citizens and strengthening of participatory, deliberative democracy. Following the event, a series of consultations took place at national level that supported the development of a “National Strategy on Active Citizenship and Participatory Governance”, in line with decision 92.576, dated 9/2/2022, by the Ministerial Council. The strategy envisions the strengthening of participatory, deliberative democracy in Cyprus, ensuring the active involvement of citizens in decision-making and policy-making processes at local and national level. One of the main principles of the strategy is the development of a culture of recognition and respect towards the value and role of civil society in Cyprus and its contribution to defending human rights. The Strategy is expected to be publicly presented by the Commissioner’s office in January 2023.

In July 2022 Cyprus adopted the Law of 2022 No. 20(I)/2022 “On Transparency of Public Decision-Making and Relevant Procedures”²⁴⁸ which is designed to ensure transparency of the participation of lobbyists in public decision-making concerning: a) the definition of the areas of public policy, development of relevant policy and its amendment; drafting and adoption of legal acts and b) the provision of public grants, state guarantees, subsidies, and state financial support in other forms. The Law covers: natural and legal persons of private law, who intend to participate in public decision-making on behalf of the persons whose interests they represent, in particular, managers and employees, elected or empowered to represent interests (hereinafter, lobbyists, representatives of interests); persons holding public positions, assistants of these persons, public and municipal servants and employees of the public sector, who can initiate the discussion of a public decision, participate in formulating or adopting its content due to their position (hereinafter, officials). Under the Law, the representatives of interests are obliged to be registered in a Register of Lobbyists, which is being established, to participate in public decision-making.

²⁴⁷ <https://www.pio.gov.cy/en/event.html?id=6471>

²⁴⁸ http://www.cylaw.org/nomoi/enop/non-ind/2022_1_20/full.html

Recommendations

To the Government of the Republic of Cyprus

The regulatory environment for civic freedoms

- 🔍 Re-insert KISA in the Register of Associations;
- 🔍 Put an end to the ongoing judicial harassment against KISA and its members.
- 🔍 Repeal the Amendment 118 (I)/2020 of the 2017 Law on Associations and Foundations and Other Related Issues, which grants the Ministry of Interior of Cyprus executive powers to remove NGOs from the Register of Associations and prohibits un-registered NGOs from continuing their actions

To the Association of Cyprus Banks

Funding for civil society

- 🔍 Development of communication tools between the Association of Banks, national banks and CSO representatives (e.g. a Working group) to ensure dialogue that takes into account the particularities of the non-for-profit sector;
- 🔍 Abstain from “freezing” CSO accounts when reviewing, particularly without any prior notice;
- 🔍 Develop clear guidelines for risk assessment procedures and administrative requirements towards CSOs and communicate them in written to CSOs, to ensure transparency and consistency;
- 🔍 Revise the bank fees posed for obligatory account reviews / due diligence, particularly for smaller CSOs.

About the contributor:

The NGO Support Centre is an independent, non-governmental, non-profit organisation dedicated to the development and strengthening of civil society in Cyprus. Since 1999 the centre has developed a substantive experience and expertise in the fields of active citizenship, peace and reconciliation, development education, human rights education, intercultural dialogue, and participation.





Civic Space Report 2023

CZECH REPUBLIC



Key Developments

- 🔗 CSOs responded to the aftermath of Russia's war against Ukraine and contributed to the resilience of Czech society and its ability to cope with current and long-term challenges.
- 🔗 CSOs participation and dialogue fragmented across the government administration, but promising steps for improvements.
- 🔗 Negative impact on CSOs due to record inflation rates, barriers to long-term funding and lack of resources, incl. digitalisation.

In 2022, the political landscape in the Czech Republic has been defined by the Presidency of the Council of the EU and the crisis brought on by Russia's aggression against Ukraine, which civil society swiftly responded to in many forms.

Despite a large increase in private donations to CSOs to provide assistance to the people affected by the war, funding remains a challenge for the sector. While the government seems to be open to policy dialogue, the state administration lacks the tools and culture to promote effective civic participation. This is more problematic in cases of stakeholders' involvement in complex processes such as the implementation of the National Recovery Plan. The power of disinformation, ineffective strategic communication of the government and insufficient conditions for independent journalism fail to dampen tensions in society, that is coping with increasing economic crises and threaten to turn against civil society. Organisations and activists working to improve the lives of LGBTQI+ people report being targeted by insults, verbal violence, hate speech, and sometimes hate crimes solely due to their work.

Institutional, political and socio-economic landscape

The October 2021 election results led to a new Czech government made up of a conservative-liberal coalition of five parties with Prime Minister Petr Fiala from the Civic Democratic Party (ODS). Former PM Andrej Babiš' political party, ANO, is now in the opposition, whereas the communists' and social democrats' presence in the Chamber of Deputies ended after 32 years. Therefore, there is no leftist party in the parliament. The government has made lots of efforts to find political agreements before any proposal goes into the Chamber of Deputies in order to keep the coalition convergent and stand in the 2022 ongoing elections campaigns. The real political debate has been dribbling out.

The Czech Presidency of the Council of the EU in 2022 took much of the political attention and capacities of the Government and its administration. Its performance has received positive responses from the EU level. However, these achievements have barely been visible to citizens and the government has not been able to "sell" them sufficiently to the Czech public. CSOs have been striving to get involved in preparing and implementing the Czech Presidency, which is still to be evaluated.

The country has been facing severe consequences of Russia's brutal attack on Ukraine, which triggered a wave of refugees from Ukraine (the Czech Republic hosts the largest number of refugees relative to the population, with a total of 470 000 refugees, 44 per 1 000 inhabitants²⁴⁹). The unprecedented solidarity of Czech society was manifested in various forms: people have sent billions of Czech Crowns to charity collections, worked as volunteers in refugee centres and train stations, transported war refugees from the Ukrainian western border in their own cars, and accommodated them in their homes. CSOs, citizens initiatives, and informal groups with a great engagement of volunteers demonstrated a unique ability to respond immediately after Russia's attack on Ukraine to help people from Ukraine, adapt their activities, and balance the missing capacities and procedures of the state. CSOs proved their ability to connect and build new coalitions in order to promote the necessary agenda.

²⁴⁹ Data from <https://www.mvcr.cz/clanek/statistika-v-souvislosti-s-vaikou-na-ukrajine-archiv.aspx> and <https://data.unhcr.org/en/situations/ukraine>

However, the energy crisis, rising costs of living, and high inflation (up to 17.8 per cent, the fifth highest in the EU) have increased public uncertainty and fears²⁵⁰. The crises have also revealed the insufficiently addressed policy areas (long-standing underfunding of the infrastructure for effective integration of migrants, lack of affordable housing and law on social housing, lacking school capacities, the inefficient social benefits system, etc.), and problematic budgetary and tax policy leading to high deficit and severe structural imbalances in public finances²⁵¹. Although the government has been adopting supportive measures, a significant part of the Czech population has been in danger of energy poverty²⁵² and other social problems. These may cause public support for Ukraine to dry up and reinforce populist tendencies in Czech public policy.

In 2022, the presidential campaign was underway, with former Prime Minister Andrej Babiš running for president while facing charges of EU subsidy fraud in connection with his farm. The debate has been about whether an accused person facing trial can become the country's president and how the judiciary deals with this highly politicised and visible case. The verdict came four days before the elections when the Municipal Court in Prague acquitted Babiš on 9th January 2023. The judge ruled that the prosecution had failed to prove its case. There was insufficient evidence that Babiš deliberately lied in his application for the subsidy and concealed his links to his giant conglomerate Agrofert. The verdict leads to an ambivalent conclusion as to whether this is evidence of an independent judiciary and a functioning rule of law. Or, on the contrary, if it demonstrates the inability of the prosecution to professionally gather evidence and bring a quality indictment, thus pointing to a less functional justice system. It is clear that the independence of the judiciary is one of the values, but the professionalism and courage of prosecutors are also indispensable.

In this year's Reporters Without Borders (RSF), World Press Freedom Index on media freedom, the Czech Republic improved from fortieth to twentieth place - all it took was the de facto owner of a key media house (Andrej Babiš) leaving the government. Even so, the Czech media suffers from a high degree of oligarchisation and a heavy burden of conflicts of interest from the days of the former Prime Minister and presidential candidate Babiš. At the same time, they have to cope with a failing funding model for smaller independent media and the deteriorating condition of the public media. Independent media still do not have the necessary state support and the government has not taken steps to increase license fees. Without urgent action to change the law, there will be redundancies,

²⁵⁰ The two biggest fears the Czech people associate with the war in Ukraine are the price increase and the fear of disruption of supplies of natural gas and other raw materials. The fear of a military threat has still been the third highest, whereas the impact of the refugee crisis or threats to civil liberties are less pressing among people.

<https://www.stem.cz/dopady-valky-cesi-se-boji-vice-zdrazovani-a-nedostatku-plynu-nez-uprchlicke-krize/>

²⁵¹ <https://www.rozpoctovarada.cz/vyjadreni-nrr-k-vysledkum-statniho-rozpctu-za-rok-2022/>

²⁵² <https://hnutiduha.cz/publikace/energeticka-chudoba-jeji-reseni>

technological obsolescence, and a decline in the quality of public service media. Media law reform has not yet taken place.

The Government has not been able to counter the spread of disinformation because of failure in strategic communication, to support pluralistic independent media, and sustainable funding for public service media. This is not helpful against the declining public trust²⁵³.

The brutal attack on LGBTIQ people in Bratislava in Slovakia on 12 October 2022, stimulated a wave of public responses throughout the Czech civil society and some officials and accented the urgency to forward the legislation on the law on same-sex marriage. The legislation process has been stuck in the Chamber of Deputies, and lawmakers have divided into relatively irreconcilable sections over it. As the Chair of the Chamber of Deputies stated: "In the 21st century, we should all have equal rights, not segregated by sexual orientation."

Appointments to key institutions

The Prime Minister appointed Klára Šimáčková Laurenčíková a new Government Commissioner for Human Rights only in May 2022 (after the position was vacant for several months), by which the human rights agenda got an ambitious and well-respected personality. Although the Commissioner is not part of the government, she has still been able to bring up a range of issues affecting vulnerable groups and minorities to the governmental level, such as the integration of refugees, systemic changes to support for people with intellectual disabilities and challenging behaviour, gender equality, well-being and mental health of children, etc.

The Public Defender of Rights Office/Ombudsman, which since 2020 has been accompanied by a controversy about the person at its head - Mr. Stanislav Křeček, was weakened by the resignation of the Deputy Ombudsperson due to fundamental differences of opinion with the Head of the Office which were exacerbated by the removal of her complete agenda. The Office has thus lost a recognised human rights expert with a wealth of experience. Before this happened, the Senate of the Parliament of the Czech Republic stated that "the Ombudsperson has long and repeatedly made prejudicial or xenophobic statements in the public which may have the effect of discouraging victims of discrimination from seeking assistance from the Public Defender's Office".

In October 2022, a new Deputy Ombudsman (former government agent before the European Court of Human Rights) was elected by the Chamber of Deputies. At the same time, a modification of the Ombudsman Act is being discussed. The return of stability and undisputed credibility to the Office

²⁵³ The public trust in Government is one of the lowest (28,5 %) and distrust is increasing (68,1 %) -

<https://cvmmapp.soc.cas.cz/#question6>

would be important not only in view of its current responsibilities but also in the prospect of it becoming a national human rights institution, which is still lacking in the Czech Republic.

The regulatory environment for civic freedoms

Freedom of association

The key legislation for an association is set in the Civil Code which covers the major legal entities of CSOs (associations, subsidiary associations, institutes, foundations, endowment funds) and in the legislation on churches and religious societies²⁵⁴. The conditions for registration, merger, or dissolution of legal entities of CSOs have not changed nor deteriorated in 2022. However, Czech CSOs face burdensome bureaucratic and administrative obligations. These are often the results of complicated legislation on taxation, and lacking digitalisation and communication among different parts of the state. For example, some state granting authorities do not effectively use the information readily available in the state administration register and delegate unnecessary administrative obligations to an applicant or CSO when applying for state subsidy.

During 2022, there were concerns about the impact of the Czech transposition of the EU AML directives on the register of beneficial owners²⁵⁵, as the law did not address the automatic transcription of data from public registers for particular legal entities. Furthermore, the public benefit corporations, foundations, or institutes established by a municipality, a county, or a state were not able to prove to have a beneficial owner²⁵⁶. The situation was partly improved by the amendment of the Act only effective from 1st October 2022.

Protests held on diverse issues

Freedom of peaceful assembly is regulated by the Act on the right of assembly²⁵⁷. A public assembly - such as meetings, street parades, demonstrations, or happenings open to everyone and held in a

²⁵⁴ The New Civil Code No. 89/2012 Coll., and the Act No 3/2002 Coll., on freedom of religion and the position of churches and religious societies and amending certain acts.

²⁵⁵ The Act No. 37/2021 Coll., on the Register of Beneficial Owners,

²⁵⁶ See the minutes from the Committee on Legislation and Financing under the Government Council for NGOs - https://www.vlada.cz/assets/ppov/rnno/legislativa-a-financovani/2008/Zapis_Vybor_pro_legislativu_financovani_06_09_2021.pdf and https://www.vlada.cz/assets/ppov/rnno/legislativa-a-financovani/2008/Zapis_VLF_01_27_2022.pdf

²⁵⁷ Act No. 84/1990 Coll., on the right of assembly.

public space - does not require a permit from a public authority but is subject to notification within given time limits, free of charge. Assemblies may not be held within a radius of 100 meters of the buildings of the Legislative Assembly and the Constitutional Court. The competent authority may - in line with the exact conditions set by law - prohibit the assembly (before it starts), dissolve the assembly, or fine penalties if the conditions laid down by law are breached.

In 2022, there were several larger demonstrations called on very diverse issues which demonstrate that citizens enjoy the right of peaceful assembly. The largest assemblies were organised in the support of Ukraine and against Russia's aggression. The blue and yellow flags flew on the buildings of most institutions across the country. Through the demonstration "We all stand with Ukraine,"²⁵⁸ Czechs joined similar demonstrations in cities across Europe and hosted a live speech by President Volodymyr Zelenskyy. The demonstration Czechia against Fear²⁵⁹ was organised shortly after the protests against hatred and violence to remember victims of prejudicial violence after the murder of LGBTQI+ people in Bratislava²⁶⁰, demanding legal protection for LGBTQI+ people and the adoption of a law on marriage for all.

However, conspiracy and pro-Russian followers and the former organisers of the anti-vax protests managed to mobilise tens of thousands of people in Prague's Wenceslas Square as part of the initiative 'Czech Republic First'. They demanded: negotiations with Russia on cheap energy supplies, against the EU, the resignation of the government, military neutrality, and asked for "freedom of expression" on social media, by which they mean the ability to share any content regardless of its factual content²⁶¹. The trade unions failed in getting the crowds into the streets as an alternative action to address the inadequacy of government measures to help people in the energy and economic crisis, however without the anti-system, anti-democratic dimension.

The high school and university students staged strikes against the inaction of politicians in the fight against the climate crisis. Fridays For Future also organised an Eastern European climate strike in Prague, where the topic of human rights was given a lot of space in connection with the LGBTQI+ attack in Bratislava. Occupation strikes organised by the Universities for Climate Association culminated in a protest on the national holiday of 17 November. This is traditionally a date for large public events for the celebration of democracy, but the anti-democratic groups organised protests there as well. The physical assault of two journalists from an independent media outlet and the Czech

²⁵⁸ Organised by Million Moments for Democracy - <https://www.facebook.com/events/v%C3%A1clavsk%C3%A9-n%C3%A1m%C4%9Bst%C3%AD-110-00-praha-%C4%8Desk%C3%A1-republika/we-all-stand-with-ukraine-evropa-stoj%C3%AD-za-ukrajinou/552731506427842/>

²⁵⁹ The demonstrations Czechia Against Fear - <https://milionchvilek.cz/ceskoprotistrachu>

²⁶⁰ The demonstration and petition against violence organised by Prague Pride - <https://spolecneprotinenavisti.cz/>

²⁶¹ Information taken also from the article at Deník referendum - <https://denikreferendum.cz/clanek/34753-nejvetsi-demonstrace-roku-2022-proti-ruske-agresi-homofobii-i-proti-demokracii>

TV were reported during the protest march to the Czech Television building. The conspirators criticised Czech Television's news coverage as unbalanced, biased against Ukraine and supporting COVID-19 vaccination, and demanded a space to speak on live TV.

In 2022, no serious problems caused by the authorities or the police were noted. However, there were several cases reported at the meetings organised by former Prime Minister Andrej Babiš during his pre-election tour through the country. In one case, non-uniformed police officers knocked over a schoolboy. Cases in which the procedure and tactics of the police officers were examined by the police internal control office also occurred. These incidents demonstrate high tensions in society and the decline in the ability of people to lead any dialogue respecting different opinions.

Developments relating to disinformation

The freedom of expression and right to information is set in the Charter of Fundamental Rights and Freedoms as part of the Constitutional order of the Czech Republic, and in the Freedom of Access to Information Act²⁶².

The Supreme State Prosecutor's Office informed citizens that the current situation related to Russia's attack on Ukraine may also have implications for their freedom of expression²⁶³. If someone publicly (including at demonstrations, on the Internet or on social networks) expresses approval of (accepts or supports) the Russian Federation's attacks on Ukraine or, in this context, expresses support for or praises the leaders of the Russian Federation, he or she could, under certain conditions, face criminal liability for the crime of approval of a crime under the Criminal Code, or for the crime of denying, questioning, approving or justifying genocide.

Shortly after Russia invaded Ukraine, mobile operators, and the CZ.NIC association blocked access to pro-Russia disinformation websites. Although this step was first presented as an initiative of private entities, it later turned out that it was an official instruction of the National Cyber Operations Centre of the Military Intelligence of the Ministry of Defence. The CSOs H21 Institute and Open Society filed a joint lawsuit against the Department of Defense for illegally cracking down on the disinformation websites²⁶⁴. They challenged the state's action for using means that violated the rule of law, freedom

²⁶² Act No. 106/1999 Coll., Act on Free Access to Information

²⁶³ <https://verejnazaloba.cz/nsz/informace-k-moznym-trestnepravnim-limitum-svobody-projevu-ve-vztahu-k-situaci-na-ukrajine/>

²⁶⁴ Press Release: <https://www.ih21.org/aktuality/tiskova-zprava-institute-h21-a-otevrena-spolecnost-zaluji-ministerstvo-za-postup-pri-zasahu-proti-dezinformacnim-webum> and <https://www.otevrenaspolecnost.cz/aktuality/8064-upresnujici-prohlaseni-k-zalobe-institute-h21-a-otevrena-spolecnost-x>

of expression, the right to receive information, freedom of thought, and scientific research. The CSOs urged that the current threats should be used as an opportunity to clarify the general constitutional limits for shutting down disinformation sites. A law to this effect is now being drafted and again, it has become a sensitive matter.

Safe Space

LGBTQI+ rights remain targeted despite increased actions against online hate speech

The Constitutional Court has stated earlier, that hate speech on the internet must be combated in a democratic society, even in serious cases through criminal law²⁶⁵. Although the Czech legal system does not define the term "hate speech", it can still be punished according to the Criminal Code. In 2022, the police were more active in investigating cases of hate speech in the online space. Several cases have already been recorded in connection with those approving of Russia's aggression, incitement against Ukrainians for defamation of the nation, and incitement to hatred in the public space and social networks. Some of the manifestations are already being prosecuted by law enforcement authorities²⁶⁶. The police opened an investigation into the racist attack on the journalist of Czech TV during the pro-Russia protest on 17th November²⁶⁷.

Organisations and activists working to improve the lives of LGBTQI+ people report being targeted by insults, verbal violence, hate speech, and sometimes hate crimes solely due to their work. These attacks come largely from Czech politicians, including several ministers and other prominent members of the current government, and take on many different forms. Hateful comments range from questioning their right to engage in public debate, to spreading disinformation and lies about LGBTQI+ people, and inciting social disharmony and fear-mongering by claiming that LGBTQI+ people represent a danger to society.

A recent homophobic terrorist attack in Bratislava, in which two queer people were murdered, shows the dangerous consequences of spreading hate and stigmatisation. The Czech Criminal Code provides less protection to victims of hate crimes motivated by the victim's sexual orientation and gender identity than to other victims. There is active resistance from a part of the political spectrum

²⁶⁵ <https://ct24.ceskatelevize.cz/domaci/3423282-ustavni-soud-se-vymezil-vuci-nenavisti-na-internetu-reagoval-tak-na-kauzu-komentare-u>

²⁶⁶ https://www.irozhlas.cz/zpravy-domov/schvalovani-ruske-agrese-trestne-ciny-valka-na-ukrajine-policie-uprchlici_2204211147_vtk

²⁶⁷ During a demonstration against Czech Television in Prague, one of the participants called him a "gypsy bastard" - <https://romea.cz/cz/domaci/policie-zacala-setrit-rasisticky-utok-na-novinare-richarda-samka-romea-cz-zna-identitu-agresora>

to financially support activities leading to improving the lives of LGBTQI+ people, which makes accessing funding for LGBTQI+ organisations difficult.

The Government Council for Human Rights adopted a statement stressing that prejudicial violence and hate attacks are unacceptable against any section of society, and urged the Government of the Czech Republic to systematically strengthen the prevention of hate attacks against all vulnerable groups and the protection of the rights of members of these groups²⁶⁸.

Lack of concrete measures to support civic space defenders

The authorities promote human rights and civic space defenders through important value-based proclamations, but less through concrete measures. On the occasion of International Human Rights Day, Prime Minister Petr Fiala and the Commissioner for Human Rights Klára Šimáčková Laurenčíková recognised the solidarity of the public and the work of people from CSOs, which, in the words of Prime Minister Fiala, contributes to the resilience of Czech society and its ability to cope with current and long-term challenges²⁶⁹.

²⁶⁸ <https://www.vlada.cz/assets/ppov/rlp/cinnost-rady/zasedani-rady/Usneseni-k-utoku.docx>

²⁶⁹ <https://www.vlada.cz/scripts/detail.php?id=201568&tmplid=50>

State lacks conceptual approach to civil society

The negative narrative of “political NGOs” has been anchored in the Czech public space and concerns organisations working in the areas of anti-corruption, democracy, environment, human rights, gender, minorities, or integration of migrants. The term has shown up with varying degrees of intensity during times and emphasises that organisations which do not deliver public services should not receive public funding. It is fuelled by many public figures and politicians, and by disinformation and hate speech in the public space. This narrative stems from misunderstanding the value of different roles and functions of CSOs in a democratic society, but also civic engagement and active citizenship.

Little understanding of the different types and roles of CSOs has translated into, in some cases, questioning the importance of supporting them. The differentiation in approach is thus mainly through the definition of the volume of state subsidies for CSOs, where the focus is on physical education and sport with almost 40 per cent of the share. When setting up advisory bodies, some ministries do not distinguish between civil society and experts and academics, or economic and social partners, which may marginalise the role of CSOs. In many other areas, the lack of a conceptual approach with adequate methodological support from the state is replaced by individual ministries' and regional governments' own interpretations.

The Government's Strategy for Cooperation Between Public Administration and NGOs 2021-2030²⁷⁰ was adopted in July 2021. It recognises the necessity to improve the societal climate for CSOs' activities and aims at strengthening understanding of the nature and social function of the non-profit sector, the benefits of activities of CSOs and increasing the visibility of partnership cooperation between the public administration and the non-profit sector. However, the implementation is largely dependent on the capacities of the Office of the Government and the respective ministerial departments. Due to the insufficiency of these capacities, the implementation of the Strategy is delayed. Given that the new government publicly declares its recognition of CSOs (noticeable especially in the management of refugees from Ukraine) and, in particular, through the Government

²⁷⁰ The Strategy for Cooperation Between Public Administration and NGOs 2021-2030 - <https://www.vlada.cz/cz/ppov/rnno/dokumenty/strategie-spoluprace-verejne-spravy-s-nestatnimi-neziskovymi-organizacemi-na-leta-2021-az-2030-189753/>

Commissioner for Human Rights that spreads awareness, particularly about the importance and significance of CSOs²⁷¹, the implementation is expected to take off.

²⁷¹ See e.g. her speech at the conference mentioned below and the speech of the Prime Minister and Government Commissioner for Human Rights from December 2022 on Human Rights Day.

Funding for civil society

Inefficient and unevenly distributed funding for CSOs

CSOs have adapted to the dramatically changing environment due to COVID-19, the impact of the war in Ukraine, and rising costs in terms of their services and operations. Few CSOs (especially those providing relief and emergency assistance) have grown significantly, while many others have struggled with uncertain funding sources or have sought to diversify them. Organisations that already had key organisational and fundraising processes set up or in place coped better with the changes, which is still not common practice for many CSOs in the Czech Republic. The Czech labour market still lacks sufficient workforce, especially in professions such as IT, communication specialists and fundraisers, which is a clear problem for the sector's stabilisation or growth.

Despite the crises, private Czech donations increased in 2022, thanks to the huge wave of solidarity but also technologies making donating much easier. The number of individual donors is slightly increasing, as is the amount they send. Inflation does not seem to be discouraging people from donating, but rather encouraging them to match the value of the money²⁷².

Regarding state funding, as every year the government approved the main areas of state subsidy policy toward CSOs for 2023²⁷³. The total amount is 7,417 mil (276,6 mil. EUR) was budgeted for 18 thematic areas. The largest part of state subsidies (39,7 per cent) is as usual planned for sport and physical training, whereas the envelopes for the activities in the areas of education, environment or ethnic and Roma minorities receive only a fraction of the sum (1,3 per cent and less). The smallest support goes to equal opportunities for women and men (0,09 per cent) and the fight against corruption (0,065 per cent). CSOs working in such areas have to seek public grant opportunities within the EU funds or at local municipalities.

CSOs face barriers due to insufficient capacities and processes - either to prepare complicated project applications for the Czech and EU grant call for proposals, meet the administrative and reporting requirements, or have effective fundraising systems and communication campaigns in

²⁷² <https://www.novinky.cz/clanek/domaci-darcovstvi-pres-krizi-lame-rekordy-40418286>

²⁷³ The Main areas of state subsidy policy towards Non-State Non-Profit Organisations in Support of Public Benefit Activities for 2023 <https://www.vlada.cz/cz/ppov/rnno/aktuality/hlavni-oblasti-statni-dotacni-politiky-vuci-nestatnim-neziskovym-organizacim-na-podporu-verejne-prospernych-cinnosti-pro-rok-2023-197441>

place to build a stable base of private donors. These limitations increase the dependence on one type of funding.

CSOs, which are mainly funded by Czech public budgets, face funding uncertainty and the impossibility of financial planning due to the lack of multi-year public funding. A CSO has to undergo the annual cycle every year from the submission of a grant application to a grant decision. Timing and length of the granting process at the side of grant providing authority delays payments of the subsidy and puts CSOs in cash-flow risks. The condition of securing co-financing for a state-funded project can be a serious obstacle for many CSOs. The Czech subsidy system is lacking a definition of partnership that would enable transfers of part of a grant between partner organisations without the duty to launch a public procurement procedure and VAT consequences. While CSOs can get support to implement highly innovative digital projects (financially and with volunteers), most continue to lack basic digital infrastructure and digital competencies, as there is a lack of appropriately targeted programmes, high costs, and operational realities.

The Government Council for NGOs established a new Expert Group on systemic change in the funding of public benefit services to deal with the identified issues mentioned above²⁷⁴. The Expert Group composed of representatives of ministries and CSOs experts has a two-year mandate to evaluate the current system of financing publicly beneficial services and activities and to initiate a systemic change in financing that will lead to more efficient and simplified funding of publicly beneficial services and activities provided by CSOs²⁷⁵.

The exemptions from taxes or tax discounts are an indirect way to support CSOs. In response to the extraordinary situation related to the COVID-19 pandemic, the limits for deduction of gifts from the taxable base for both natural (from 15 per cent to 30 per cent) and legal persons (10 per cent to 30 per cent)²⁷⁶ were temporarily raised. This higher limit can also be used for the tax period for 2022. The Income Tax Act²⁷⁷ also introduced the definition of a public-benefit taxpayer which, however, is not linked to any other regulation and covers both private-law entities pursuant to the Civil Code and public-law entities pursuant to other regulations. The Act also covers any tax exemptions for income from donations (gratuitous transactions). Donations and gifts are legally defined in the Civil Code.

²⁷⁴ https://www.vlada.cz/cz/ppov/rnno/ex_skup_fin/expertni-skupina-k-systemove-zmene-financovani-verejne-prospesnych-sluzeb-a-cinnosti-ze-statniho-rozpoctu-198755/

²⁷⁵ https://www.vlada.cz/assets/ppov/rnno/ex_skup_fin/Priloha_1_Zapis_Agregace_temat_FIN_1.pdf

²⁷⁶ An amendment to the Income Tax Act took effect on 4 February 2021 (Act No 39/2021 Coll. amending Act No 586/1992 Coll. on income tax, as amended)

²⁷⁷ The Act No 586/1992 Coll., on income tax, as amended, Section 17a, and the conditions for reducing the taxable base of a public-benefit taxpayer are laid down in Section 20 par. 7.

In response to widespread implementation problems, an Amendment to the Act on Public Collections²⁷⁸ is requested for 2023. The recommendations of the Working Group to the Ministry of Interior are to promote a fundamental change in the legal conditions for organising public collections, primarily by narrowing the regulation to cash collections from persons from whom no identifiable information is available. The law application in practice needs to be unified and supported by additional awareness among organisers of collections; the proposed adjustments consider the technological developments since the adoption of the law and efforts to remove identified obstacles from practice²⁷⁹.

²⁷⁸ Act No 117/2001 Coll.

²⁷⁹ https://www.vlada.cz/assets/ppov/rnno/pskvs/Doporuceni_pro_pracovni_skupinu_MV_01-03-2022_pro_VLF.pdf

Civil dialogue and right to participation

There is still a lack of a culture of participation and a lack of widely shared understanding of its nature and benefits in public decision-making at the central governmental level. A related issue is that public administrations do not have a clear approach to why, how, what and whom (which organisations, networks or citizens directly) to involve and how to organise this cooperation. Expertise, information, and value consensus are important for the public administration in relation to CSOs, or if they are mandated to engage by regulation or methodology. CSOs must actively seek cooperation and finance the costs from their own resources. Inconsistent participation mechanisms make access to information and decision-making difficult, especially for complex processes such as the National Recovery Plan and the effective use of EU funds.

At the central government level, the basic framework for participation is through the establishment of advisory and working bodies under the Government²⁸⁰ and ministries, and through appointments of government commissioners for different agendas (e.g. for human rights). In addition, a structure of monitoring committees and platforms for the preparation and implementation of the EU funds has been established for the current operational period²⁸¹. There is no simple way to get access to information on the actual structure and membership composition of different committees.

The Government Council for Non-State Non-Profit Organisations/NGOs is a permanent advisory, initiating, and coordinating body of the Government. In 2022, based on the changed statute the number of members increased to 36, of which 13 represent the non-state sector. Thanks to coordinated action, a parity of seats was filled with active representatives of CSOs and their networks, which increased the effectiveness of the body. For CSOs, this Council is the most important formal body both for raising specific issues and for spreading impulses for the development of a culture of participation in the Czech Republic. The Council met for the first time in the new composition on 13 October 2022²⁸².

²⁸⁰ See the list of Advisory and Working bodies of the Government at <https://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/> and statutes at <https://www.vlada.cz/cz/ppov/ppov-50611/>

²⁸¹ See the outdated document with Platforms for implementation of EU funds edited by the Ministry of Regional Development at <https://www.dotaceeu.cz/getmedia/5619e205-e168-4759-a39f-66f19f36f810/Platformy-pro-implementaci.pdf.aspx?ext=.pdf>

²⁸² https://www.vlada.cz/assets/ppov/rnno/zapisy-ze-zasedani/Zapis_RVNNO_13_10_2022.pdf

For the first time in 2022, the Secretariat of the Government Council for NGOs commissioned research with the aim to describe the existing cooperation of the state administration with umbrella and networks of NGOs, including the criteria on the basis of which cooperation is established bilaterally²⁸³. The analysis revealed that 66 per cent of the respondents from the state administration declared interest in cooperation with CSOs. A significantly prevailing reason for the interest in cooperation on their part (82 per cent) is the expertise and information provided by CSOs. The Ministry of Labour and Social Affairs, the Office of the Government, and the Ministry of Regional Development have the most cases of cooperation with CSOs and their umbrella organisations. The existence of a regulation requiring a participatory process, usually coming from the EU, was cited as another relevant reason. misunderstanding between the state administration and CSO umbrella organisations about the main obstacles to cooperation persists (lack of CSO capacity, lack of access to information for CSOs, low awareness of the state administration about partners among CSOs and how to engage them - see research findings²⁸⁴). However, in cases where cooperation with CSOs exists (mainly in the field of environmental protection and social services), it is generally positively evaluated by both parties and the influence on the final form of government documents is often decisive.

On 22 June 2022, the Government Council for NGOs approved the Methodology for the participation of CSOs²⁸⁵ and instructed the Council Secretariat to ensure pilot testing of the Methodology in the ministries²⁸⁶.

In the context of the Czech Republic Presidency to the Council of EU, CSOs have presented a joint contribution to the priorities of the Czech Presidency²⁸⁷ in order to increase the participation of CSO on issues relevant to the Presidency. The Conference on Strategic Partnership for Democratic Society

²⁸³ <https://www.vlada.cz/cz/ppov/rnno/dokumenty/analiza-spoluprace-statni-spravy-se-stresnimi-organizacemi-a-sitemi-nestatnich-neziskovych-organizaci-198802/>

²⁸⁴ <https://www.vlada.cz/cz/ppov/rnno/dokumenty/analiza-spoluprace-statni-spravy-se-stresnimi-organizacemi-a-sitemi-nestatnich-neziskovych-organizaci-198802/>

²⁸⁵ The Methodology for the participation of non-governmental non-profit organisations in advisory and working bodies and in the drafting of state administration documents

²⁸⁶ See minutes from the Council meeting https://www.vlada.cz/assets/ppov/rnno/zapisy-ze-zasedani/Zapis_RVNNO_28_06_2022_FIN.pdf and the Methodology

<https://www.vlada.cz/cz/ppov/rnno/dokumenty/metodika-participace-nestatnich-neziskovych-organizaci-v-poradnich-a-pracovnich-organech-a-pri-tvorbe-dokumentu-statni-spravy-197878/>

²⁸⁷ <https://glopolis.org/koordinace-neziskoveho-sektoru-neon/non-profit-organisations-offered-their-know-how-in-the-preparation-and-implementation-of-the-czech-eu-presidency-programme/>

in Europe²⁸⁸ was organised to provide space to promote dialogue and cooperation between representatives of public administration, parliament, CSOs, and other actors in the Czech Republic and the EU. While the outcomes of the conference were disseminated to relevant stakeholders already at the end of 2022, the Committee for the EU of the Government Council for NGOs will assess the involvement of civil society in the implementation of the Czech Presidency programme in the first quarter of 2023.

Nomination procedures needed for transparency

Much of the existing cooperation is mainly informal, and based on long-term relationships. A transparent selection of partners for "representation" of the non-profit sector has been lacking. The open call for nominations was used for some advisory bodies of the Government (e.g. the Government Council for NGOs and its EU Committee) and representatives of the Council to select monitoring committees of EU funds in accordance with the new participation methodology.

However, in some cases, the choice of partners for consultations was problematic as it did not follow the open calls process. The Ministry of Social Affairs e.g. is preparing a Family Policies Strategy. It invited certain stakeholders from among CSOs to participate. Among them, inexplicably, is also an organisation (Alliance for Family) whose main goal is to prevent any improvement of the lives of LGBTQI+ people and to harass and stigmatise same-sex families. The organisation suggested that homosexuality is an illness, actively lobbies against any legislation helping LGBTQI+ people, uses disinformation techniques (claiming two moms or two dads damage a child's development), and demands that information about LGBTQI+ people must be censored (e.g. complaining to public television after the television aired a programme featuring a same-sex couple with their child). Even though these and many other harmful actions of the organisation are well documented and publicly known, the organisation is kept on the panel of stakeholders consulted for the Family Policies Strategy.

As a rule, there is no formal space for the CSO sector to comment on prepared government materials. With few exceptions, CSOs do not have access to the electronic library of the legislative process²⁸⁹. Based on the implementation plan of the Strategic Framework Czech Republic 2030 approved by the Government in September 2022, an umbrella organisation of environmental CSOs, Green Circle, was

²⁸⁸ The conference was organised on October 17-18, 2022 by Glopolis in cooperation with the Office of the Government of the Czech Republic - Department of the Secretariat of the Government Council for NGOs, Foundation Partnership and Spiral and under the auspices of the Czech Minister for European Affairs. See <https://glopolis.org/konference-strategicka-partnerstvi/> and the Report - https://glopolis.org/site/assets/files/1365/publikace_best_practices_cz_web.pdf.

²⁸⁹ So called the non-public part of the eKLEP - <https://odok.cz/portal/>.

able to comment with access to eKLEP for a test period from March 2023 to December 2024. Testing the involvement of umbrella CSOs in the inter-ministerial comment process for environmental proposals is a measure to help develop practices that increase the inclusiveness of governance from the perspective of citizens in order to improve the quality of governance.

In 2022, the Migration Consortium, which brings together CSOs working with migrants, became another umbrella organisation with access to eKlep as they were invited to provide comments for Lex Ukraine 4.

CSOs push back in trying times

Many CSOs have provided indispensable support to the state and the country in dealing with the impacts of the Russia's aggression on Ukraine in the forms of the necessary assistance to people who have fled, expertise and data from the field, and policy recommendations to a wide area of integration, education, social care, environment, and other agendas. However, the many challenges are taking a toll on the health and organisational stability of many (especially small and medium-sized) organisations. CSOs often face uncertain funding sources, which do not correspond to the sudden growth of activities, increased workload, administrative and legislative obstacles, and many are lagging behind with digitalisation.

At the end of the Czech EU Presidency, Czech CSOs addressed a joint appeal to the government²⁹⁰ related to the application of the EU funding conditionality mechanism against Hungary and supported the joint efforts led by the other European CSOs active in this matter.

Public trust in public institutions has been declining over the past seven years, while distrust has been rising. According to a time series of selected questions from the CVVM "Czech Society" survey, March 2022, trust in non-profit institutions is slightly improving, with only 37.8 per cent of respondents stating that they trust non-profits, while 50.8 per cent report distrust²⁹¹. The unique research series "Czechia Together"²⁹² has shown that there have been several underlying themes driving society. The most critical is whether Czechs feel that their voice is heard, whether they feel successful and whether they believe their children have a chance to succeed.²⁹³

²⁹⁰ See Press release on the open letter to the Minister of Finance Zbyňek Stanjura before the meeting of the Council of European Finance Ministers in December 2022 to consider the measures to protect the Union budget against violations of the rule of law in Hungary and the application of the general conditionality regime -

<https://glopolis.org/en/koordinace-neziskoveho-sektoru-neon/press-release-on-the-open-letter-to-the-minister-of-finance-zbynek-stanjura/>

²⁹¹ CVVM - Public Opinion Research Centre - <https://cvvmapp.soc.cas.cz/> and <https://cvvmapp.soc.cas.cz/#question24>

²⁹² Aktuálně.cz, in cooperation with Česká spořitelna, STEM and other partners, has prepared the Czechia Together project intended to help better understand what is happening in the society during the crisis <https://zpravy.aktualne.cz/domaci/cesko-spolecne/r~dd52c6544af311edbc030cc47ab5f122/>

²⁹³ Cited Martin Buchtik, the director of STEM - <https://zpravy.aktualne.cz/domaci/rozhovor-putinovi-se-dari-zdejsi-spolecnost-delit-nastesti-a/r~6eaae5c44ec211ed8c6f0cc47ab5f122/>.

State authorities have limited (if any) opportunities to strengthen trust in civic actors, and even if they tried to do so, any efforts would be easily undermined by populist proclamations by political actors, hate speech and misinformation. There are several reasons for this, to name but a few: state authorities lack strategic communication, capacity, and tools to communicate effectively to citizens, civic education is still insufficient, and inter-ministerial cooperation and multi-stakeholder engagement in policy development and implementation are the results of fragmented efforts rather than a systemic approach championed by the administration.

New initiatives in civic space are emerging

There have been several initiatives and coalition building across the civic sector, responding quickly to the needs and challenges of society and new agendas stimulated by the migration situation, energy crises or the Czech EU Presidency.

- 🔍 NeoN²⁹⁴ - an informal network of networks associating 18 umbrella organisations and other CSOs across thematic fields to increase collective impact and strengthen democratic and civic space, civic participation and cooperation of the state with the civil society.
- 🔍 Let's help Ukraine²⁹⁵ - a joint initiative created under the Migration Consortium with a number of CSOs and the private sector to coordinate assistance to people from Ukraine.
- 🔍 The Network for Defence of Democracy²⁹⁶ - an informal network of companies, CSOs, informal groups and individuals to avert acute threats to democracy, cooperating with experts on topics of rule of law.
- 🔍 Resilient Czechia²⁹⁷ - an informal initiative of five CSOs to advocate for executive and legislative measures to strengthen the Czech Republic's resilience to the influence of undemocratic regimes.
- 🔍 Energy to People²⁹⁸ - an initiative of environmental and social care CSOs aiming at fighting the impact of energy poverty and promoting measures for clean and affordable energy for all.

²⁹⁴ <https://glopolis.org/en/koordinace-neziskoveho-sektoru-neon/>

²⁹⁵ <https://www.pomahejukrajine.cz/>

²⁹⁶ <https://www.ochranademokracie.cz/>

²⁹⁷ <https://odolnejsicesko.cz/>

²⁹⁸ <https://energielidem.cz/>

 Together and Digital²⁹⁹ - a platform of CSOs for the digital transformation of the state.

Such initiatives are necessary to increase the collaboration across the civil society, its resilience and effectiveness, at the same time there is only limited funding provided from the private sources, and none from public funding.

²⁹⁹ <https://spolecneadigitalne.cz/>

Recommendations

To the Government of the Czech Republic

The regulatory environment for civic freedoms

- 🔍 Ensure that the Act on Public Collections and connected laws are amended according to the recommendations prepared by the working group and presented to the Ministry of Interior.

Safe Space

- 🔍 Ensure effective and strategic communication across the government administration and state officials and seek ways to depolarize the country and promote the recognition of the diverse roles of CSOs and the value of open civic space, and civic involvement in decision-making as an important value of democracy.
- 🔍 Systematically strengthen the prevention of hate attacks against all vulnerable groups and the protection of the rights of members of these groups through legislation.
- 🔍 Refrain from attacks on LGBTQI+ persons and condemn these attacks at the highest level.
- 🔍 Strengthen the Czech Criminal Code to ensure protection to victims of hate crimes motivated by the victim's sexual orientation and gender identity.

Funding for CSOs

- 🔍 Proactively address the impact of inflation and rising energy prices on the financing of CSOs activities through measures such as capping energy prices, extraordinary increases in already approved subsidies, etc.
- 🔍 Open grant programmes to support the development of digital competences and digital infrastructure of civil society organisations, especially smaller and medium-sized ones, as well as to develop other capacities and processes necessary for ensuring open and safe digital civic space.

The right to participation and dialogue between the sector and governing bodies

- 🔍 Stimulate and organise multi-stakeholder debates on the merit and recommendations from the EU Rule of Law Reports at the Governmental and parliamentary levels, engaging the civil society organisations and other actors and actively follow-up the outcomes from such debates to improve the rule of law and civic space in the Czech Republic.
- 🔍 Ensure the necessary political support, administrative capacity and resources for the implementation of the Strategy for Cooperation between Public Administration and NGOs 2021-2030.
- 🔍 Ensure effective piloting and evaluation of the Methodology for the Participation of Civil Society Organisations in Consultative Bodies and in the Preparation of Public Administration Documents.
- 🔍 Subsequently, apply participatory processes widely, build capacity and competences for setting up and managing participatory processes, and establish a long-term mechanism for evaluating participation in decision-making across ministries and central authorities. Accompany the process with awareness raising to promote a "culture of participation".

About the contributor:

Glopolis is a hub for analysis and networking that supports CSOs, state administrations and businesses to work together more effectively to address common challenges to democratic principles, green economy and inter-connected, cohesive society.



NeoN is the Czech coalition of 18 umbrella organisations and networks, together associating more than 540 CSOs, and collectively striving for sustainable democracy, vibrant civic space and effective collaboration with the state. Glopolis provides a backbone coordination for NeoN.
<https://glopolis.org/en/ngo-sector-coordination/>



Civic Space Report 2023

FRANCE



Key Developments

- The implementation of “Separatism Law” challenges freedom of association and access to funding
- Concerns remain over the 2021 new version of the Scheme for the Maintaining of public order and de facto impunity of security forces’ violence during protests
- Organisations aiming at Muslim people’s participation and anti-discrimination are targeted by public authorities.

While fundamental freedoms are protected by the law and generally well respected, since 2015’s state of emergency introduced in response to the terrorist attacks, and then following the killing of Samuel Paty in 2020, authorities have added legal frameworks and specific measures that unduly limit civil liberties and put pressure on segments of civil society³⁰⁰.

Regarding 2022, the implementation of the “Separatism Law” started to produce negative effects on the right to freedom of association and the right to access funding, with at least three cases of associations whose funding has been endangered and four decrees by the ministry of interior dissolving associations. Concerns over the right to protest remain, especially with regard to the regulatory framework for maintaining public order and accountability of security forces. In the same way, we are witnessing increased repression of actions of environmental defenders resorting to civil disobedience. Finally, several measures taken by the public authorities affect the freedom of religious expression of Muslims and the freedom of associations that support them. It should be noticed that in a significant number of cases, the judiciary took positive decisions against authorities’ abuses.

³⁰⁰ France is rated narrowed on the CIVICUS Monitor.

The regulatory environment for civic freedoms

Freedom of association

In France, the law of 1901 provides a highly liberal frame for enabling freedom of association. In particular, no authorisation has to be given for citizens to come together and create an association; no condition of citizenship is required. However, civil liberties, including the freedom of association, have been under increasing pressure since 2015, after the state of emergency was introduced in response to the terrorist attacks and then again following the killing of Samuel Paty in 2020.

The “Separatism Law” challenges freedom of association and the right to access funding

The law “on the respect of the republican principles” (Law No. 2021-1109 of 24 August 2021) claims reinforcing the neutrality and secularism of public services and associations. It also amends the regime governing the dissolution of associations³⁰¹.

The law requires any association applying for public financing to sign a “contract of commitment to Republican principles” (thereafter, “contract”) by which it undertakes:

1. to respect the principles of liberty, equality, fraternity and human dignity, as well as the symbols of the Republic within the meaning of Article 2 of the Constitution;
2. not to call into question the secular character of the Republic;
3. to refrain from any action that undermines public order.

Administrative authorities are given the power to decide whether an organisation is not in compliance with any of the principles mentioned in the contract. In the event it judges a violation took place, the law provisions allow the immediate withdrawal of the grant or, where it has yet to be disbursed, its non-award. Appealing to the judiciary is possible only after the funding has been lost.

The law also assigns responsibility to associations for acts committed by members, linked or not to their activities, when their leaders are aware of them and have refrained from stopping them³⁰².

³⁰¹ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>

³⁰² L.212-1-1 of the Internal Security Code

In 2022, authorities began implementing the new provisions under the separatism bill with negative repercussions on freedom of association and access to funding:

- 🔍 In March, the mayor of Chalon-sur-Saone decided to forbid a public event organised for International Women's Rights Day by the local branch of the Planning Familial³⁰³, an association that is well recognised for more than 60 years, benefiting public funds in order to carry activities for assisting women that want to access abortion, for sexual education and gender equality. The national campaign included a promotional poster featuring a veiled woman, among others, which the mayor argued constituted a violation of the principle of secularism. The mayor's order was suspended by the Dijon administrative court³⁰⁴ and later declared illegal by the Council of State³⁰⁵.
- 🔍 In June, the Ile-de-France region suspended a subsidy to the Ligue de l'Enseignement (the oldest association in France, created in 1866) with almost a million affiliates across France after seven young participants in a publicly-funded eloquence contest formulated their point of view in ways "contrary to the values of secularism and the Republic", despite the organisation making clear that the speeches do not reflect the association's position on secularism³⁰⁶. The decision was later cancelled.
- 🔍 In October, the Prefect of Vienne challenged before the Administrative Court the grant of a subsidy from the City of Poitiers to the association Alternatiba, which fights against climate change and social inequalities with a wide resonance in society, on the ground that the latter had organised workshops on nonviolent civil disobedience actions, which, in the view of the prefect, were likely to constitute a disturbance of public order³⁰⁷. In response, several associations mobilised alongside Alternatiba in the name of respect for freedom of association, assembly and expression. A legal appeal is still pending in court.

On dissolution of associations, the law creates a new provision allowing the dissolution of any association or de facto group that provokes violent acts against persons or property³⁰⁸.

Since the beginning of 2022, there have been no less than four decrees dissolving an association or a de facto group, including two under the new provision referred to above: the "Antifascist Group of

³⁰³ <https://www.info-chalon.com/articles/2022/03/04/67804/gilles-platret-refuse-la-demande-formulee-par-le-planning-familial-71-et-l-accuse-de-communautarisme/>

³⁰⁴ <https://www.info-chalon.com/articles/2022/03/04/67806/gilles-platret-tente-de-museler-le-planning-familial-71-et-s-enforce-dans-ses-theories-ideologiques/>

³⁰⁵ <https://www.info-chalon.com/articles/2022/03/11/67982/le-conseil-d-etat-desavoue-gilles-platret-sur-la-question-du-planning-familial-71/>

³⁰⁶ <https://www.lefigaro.fr/actualite-france/laicite-la-region-ile-de-france-suspend-sa-subvention-a-la-ligue-de-l-enseignement-20220623>

³⁰⁷ Prefectural referral filed on October 28, 2022 before the Administrative Court of Poitiers

³⁰⁸ L. 212-1 of the Internal Security Code

Lyon and around" known as "GALE" and the "Bloc Lorrain" that claims to be an anarchist and anti-capitalist association³⁰⁹. The independent media "Nantes Révoltée" has also been threatened with administrative dissolution³¹⁰.

With regard to GALE, the Council of State cancelled the dissolution, ruling in particular that their very critical stance against the police institution could not in itself constitute a provocation to violent acts within the meaning of the new provisions and that the participation of its members or sympathisers in demonstrations where violence may have been committed could not in itself lead to the attribution of violence to the group. In essence, the Council of State seems to enshrine the political legitimacy of anti-fascism and anti-capitalism, whose freedom of expression must be protected.

On the contrary, the court confirmed the dissolution of Bloc Lorrain³¹¹.

It is important to note that even when authorities' moves against an association do not lead to a suspension of funding or dissolution, they have severe material and symbolic costs, such as reputational damage and intimidation. In all cases, authorities' declarations or decisions divert capacities and resources away from the organisation's mission to defend itself in court and the public. Indictments, even if declared to date often undue, may also deter associations and activists from pursuing their normal actions for fear of repression.

Freedom of assembly

Articles 10 and 11 of the French Declaration des droits de l'homme et du citoyen enshrine freedom of expression. The Constitutional Council has also enshrined the right to the collective expression of ideas and opinions (CC n°94-352 DC of 18 January 1995; CC n°2019-780DC of 4 April 2019). Under French law, prefects or mayors who are receiving prior notification of demonstrations to be held in the public space may sign an order prohibiting a specific event if they consider that it is likely to disturb public order (Article L 211- 4 of the Internal Security Code). Restrictions on the right to freedom of peaceful assembly can only be decided for one of the specific purposes mentioned by the law. The measures must be limited to what is necessary to achieve the purpose and must be proportionate to the objective pursued.

³⁰⁹ Decree of 9 March 2022 dissolving the de facto group "Collectif Palestine Vaincra", decree of 9 March 2022 dissolving the association "Comité Action Palestine", Decree of 30 March 2022 dissolving a de facto grouping GALE, decree of 23 November 2022 dissolving the association Bloc Lorrain

³¹⁰ Civic Space Watch | FRANCE: "Nantes Révoltée" under threat of dissolution

³¹¹ <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-12-20/469368>

Since 2015 the right to peaceful assembly has been put under growing pressure, including through the denial of the right to hold demonstrations, extensive use of preventive detention and excessive use of force.

Concerns remain over the 2021 Plan for the Maintaining of Public Order and the impunity of security forces during protests

The National Plan for the Maintenance of Public Order (SNMO) is a document published by the Ministry of the Interior, which aims to establish the operational modalities of the maintenance of order by all internal security forces in the context of public demonstrations. The Plan was first presented on 16 September 2020 in response to the yellow vest demonstrations - characterised by an intensification of conflicts with the protesters and the routinary use of disproportionate force by the police - provides for a stiffening of policing practices, especially the possibility of encircling a group of demonstrators for the purpose of control, arrest or prevention of further unrest³¹². The Council of State cancelled the provision, considering it insufficiently precise and whose implementation is likely to significantly affect the freedom to demonstrate, deter its exercise and infringe the freedom to come and go.³¹³

On 17 December 2021, the Ministry of the Interior published a new version of the SNMO seeking to take into account the decision rendered by the Council of State³¹⁴, which is considered to remain illegal by human rights actors. Indeed, not only does it not conform with the first decision made by the Council of State, but it also contains more worrying provisions in the police practices dealing with demonstrators' rights, including the use of kettling³¹⁵. Furthermore, it fails to provide clear and concrete guarantees for rights observers monitoring and reporting on police behaviours during demonstrations. An appeal against SNMO 2 is currently pending before the Council of State.

On the impunity of the police officers, legal recourse to the Council of State was filed on 26 September 2022 to ensure effective compliance with the legal requirement of visible identification

³¹² Point 3.1.4 that " Without prejudice to the non-confinement of demonstrators, which is a condition for dispersal, it may be useful, for the time just necessary, to surround a group of demonstrators for the purpose of controlling, arresting or preventing further disturbances. In these situations, people are systematically left with a controlled exit point. ».

³¹³ THAT 10 June 2021, No. No. 444849

³¹⁴ <https://www.interieur.gouv.fr/actualites/communiqués/mise-a-jour-du-schema-national-du-maintien-de-lordre-snmo>

³¹⁵ https://site.ldh-france.org/paris/files/2021/12/202112_CP_SNMO.pdf

Although an identity and organisation repository (RIO) has been set up, it is a fact that, in practice, the tools that support the identification of law enforcement agents are ineffectively implemented. In particular, the methods of wearing the individual identification number are manifestly inappropriate, with the absence of visible wearing and the practices of voluntary concealment of the personal number.

The creation in 2021 of a new offence of trespassing on airport runways, punishable by six months imprisonment and a fine of 7500 euros, expanded the legal arsenal against climate activists'

³²⁰ [https://site.ldh-france.org/paris/files/2020/05/Rapport-d% c3% a9fenseur-des-droits-Manif-pont-de-Sully.pdf](https://site.ldh-france.org/paris/files/2020/05/Rapport-d%c3%a9fenseur-des-droits-Manif-pont-de-Sully.pdf)

actions³²¹ 322. This was in direct connection with a successful protest against the extension of Roissy airport, as it was abandoned, among other things, in view of climate issues³²³. Draft bills, some of which are still under discussion, seek to broaden the repression of actions disrupting economic activities under the argument of assimilating them to infringements of fundamental freedoms.³²⁴

Cases described in the section “The implementation of “Separatism Law, challenges freedom of association and right to access to funding” illustrate how the public authorities use the provisions of the so-called “separatism” law of 24 August 2021 to hinder the freedom of association on the grounds that civil disobedience actions would contravene to the “republican values” as defined in the separatism bill, through attempts to ban demonstrations and withdraw public subsidies on these grounds.³²⁵ On 10 October, the Ministry of the Interior also sent a circular to all prefectures detailing the application of the contract of commitment to Republican principles. The document gives concrete examples in a chapter entitled “In what cases can we consider that the Republican Commitment Contract (CER) is not respected?” which cites an example of an environmental association created to oppose the construction of a radioactive waste storage site³²⁶. Even if appeals to the judiciary are often successful, the legal and regulatory texts and their implementation against “civil disobedience” actions contribute to the deterioration of active citizens to trust institutions’ willingness to guarantee public freedoms and a democratic debate.

³²¹ <https://monitor.civicus.org/updates/2021/09/01/national-assembly-approves-controversial-separatism-bill-massive-protests-opposing-passsanitaire/>

³²² https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000044176999

³²³ https://www.francetvinfo.fr/meteo/climat/climat-sept-militants-juges-pour-s-etre-introduit-sur-le-tarmac-de-l-aeroport-de-roissy_4791327.html

³²⁴ <https://www.senat.fr/dossier-legislatif/pp18-023.html>

³²⁵ <https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/vienne/poitiers/et-si-desobeir-etait-reconnu-d-interet-general-la-prefecture-n-apprecie-pas-et-demande-de-retirer-les-subsventions-publiques-a-alternatiba-poitiers-2615668.html>

³²⁶ <https://www.mediapart.fr/journal/france/130123/la-repression-de-la-desobeissance-civile-se-generalise>

The principle of non-discrimination

The repression of associations in the name of the fight against Islamism

In the name of the "fight against separatism", "communitarianism" or "Islamism", associations defending the rights of Muslims, as well as those showing solidarity with these populations, have become the target of smear campaigns and sanctions by the public authorities.

Smear campaigns are public comments by political or administrative officials to denigrate an association or one of its members. The smear campaigns are based on three types of accusations: "proselytising" and "undermining secularism"; "separatism" and "communitarian" practices; and finally, association with groups or individuals said to be "radicalised" or threatening the "values of the Republic".

They are sometimes used to justify forms of hindrance: financial and material (loss of subsidies), regulatory and administrative (loss of accreditation, denial of service, dissolution).

Such acts of repression are never decided through judicial procedures but through administrative decisions that do not respect the principles of a fair process (contradiction, non-retroactivity, presumption of innocence, proportionality, possibility of appeal).

The report of the Observatory of associative freedoms (2022) lists for the years 2016-2021 20 cases of sanctions against associations for which public authorities accused them of "separatism", "communitarianism", "religious radicalisation" or "proselytism"³²⁷. The alleged facts are quite diverse, ranging from public statements denying the concept of Islamophobia and related actions done to oppose its manifestations, criminalising collective actions concerning the right to wear the headscarf in the context of social activities and even attacking activities related to providing services in relation to Islam (distribution of meals, organisation of a buffet during a conference...).

By penalising associations whose practices are legal under current law and sometimes on charges with uncertain factual bases, these administrative decisions are dangerous and counterproductive. Dangerous because they illustrate more than often arbitrariness and undermine the rule of law. And

³²⁷ https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport_Chasse-aux-Sorcieres_2022_VF.pdf

counter-productive because they contribute to deepening the civic marginalisation of Muslim citizens through the weakening or disappearance of legal associations.

Burkini ban spurred on by the government

In the context of a growing trend of hate speech against people of Muslim faith, in the summer of 2016, a number of French local authorities issued municipal decrees banning the wearing of a swimming costume worn by Muslim women, the burkini, on beaches, referring to a principle of secularism.

The misguided use of the principle of secularism was not upheld by the high administrative court, which censured this banning measure on the grounds that it seriously violated fundamental freedoms, namely the freedom of movement, the freedom of belief and the personal liberty³²⁸.

Nevertheless, some municipalities continue to take such banning measures as summer approaches, regularly with the indifference or complicity of the prefectural authorities, who still do not intend to exercise their duty of control of the legality of these measures despite their highly liberticidal nature³²⁹.

Yet, by prohibiting access to bathing to any person who wears a burkini, a cloth that respects the rules of hygiene and safety adapted to the public maritime domain, the contested orders hinder free access to a public space that has to be open to all. They prevent the exercise of fundamental freedoms in this space in a discriminatory manner and without any justification.

Discrimination in access to sports and ban on protest

Wishing to assert their right to play football while wearing a veil and, more generally religious symbols, a group of women decided, in the face of the absence of any support neither from the authorities at the national level, nor the sports authorities, to organise a protest event with some MPs in front of the National Assembly³³⁰.

³²⁸ <https://www.conseil-etat.fr/decisions-de-justice/dernieres-decisions/ce-ordonnance-du-26-aout-2016-ligue-des-droits-de-l-homme-et-autres-association-de-defense-des-droits-de-l-homme-collectif-contre-l-islamophobi>

³²⁹ <https://www.varmatin.com/politique/linterdiction-du-burkini-sur-les-plages-et-dans-les-piscines-municipales-de-frejus-fait-des-vagues-768506>

³³⁰ <https://www.mediapart.fr/journal/france/090222/la-prefecture-de-paris-prive-les-hijabeuses-d-un-match-devant-l-assemblee>

By an administrative order dated 8 February 2022, the prefect of police of Paris banned the event entitled *"MPs play football with hijabeuses"*, which should have taken place on the following day.

In order to ban this demonstration, the police prefect used reasons that were full of misleading statements and approximations, such as the fact that the demand for this event was subject to *"lively debates and a major split within society between supporters of the affirmation of a political Islam, which advocates the wearing of the veil by women, and supporters of the republican values of equality between women and men"*.

This ban, which violated the freedom of demonstration, was suspended by the Administrative Court, which ordered the Paris police prefect to remove all obstacles to holding the declared demonstration³³¹.

The "Hijabees" protest is in relation to measures taken by the French Football Federation in the name of an undue interpretation of the principle of neutrality that it claims is to be imposed on people's participation in sports events.

While the International Football Federation (FIFA) had authorised in 2014 Muslim female footballers to wear the veil on the playing fields as a sign of tolerance and respect of religious freedom as defined in the Universal Declaration of Human Rights, the statutes of the French Football Federation (FFF), established for the 2021-2022 season, prohibit *"during competitions or events organised by the federation or in connection with it, (any) speech or display of a political, ideological, religious or trade union nature, (any) wearing of signs or clothing ostensibly expressing a political, philosophical, religious or trade union affiliation, (and) any act of proselytising or propaganda"*.

By instituting such a rule, the FFF has created an obligation of what they claim to be a neutrality for its players, the scope of which is both general and absolute. However, in France, the law says that the principle of secularism and the applicable texts only apply to the public agents invested with a public service mission are invested with such an obligation of neutrality, to the exclusion of their users and, more generally, of the public for whose benefit the public service activity or the mission of general interest is carried out.

The Conseil d'Etat is examining an application for annulment of FFF ruling.

³³¹ Ord. TA Paris, 9 février 2022

Recommendations

Regulatory environment for civic freedoms:

- 🔍 Freedom of association: The application of the law “on the respect of the republican principles” and the so called “Contrat d’engagement républicain” have been successfully challenged in courts. The law should now be amended and the contract withdrawn in line with the full respect of civic freedoms.
- 🔍 Freedom of assembly: The “Plan for the Maintaining of the Public order” contains a number of provisions that significantly limit the right to peaceful demonstration. It shall be modified to follow best practices in other European countries. The Government should develop accountability mechanisms for police forces, particularly an effective identification of police officers, and ensure their proper implementation.
- 🔍 Freedom of expression: Legal and regulatory texts and their implementation regarding “civil disobedience” actions should recognise the nature of the actions as acts of protest and their direct link with freedom of expression and the right to information in the context of climate emergency.

Safe space and right to participation:

- 🔍 Non-discrimination: For specific communities, particularly Muslim people and some vulnerable groups, counter-terrorism laws and their implementation have a proven negative impact on their rights, especially the right to freedom of association, freedom of assembly and right to participation, and access to justice and fair trial – crucial principles of the rule of law. The European Commission, with the support of the European Union Agency for Fundamental Rights should monitor and assess the impact of counter-terrorism laws and their compliance with the Charter of Fundamental Rights of the European Union. The French government shall take measures to redress these impacts.

About the author

Ligue des droits de l'Homme is an association founded in 1898. It is a highly recognised civic actor, acting in total independence of political parties, and public authorities. It claims to be a political actor in the sense of dealing with all issues of public interest for the effective access to all rights for all. It is therefore an actor of the public debates. It acts against injustice, racism, sexism, anti-Semitism and discrimination of all kinds. It acts for the development of an active citizenship which relies on a strong and vibrant democracy and extended solidarity. It defends a secularism of the State that favours inclusion for all faith and belief. It fights against any xenophobic instrumentalisation, freedoms, equal rights and fraternity as the basis of a fraternal society and, therefore, of solidarity.





Civic Space Report 2023

GERMANY

MAECENATA STIFTUNG



Key Developments

- 🔍 Reforms on tax status regime for civil society insufficient
- 🔍 Palestinian activists and youth climate group faces harassment
- 🔍 New coalitions makes several commitments to civil society

While civic space is regarded as “open” in Germany³³², over the last few years, it has experienced some challenges. Despite concerns about the compatibility of tax-exempt status and political activity and the European Commission’s recommendation that this should be addressed with reforms, civil society states that reforms initiated have not been sufficient enough and leave too much room for legal uncertainty.

Concerningly, Palestinian activists and BDS activism has been repeatedly targeted, with at least 13 anti-BDS resolutions passed since 2018. The right to peaceful assembly has also faced repressions. For instance, police issued a ban against several pro-Palestine marches deeming it “anti-semitic”, while climate youth group ‘Rise of the Last Generation’ is facing harassment due to staging acts of civil disobedience. Additionally, the ongoing attacks on journalists, especially during protests, remain a concern. However, there have also been some positive moves to create a more enabling environment for civil society, with the government making several commitments, including a plan, currently under discussion, to provide a funding programme for CSOs working on democracy, human rights and the rule of law.

³³² CIVICUS Monitor, Germany rating, CIVICUS, 2022. <https://monitor.civicus.org/country/germany/>

Institutional, political and socio-economic landscape

After 16 years of a conservative and conservative-social democratic coalition government at federal level, 2022 politics was coined by the start of a new coalition of liberal, green and social democratic parties. In a positive development, the coalition agreement mentioned civil society approx. 20 times, a major difference to previous agreements. Furthermore, as a result of the Russian invasion of Ukraine, not only did the new chancellor Olaf Scholz proclaim a shift of times in security and foreign policy, but a severe energy crisis hit Germany, which is causing continuing socio-economic challenges for many.

Overall, the system of rule of law is in place in Germany and people may exercise their rights and freedoms in the public sphere. Democracy indices like Polity5 and the Economist Democracy Index rank Germany as a functioning and consolidated democracy. However, studies such as the Edelman Trust Barometer (2022)³³³ and Decker et al (2020)³³⁴ indicate an ongoing decline in social and political trust, which could endanger the stability of German democracy in future.

³³³ Edelman Trust Barometer Global Report 2022, Edelman Barometer, 29 December 2022.

<https://www.edelman.de/research/edelman-trust-barometer-2022>.

³³⁴ Decker, F., Best, V., Fischer, S., Küppers, A. Vertrauen in Demokratie: Wie zufrieden sind die Menschen in Deutschland mit Regierung, Staat und Politik? 2020. <https://www.fes.de/studie-vertrauen-in-demokratie>

The regulatory environment for civic freedoms

Talking politics, still a concern for tax-exempt CSOs

Freedom of association is well established, although there are some conflicts regarding the compatibility of tax-exempt status and political activity.³³⁵ There are over 600,000 registered associations (plus an unknown number of unregistered associations) in Germany. Shut-downs nearly equal new association registrations.

The debate on political activity of tax-exempt CSOs accelerated after 2014 when the tax authority withdrew the globalisation-critical network ATTAC's status on grounds of pursuing too many general policy objectives. The case has gone through all levels of the financial courts; ATTAC has now lodged a complaint with the Constitutional court.³³⁶ Other associations are affected too; e.g., Innn.it-Verein (formerly Change.org) filed a lawsuit for non-profit status after the Berlin tax office rejected the association's objections after 20 months. According to the platform 'Nachdenkseiten', their association will lose its charitable status on 1 January 2023³³⁷. Many associations and foundations do not have the means to get involved in lawsuits over their charitable status. Some lawyers and tax consultants, therefore, recommend refraining from involvement in political activity.

In response to these concerns, there was a change to the application decree of the Tax Code in 2022, i.e. the guidelines for the financial authorities, which clarifies that tax-exempt CSOs may be politically active beyond their purpose "occasionally", and that it is "... not objectionable if a tax-exempt organisation occasionally comments on day-to-day political issues outside its statutory purposes". The CSO 'Allianz Rechtssicherheit für politische Willensbildung' claims this amendment, while an improvement, is not sufficient, because it does not clearly comprise the scope of the term "policy

³³⁵ According tot Anwendungserlass AO 2014 (AEAO) v. 31. 1. 2014 (BStBl I S. 290) , changed 18. 5. 2022 by (BStBl I S. 665)

³³⁶ <https://www.attac.de/kampagnen/gemeinnuetzigkeit/gemeinnuetzigkeit>

³³⁷ <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/innnit-klagt-auf-gemeinnuetzigkeit/>

means", and also introduces new imprecise terms such as "politically neutral", which causes further legal uncertainty³³⁸.

Registrations and suspensions of CSOs

As for registration requirements, since January 2022, CSOs, (and anybody else) wishing to lobby in the German federal parliament and government, need to register for representation of interests with the federal parliament. More than 5,500 natural or legal persons, partnerships, networks, and other forms of collective activity have registered. But not all requirements, e.g. in terms of transparency, have been established yet. Organisations that register must declare donations of more than 20,000 €; the name and address of the donor must be disclosed. This rule has been suspended for the current year so that the data of private donors may be anonymised. This transitional provision will now be extended. In the coalition agreement, the government parties had agreed on a revision of the lobby register law and also wished to introduce an executive and legislative footprint, but changes in the law will not take place until 2023.

Some suspensions of associations on grounds of antiterror and security policies have occurred. E.g., the Shiite Al-Mustafa association remains banned. The Bremen authorities had imposed the ban on the mosque association in March 2022 as they found that the Al-Mustafa community supports the terrorist organisation Hezbollah, which is banned in Germany. The Al-Mustafa community was the largest Shiite mosque community in northwestern Germany until it was banned. The Bremen Higher Administrative Court rejected a corresponding complaint against the ban made by the association. Additionally a ban was imposed by the Federal Ministry of the Interior on the association 'Deutsch-Libanesische Familie e.V.' as a substitute organisation for the association 'Waisenkinderprojekt Libanon e.V.', which was banned in 2014 and declared lawful, by the Federal Administrative Court in 2022.³³⁹

With the onset of the COVID-19 crisis, rules were adapted, allowing associations to hold general meetings online, even if this is not laid down in the articles of association. This exemption expired on 31st August, 2022. If the statutes of the association do not provide for online meetings and resolutions, these are now no longer legal. Towards the end of the year, a draft law was presented to permanently enable members to participate online in a face-to-face AGM by board resolution. However, the change is still pending. (N.B.: For the private sector, permanent regulations to this effect

³³⁸ Die Allianz Rechtssicherheit für politische Willensbildung, Allianz, 2022. <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/die-allianz/>

³³⁹ Rechtslupe 2022: Online at <https://www.rechtslupe.de/zivilrecht/vereinsrecht/vereinsverbot-fuer-den-deutsche-libanesische-familie-e-v-3238135>

were introduced in time to follow the provisional ones without any delay.) Another exemption to the non-profit law due to the COVID-19 crisis and the war in Ukraine, concerning more flexibility in the use of funds, has been extended by the Federal Ministry of Finance to the end of 2023.

New law replaces problematic NetzDG to tackle online hate speech

The debate about freedom of expression in Germany has been marked by the amendments to the Network Enforcement Act (NetzDG), data protection, and hate speech. The Network Enforcement Act (NetzDG), which was passed by parliament in June 2017 and took full effect in January 2018, aims to combat fake news, hate speech and misinformation online. It introduces compliance rules for providers of social networks with fines regarding the handling of user complaints about hate crimes and other criminal content on the Internet. The deleted content must be stored for at least 10 weeks afterwards, and platforms must submit transparency reports on dealing with illegal content every six months. The law has been criticised for incentivising social media platforms to pre-emptively censor valid and lawful expression, and making them the arbiter of what constitutes free expression and curtailing freedom of speech in Germany. The law was amended by the Act to Combat Right-wing Extremism and Hate Crime, which from 1 February 2022 obliges providers of social networks to notify the Federal Criminal Police Office (BKA) of content with concrete indications that it endangers the democratic rule of law, violates public order, disseminates child pornography or poses a threat to life, sexual self-determination, physical integrity and personal freedom (§ 3a NetzDG). The Administrative Court of Cologne has provisionally upheld the appeals of Facebook and Google against the new regulations of the amended Network Enforcement Act (NetzDG) in summary proceedings, ruling that the reporting obligation under § 3a NetzDG is incompatible with the country of origin principle of the European directive on electronic commerce (ECR) and therefore inapplicable.³⁴⁰ A far right-wing protest movement (Querdenker) is campaigning against an infringement of freedom of expression in this context.

Climate group faces harassment due to protests

A heated public debate is currently in progress about means of protest for climate protection, especially the 'Rise of the Last Generation', which started campaigning by giving away containerized food in various cities, but soon focused on public action in museums and road blockades. Some

³⁴⁰ www.lto.de/recht/hintergruende/h/vg-koeln-stoppt-netzdg-loeschpflichten-hate-speech-regulierung-medien-facebook-google/

politicians and media, mostly conservative, criticise their activities, proclaiming the movement to be a new 'Red Army Fraction' (terrorist group), which should be observed by the relevant constitutional authorities. In early December 2022 the police searched the homes of eleven members of the group, affirming an initial suspicion of formation of a criminal organisation. The search appears to be related to actions by which oil pipelines were disrupted in the spring of 2022. There have been several arrests of climate activists during these actions³⁴¹. There is widespread media coverage of this topic, and public debate is controversial between supporters, which defend this kind of protest in a democracy, and increasingly hostile opponents. Surveys show that climate and environment protection organisations are face continuous and increasing harassment and legal attacks.

Spill-over effects for other CSOs are to be feared. In the context of these protests, restrictive legislation has also been put on the table in some parts of Germany. In Bavaria, the amended Police Task Act grants the police far-reaching rights of intervention even in the event of "imminent danger" (the law previously stated "concrete danger" until it was amended in 2018.). With this formula, the state government significantly lowered the benchmark for preventive custody. A new law of assembly in Nordrhein-Westfalen (NRW) is also controversially debated. In recent months, thousands of people from trade unions, parties and political groups have repeatedly protested against the planned law. They fear excessively far-reaching restrictions on the right to protest. Supporters say it should help prevent right-wing extremist propaganda and marches at symbolic locations and memorial days in NRW in the future.

³⁴¹ Climate activists glueing themselves to Berlins roads say they want to cause „peaceful frictions, Euronews, 15 July 2022. <https://www.euronews.com/green/2022/07/15/climate-activists-sticking-themselves-to-berlins-roads-say-they-want-to-cause-peaceful-fri>

Safe Space

Anti- Gender rights protests

The deadly attack on a 25-year-old during Christopher Street Day in Münster has sparked a nationwide debate on hate crime against LGBTQI+ and promoted some solidarity demonstrations. According to the Lesbian and Gay Association (LSVD), anti-queer attitudes are becoming a growing danger in Germany. At Christopher Street Day events in Berlin, Jena and Bielefeld, hostility was also reported: people were attacked, rainbow flags were torn. With the exception of the right-wing political party AfD, these incidents were unanimously condemned by politicians of all parties. In October 2022, several hundred people from the Young Alternative, the youth organisation of the AfD, demonstrated against a planned housing project with homosexual counselling in Berlin; a counter-demonstration with over 300 participants faced the members of the protest.

In relation to sexual and reproductive health and rights, parliament has lifted the ban on advertising for abortions. In the future, doctors will be able to publicly inform about abortion, and with what method they perform abortions. Pregnant women should be able to find a suitable doctor more easily. In this context, some protests from misogynistic and anti-abortion organisations could be observed in several cities, but mainly online.

Targeting of BDS activism

Over the past few years³⁴², there have been several cases where Palestinian activists and Boycott Divestment and Sanctions (BDS) campaigns³⁴³ have been subjected to repressions. Several local and regional Parliaments, including the German Bundestag, have adopted at least 13 anti-BDS resolutions³⁴⁴, which several courts have deemed unconstitutional and in violation of the right to peaceful assembly and expression. In a recent, January 2022 court ruling, Germany's Federal Administrative Court in Leipzig confirmed that the City of Munich had violated the right to freedom

³⁴² https://res.cloudinary.com/elsc/images/v1644411154/German-precedents-anti-BDS-motions/German-precedents-anti-BDS-motions.pdf?_i=AA

³⁴³ A Palestinian movement for freedom, justice and equality for all: <https://bdsmovement.net/what-is-bds>

³⁴⁴ Since 2017, at least 13 anti-BDS resolutions have been adopted by the parliaments of Frankfurt, Munich, Berlin, Cologne, Dortmund, Bochum, Bonn, Leipzig and Bielefeld, the countries of Baden-Württemberg, Thuringia and North Rhine-Westphalia, and the federal Bundestag.

of expression, after it denied the use of its conference hall for a planned public debate set to discuss Munich's anti-BDS resolution³⁴⁵.

There have also been several cases of Palestinians activists being targeted. According to the European Legal Support Centre, activists of the initiative 'Bundestag 3 for Palestine'³⁴⁶, who are suing the Bundestag for its 2019 anti-BDS resolution have been "insulted as antisemitic and unlawfully excluded from many public spaces in German cities". Additionally, Dr Anna Younes, a German Palestinian academic has been subject to a smear campaign, and surveillance³⁴⁷. In 2019, Younes was invited to an event to speak about strategies against right-wing extremism in Germany, but was uninvited shortly before the event. Later it emerged that the academic was surveilled and her data was privately processed by two organisations: RIAS Berlin an MBR (organisations which monitor antisemitic incidents) to "frame her as anti-Jewish racist, sexist and as a terrorist sympathiser". The organisation created a secret dossier which was shared with the event organisers, resulting in the invite being retracted. In March 2020, Younes requested access to her data from RIAS on the basis of European Data Protection Regulation (GDPR), which the organisation refused.³⁴⁸ She subsequently launched a complaint with the Berlin Data Protection Authority.

In a positive development, on 16th May 2022 the Berlin Data Protection Authority decided in favour of Dr Younes and issued a warning against VDK, the German state-funded organisation legally representing RIAS Berlin and MBR for violating Dr Younes' data rights protected by the GDPR. This outcome followed a first decision in favour of Dr Younes, issued by a district court earlier in May 2022. While in its recent ruling, the Berlin Data Protection Authority recognised the violation of the academic's digital rights, it evaluated that the creation of the secret dossier and its sharing with the event organisers was lawful.

Protests deemed "anti-semitic" by authorities

In May 2022, a demonstration by Palestinian activists and supporters to mark Nakba day, which commemorates the displacement of Palestinians caused by the creation of the state of Israel in 1948, was denied permission by Berlin police. According to the police assessment³⁴⁹, the protest was deemed "an immediate risk" of "inflammatory, anti-Semitic exclamations" and violent behaviours,

³⁴⁵ <https://elsc.support/news/more-and-more-german-courts-confirm-the-right-to-bds>

³⁴⁶ <https://www.bt3p.org/>

³⁴⁷ <https://elsc.support/news/letter-in-support-of-dr-anna-younes>

³⁴⁸ <https://elsc.support/news/berlin-data-protection-authority-holds-rias-mbr-accountable-for-violating-dr-younes-data-rights>

³⁴⁹ <https://www.berlin.de/polizei/polizeimeldungen/2022/pressemitteilung.1205876.php>

based on previous incidents. Among these, police mentioned pro-Palestinian gatherings that took place at the end of April, during which, according to police, violence, anti-Semitic exclamations and hatred were reported. Due to the “emotion” attached to Nakba Day, the police considered that it was too dangerous to allow any related demonstration. This decision was upheld by a court in Berlin and by the German appellate court, which rejected the demonstrators’ challenge of the ban. Human rights organisations condemned the ban, highlighting that any restrictions on protest should be “necessary and proportionate”³⁵⁰. Despite the ban, between 13th and 15th May 2022, several demonstrators who took part in the Nakba Day protests in Berlin faced excessive force, with some of them detained for up to two hours by the police. Around 20 people were arrested during protests. This isn’t the first case of a Palestinian solidarity protest being restricted by police, a similar approach was used for other gatherings organised from 29th April to 1st May 2022.

Attacks on journalists remain a concern

Worryingly, attacks on journalists, especially during protests, have continued. These attacks prompted Reporters Without Border to downgrade Germany’s rating from 13th to 16th in its World Press Freedom Index³⁵¹. Journalists have faced verbal and physical attacks as well as obstructions preventing them from reporting. In particular, verbal and physical attacks have frequently taken place during Querdenker (Covid-19 denialists protest movement). demonstrations.

³⁵⁰ <https://www.hrw.org/news/2022/05/20/berlin-bans-nakba-day-demonstrations>

³⁵¹ <https://monitor.civikus.org/updates/2022/04/25/rsf-index-signals-decline-press-freedom-journalists-continue-come-under-attack/>

Funding for civil society

CSOs challenged by refugee crisis

The main resources for CSOs, beside payment for services and grants, donations and volunteering, tend to be fairly stable in Germany. However, available data are not conclusive. While the Deutscher Spendenrat reports total donations of 5.8 bn € in 2021, an increase of 7% over 2020 and the highest number since the beginning of the survey (2005)³⁵², Deutsches Zentralinstitut für soziale Fragen (DZI) reports 12.9 bn € for 2021. (The figures differ as they are based on different methods).³⁵³ Donating to causes connected to Ukraine were most prominently represented.

According to the 5th German Volunteer Survey, 39.7 per cent of people aged 14 and over volunteered.³⁵⁴ Volunteers were mainly involved in sports clubs, religious communities, and development and humanitarian aid organisations. However, there are concerns about the recruitment of young people.

The volunteer fire brigades launched nation-wide media calls for awareness this year, as they have difficulties in attracting new members. Volunteers make up 95 percent of all firefighters. There are still 22,000 fire fighters in Germany, but the German Fire Brigade Association (DFV) has for years observed that the numbers are falling. In 2000, almost 1.1 million people volunteered for the fire service, 16 years later that number was only 995,000.³⁵⁵

The energy crisis triggered by Russia's war against Ukraine affects many small CSOs, endangering the existence of many also due to the fact that organisations with tax exempt status are not legally allowed to accumulate substantial reserve funds. E.g., the German Sports Umbrella Organisation Deutscher Olympischer Sportbund calls on its members to save at least 20 percent on energy in the coming months in order to avoid blanket closures of swimming pools and sports facilities.

³⁵² Deutscher Spendenrat. Online at: <https://www.spendenrat.de/spendenjahr-2022/>

³⁵³ Deutsche Zentralinstitut für soziale Fragen. Online at: <https://www.dzi.de/pressemitteilungen/aermere-haushalte-spenden-mehr-als-reiche-haushalte/>

³⁵⁴ Freiwilligensurvey 2021. Online at: <https://www.bmfsfj.de/bmfsfj/service/publikationen/freiwilliges-engagement-in-deutschland-176834>

³⁵⁵ Dw 2022: Online at: <https://www.dw.com/de/die-nachwuchssorgen-der-freiwilligen-feuerwehr/a-50226766>

One of the main challenges for CSOs in 2022, which also showcases the important role of civil society actors, was the reception of and care for many refugees from conflict regions, mainly from Ukraine, but also from Syria, Afghanistan and other war zones. There exists a 'trade-of problems' that accumulated in the Ukraine crisis for many CSOs. It can be shown in the area of charity food banks: While the number of Ukrainian refugees applying for food has grown, food donations have declined as major food sponsors have donated to Ukraine, thus creating a shortage of goods and volunteers at local level.

Positive moves for funding

In early December, the federal government adopted the draft of the Democracy Promotion Act. It primarily provides a funding programme for CSOs working for democracy, human rights and the rule of law. If passed by parliament, it would fulfill one of the promises relevant to civil society made in the coalition agreement. The ministers responsible for this law have also promised to lobby for the legal framework of CSOs to be fundamentally modernised next year. However, there is considerable dissent within the coalition over this, with the liberal party being averse to any changes.

While most German CSOs strongly support the Lagodinsky Initiative for a statute for European associations and a Commission Directive regarding mutual recognition and minimum standards, the German government has not so far made its position public.

Civil dialogue and right to participation

Dialogue between government and CSO: room for improvement

There are no explicit fora for dialogue between the state and civil society at federal or state level in Germany, while they do occasionally exist at local level. Dialogue with governments is traditionally maintained by umbrella organisations, which represent different areas of civil society, e.g. for sport or humanitarian organisations. These organisations see themselves primarily as lobbyists and much less as partners in dialogue. CSOs not aligned with such umbrella organisations usually have very limited access to decision-makers. While some overarching structures like the Bundesnetzwerk Bürgerschaftliches Engagement (the federal civic engagement network) exist, there is no network or organisational frame that encompasses all areas of civil society activity. A public body, the Deutsche Stiftung für Engagement und Ehrenamt, established by an Act of the federal parliament in 2020, strives to be an interface between CSOs and local, state, and federal governments and has established some forms of dialogue, but remains heavily government-controlled. An institutionalised and comprehensive strategy for the integration of the civic space into the public sphere beyond the very traditional mechanisms of hearings is lacking.

The dialogue between government and civil society, as announced in the coalition agreement, has not yet materialised. This is underpinned by the fact that the political parties, possibly with the exception of the Green Party – and the traditional media for that matter – have as yet failed to adopt a modern state-of-the-art concept of civil society and the civic space. E.g., while politicians on official visits abroad now regularly hold meetings with “civil society”, they neither disclose whom they are actually talking to nor involve German CSOs or civil society experts in these talks. Furthermore, with few exceptions, they show little interest in such meetings at home. On the other hand, there is an increasing interest with politicians in organising citizens' councils, town hall meetings, and assemblies as meaningful extensions of representative democracy. But little attention is paid to choosing the right format. Habitually, they include a randomly composed group of citizens who discuss major political issues, and propose (non-binding) policy recommendations. No effort is put into integrating such one-off projects into a comprehensive strategy of rendering democracy more resilient. Also, there is a tendency to crowd out organised civil society by such activities.

Recommendations

- 🔍 Urgently consult with civil society on reforms to adapt the tax-exempt status for non-profit organisations and provide timely follow-up and feedback during the consultation process, and ensure that reforms are in line with European and international standards on funding for civil society
- 🔍 Refrain from detaining and harassing climate youth group 'Rise of the Last Generation' and respect the right to freedom of peaceful assembly
- 🔍 Co-create participatory platforms such as councils, town hall and assemblies with civil society, through an open, transparent and inclusive process to promote participation

About the contributor

The Maecenata Foundation is an independent think tank, specialising in the subjects of civil society, civic engagement, philanthropy and foundations.

MAECENATA STIFTUNG

It has the legal form of a non-profit foundation under civil law and is based in Munich. It was founded in 2010 and has encompassed all Maecenata activities under its roof since 2011. The Foundation manages and collates the activities of its programmes and publishes its stance on major issues. It sees itself as an ideal service provider for civil society and advocates its transnational strengthening and the development of an open society in Europe and beyond. The Maecenata Foundation realises its statutory purposes through four permanent programmes and other projects.



Civic Space Report 2023

GREECE



Key Developments

- 🔍 CSOs working on migrant rights face restrictions and vilification
- 🔍 Surveillance of independent journalists is a major concern
- 🔍 Protests met with police violence

Further deteriorations of civic space have been noted in 2022 in Greece. As a consequence, the CIVICUS Monitor rating was downgraded from “narrowed” to “obstructed”.³⁵⁶

The government has failed to implement recommendations by the European Commission in its 2022 Rule of Law report on Greece, which included to “ensure that registration requests for CSOs are proportionate” and to “establish legislative and other safeguards to improve the physical safety and working environment of journalists”.³⁵⁷ Instead, it has continued to target civil society, particularly CSOs working on migrant rights, and it has failed to tackle the protection of journalists. The government, instead, ramped up its targeting of journalists: investigations have revealed mass surveillance of journalists and many of them continue to face attacks and SLAPPs. Worryingly, the criminalisation of solidarity has continued, with several human rights defenders on trial. People protesting have faced several repressions during protests. Despite the restrictive environment, civil society has remained vigilant and reactive.

³⁵⁶ <https://monitor.civicus.org/country/greece/>

³⁵⁷ https://commission.europa.eu/system/files/2022-07/21_1_194014_coun_chap_greece_en.pdf

Institutional, political and socio-economic landscape

In August 2022 Greece exited several years of enhanced EU surveillance which aimed to ensure that the country performed necessary reforms to avoid a new financial crisis. While reforms took place under enhanced surveillance, challenges remain in place. The performance of Greece's justice system remains one of the lowest of the EU³⁵⁸ while its public administration and health care system capacity are weak, with the latter being further challenged by the COVID-19 pandemic. Unemployment remains high³⁵⁹, especially among younger people³⁶⁰. Inflation, energy and food prices have significantly increased due to the war in Ukraine, affecting many households³⁶¹³⁶².

The country dropped eight places in the World Justice Project's 2022 Rule of Law Index compared to the previous year and 38 places in the World Press Freedom Index ranking by Reporters without Borders, receiving the lowest score in the EU.

Strict COVID-19 related measures that were implemented in the last two years and which restricted various freedoms such as the freedom of peaceful assembly were lifted, nevertheless, police violence during protests and demonstrations remained high³⁶³³⁶⁴. The country dropped eight places in the World Justice Project's 2022 Rule of Law Index compared to the previous year and 38 places in the

³⁵⁸ https://commission.europa.eu/system/files/2022-05/2022-european-semester-country-report-greece_en.pdf

³⁵⁹ <https://www.eurofound.europa.eu/country/greece#key-figures>

³⁶⁰ <https://ec.europa.eu/eurostat/documents/2995521/16138291/3-02032023-BP-EN.pdf/40695304-0f6a-616d-2440-0884ea8a0220?version=1.0&t=1677682503789>

³⁶¹ <https://www.theguardian.com/world/2022/dec/08/the-fixed-price-shopping-basket-greeces-answer-to-cost-of-living-crisis>

³⁶² <https://www.euronews.com/my-europe/2023/01/12/nearly-half-of-europeans-say-their-standards-of-living-have-already-declined-as-crises-mou>

³⁶³ https://civicspacewatch.eu/wp-content/uploads/2022/06/ROL_Greece.pdf

³⁶⁴ <https://civic-forum.eu/wp-content/uploads/2021/03/Rule-of-Law-2021-ECF-2.pdf>

World Press Freedom Index ranking by Reporters without Borders, receiving the lowest score in the EU.³⁶⁵

A surveillance scandal has made headlines and created political unrest as Greece is accused of using the illegal Predator spyware on several journalists, politicians and entrepreneurs.³⁶⁶ While the secret service (EYP), which the Prime Minister (PM) brought under his control after being elected in July 2019³⁶⁷, admitted that it was monitoring certain people, the government has so far denied any wrongdoing and insists that it has not used any spyware. Nevertheless, an independent media outlet claimed that the Secretary General of the PM (and also his nephew) Grigoris Dimitriadis, who resigned after the scandal, had links to a company that trades spyware. The case was investigated by a parliamentary commission that included mostly members from the party in power, and later on by the National Transparency Authority (EAD) both of which found no misconduct. However, neither of the two bodies are truly independent and the outcomes of their investigations are questioned.³⁶⁸³⁶⁹ Following pressure by the European Commission (EC), new investigations are currently in place.

Pushbacks of migrants and refugees continue and so do the efforts to stop or silence those who support them such as CSOs and journalists

Pushbacks of migrants and refugees continue and so do the efforts to stop or silence those who support them such as CSOs and journalists (see below under safe space). The government is denying that such incidents are taking place despite well-documented testimonies and credible reports by international organisations including the UN Refugee Agency (UNHCR)³⁷⁰ and International Organisation for Migration (IOM),³⁷¹ the UN Special Rapporteur on the human rights of migrants,³⁷²

³⁶⁵ <https://greekreporter.com/2022/07/11/greece-falls-latest-rule-law-world-index/>

³⁶⁶ <https://govwatch.gr/en/finds/parakoloythiseis-politikon-dimosiografon-kai-epicheirimation-apo-predator-kai-eyyp/>

³⁶⁷ <https://ipi.media/greece-the-government-must-not-cover-up-greek-watergate/>

³⁶⁸ <https://www.documentonews.gr/article/plyntirio-tis-kyvernisis-i-ethniki-arxi-diafaneias/>

And <https://www.balkanicaucaso.org/eng/Areas/Greece/Predatorgate-dozens-of-Greek-ministers-and-journalists-under-surveillance-221605>

³⁶⁹ <https://ipi.media/greece-the-government-must-not-cover-up-greek-watergate/>

³⁷⁰ <https://www.unhcr.org/news/press/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html>

³⁷¹ <https://www.iom.int/news/iom-concerned-about-increasing-deaths-greece-turkey-border>

³⁷² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement>

the Council of Europe Commissioner for Human Rights,³⁷³ the Greek Ombudsman³⁷⁴³⁷⁵³⁷⁶ and various civil society organisations.³⁷⁷ Following pressure by the EC to establish an independent monitoring mechanism for violations at the country's borders, Greece designated EAD as the competent institution to investigate allegations of breaches of fundamental rights at the borders.

This raised concerns as the authority does not meet the criteria by UN institutions and the European Network of National Human Rights Institutions (ENNHRI) for the establishment of an independent and effective national border mechanism to monitor fundamental rights violations at the Greek borders.³⁷⁸ The fact that the body's independence, transparency and autonomy are in question raises concerns about the authority's ability to act as an independent monitoring mechanism. A three-month investigation carried out by EAD in March 2022 found no evidence of pushbacks. The legitimacy of the investigation is further challenged by the fact that the EAD decided to announce the findings of its investigation through a press release, failing to provide information regarding the methodology, actors involved in the investigation and to what extent the cases of illegal pushbacks recorded by other bodies have been examined³⁷⁹.

In December 2022 police shot and killed a Roma teenager³⁸⁰, only a year after police killed another young Roma man³⁸¹. The Greek Ombudsman reported in June 2022 on complaints of police abuse against persons because of their racial origin.

³⁷³ <https://www.coe.int/en/web/commissioner/-/greek-authorities-should-investigate-allegations-of-pushbacks-and-ill-treatment-of-migrants-ensure-an-enabling-environment-for-ngos-and-improve-recept>

³⁷⁴ https://www.efsyn.gr/ellada/dikaionomata/344591_pano-apo-50-kataggelies-epanaproothiseon-diareyna-o-synigoros-toy-politi

³⁷⁵ https://rsaegean.org/wp-content/uploads/2022/06/Greece_CSO_Briefing_LIBE-1.pdf

³⁷⁶ <https://www.synigoros.gr/el/category/default/post/h-ethsia-ek8esh-toy-synhgoroy-toy-polith-gia-to-2021>

³⁷⁷ <https://rsaegean.org/en/joint-action-against-push-backs-signed-by-49-ngos/>

³⁷⁸ <https://eu.rescue.org/sites/default/files/2022-04/Greece%20IBMM%20Report%20final.pdf>

³⁷⁹ <https://eu.rescue.org/press-release/greeces-national-transparency-authority-should-publish-its-full-report-regarding>

³⁸⁰ [https://www.reuters.com/world/europe/roma-teenager-dies-greece-after-police-shooting-2022-12-13/#:~:text=ATHENS%2C%20Dec%2013%20\(Reuters\),of%20the%20teenager%20on%20Dec.](https://www.reuters.com/world/europe/roma-teenager-dies-greece-after-police-shooting-2022-12-13/#:~:text=ATHENS%2C%20Dec%2013%20(Reuters),of%20the%20teenager%20on%20Dec.)

³⁸¹ <https://balkaninsight.com/2022/12/08/roma-community-in-greece-revolt-against-the-bloody-shoot-of-a-teenager-by-a-police-officer/>

The regulatory environment for civic freedoms

Strict requirements for CSOs working on migration remain

While no new laws were passed on freedom of association in 2022, a Joint Ministerial Decision, which in 2020 introduced strict requirements for the operation of CSOs working on migration in Greece, on which the ECF has previously reported^{382,383}, is still in place. The law makes it difficult for these organisations to register, consequently hindering their operations. Various domestic and international bodies³⁸⁴, including the European Commission³⁸⁵, have raised concerns about the compatibility of the legislation with the country's legal obligations, nevertheless, Greece insists on implementing it. For more on the application of this law, see section on safe space.

Restrictive peaceful assembly law

New concerning legislation that regulates public outdoor assemblies was introduced in January 2021. The law (4703/2020), among other issues, gives authorities the discretionary power to disperse or prohibit assemblies. In July 2022, the mayor of Athens requested from the Ministers of Interior and Citizens Protection the right to license -and therefore limit- assemblies in the country's capital. 386

Several concerning laws remain, new problematic laws added

³⁸² https://civicspacewatch.eu/wp-content/uploads/2022/06/ROL_Greece.pdf

³⁸³ <https://civic-forum.eu/wp-content/uploads/2021/03/Rule-of-Law-2021-ECF-2.pdf>

³⁸⁴ <https://rsaegean.org/en/registry-of-ngos-working-with-refugees-and-migrants-in-greece-under-scrutiny/>

³⁸⁵ https://commission.europa.eu/system/files/2022-07/21_1_194014_coun_chap_greece_en.pdf

³⁸⁶ <https://govwatch.gr/en/finds/ripsi-chimikon-simeiothike-sti-synaylia-diamartyrias-toy-thanasi-papakonstantinoy-sto-apth/>

the country adopted new legislation that will create a committee to monitor whether the principles of journalistic ethics and conduct have been observed. If not, media organisations may be removed from the registry and may be excluded from state funding.

A November 2021 law makes ‘fake news’ punishable with up to five years in prison.³⁸⁷ In December 2022 the country adopted new legislation that will create a committee to monitor whether the principles of journalistic ethics and conduct have been observed. If not, media organisations may be removed from the registry and may be excluded from state funding.³⁸⁸ The scientific committee of the parliament, among others, expressed concerns that the law may affect freedom of expression and lead to censorship³⁸⁹. In November 2022, Greece also adopted a long overdue whistle-blower protection law, almost a year after the EC’s set deadline for the transposition of the EU Directive on Whistleblowing. The EC pressured Greece to adopt the law following the prosecution of two journalists whose investigations uncovered a scandal about Novartis, a pharmaceutical company. Overall, the process was slow, lacked transparency and did not include consultations with CSOs or other stakeholders, who believe that the law is weak and fails to ensure adequate protection³⁹⁰.

An amendment to a law regarding the confidentiality of communications, which was adopted in March 2021, allows the National Intelligence Service (EYP) to monitor citizens without them being notified about it.³⁹¹ Cases of surveillance, including against journalists conducting investigative work, people working with refugees and others have increased significantly in recent years and especially after the adoption of the amendment.³⁹² Journalists who covered the Predatorgate surveillance scandal were also allegedly placed under surveillance by state authorities during 2022.³⁹³ Following this, in December 2022 the government amended the surveillance law, via the bill on suspending the confidentiality of communications, cybersecurity and the protection of citizens’ personal data.

³⁸⁷ <https://www.hrw.org/news/2021/11/17/greece-alleged-fake-news-made-crime>

³⁸⁸ <https://www.mapmf.org/alert/25509>

³⁸⁹ Ibidem.

³⁹⁰ <https://www.whistleblowingmonitor.eu/?country=greece>

³⁹¹ <https://www.hrw.org/news/2022/12/08/greece-problematic-surveillance-bill>

³⁹² <https://balkaninsight.com/2021/11/16/greek-state-spies-on-journalists-lawyers-civil-servants-report/>

³⁹³ <https://gowwatch.gr/en/finds/apokalypseis-gia-parakoloythiseis-dimosiografon-poy-ereynoy-n-tis-ypoklopes/>

However, after limited public consultation, it only includes minor “cosmetic” improvements and remains problematic.³⁹⁴

³⁹⁴ <https://rsf.org/en/greece-s-predatorgate-draft-law-surveillance-falling-short-european-standards-must-be-amended>

Safe Space

CSOs & individuals working on migrant rights targeted

In 2021 the government rejected the registration application of the NGO Refugee Support Aegean (RSA). However, following criticism of the decision by the Greek Ombudsperson and CSOs, among others, the Ministry of Migration and Asylum accepted a new application by RSA in 2022.

RSA is not the only case of government interference with the work of CSOs. Using various tactics, authorities often target organisations particularly those that work on migration issues or that openly criticise the government. A recent Law (4825/2021 article 40) criminalises rescue operations, particularly maritime search and rescue operations³⁹⁵. Organisations that engage in such activities were forced to terminate them due to fear of being prosecuted.

In September 2022, the Ministry of Migration and Asylum, accused the Greek NGO Human Rights 360 and a journalist of lying when they reported on the death of a little girl at Greece's borders, threatening the organisation with de-registration, fines and other legal measures. It also launched a financial investigation against the organisation whose reputation was severely affected following the incident

Furthermore in 2022, four NGOs³⁹⁶ that have brought a total of 13 cases to the European Court for Human Rights and achieved interim measures for refugees at risk of being pushed back, were put under investigation for "possible links to smuggling". In September 2022, the Ministry of Migration and Asylum, accused the Greek NGO Human Rights 360 and a journalist of lying when they reported on the death of a little girl at Greece's borders, threatening the organisation with de-registration, fines and other legal measures. It also launched a financial investigation against the organisation whose

³⁹⁵ https://fra.europa.eu/sites/default/files/fra_uploads/el_franet_civic_space_2021-22_en.pdf

³⁹⁶ <https://www.newsit.gr/ellada/evros-ereyna-gia-ti-drasi-mko-kai-ti-syndesi-tous-me-ta-kyklomata-paratypon-metanaston/3534121/>

reputation was severely affected following the incident.³⁹⁷ More recently, in December 2022, the government also accused well-known human rights defender (HRD) Panayote Dimitras of “setting up a criminal organisation with the purpose of facilitating the illegal entry and stay in Greece of third-country nationals”. Following interrogation, the HRD was prohibited from being involved with his organisation (Greek Helsinki Monitor) while other measures, including house arrest, are pending.³⁹⁸³⁹⁹

24 humanitarian activists, including search and rescue volunteers Sarah Mardini, Seán Binder, Nassos Karakitsos, faced trial for a series of misdemeanour charges, including espionage, forgery, and assisting the criminal organization of the NGO Emergency Response Center International (ERCI) in their smuggling activities.

On 10 January 2023, 24 humanitarian activists, including search and rescue volunteers Sarah Mardini, Seán Binder, Nassos Karakitsos, faced trial for a series of misdemeanour charges, including espionage, forgery, and assisting the criminal organization of the NGO Emergency Response Center International (ERCI) in their smuggling activities. The Court of Mytilene annulled the summons for all foreign defendants and the charge of espionage for all defendants on the ground of procedural errors.⁴⁰⁰ It should be noted that felony charges against the human rights defenders for smuggling, facilitation of illegal entry and for forming and participating in a criminal organisation that engages in the commission of felonies, which can carry up to 25 years imprisonment, are under investigation by the authorities⁴⁰¹.

In addition to CSOs, people on the move themselves are being criminalised for seeking protection on European territory and some of them have been charged with lifelong imprisonment sentences.⁴⁰²

³⁹⁷ <https://www.koraki.org/post/evros-islet-not-turkish-after-all>

³⁹⁸ <https://rsaegean.org/en/the-attempt-to-silence-human-rights-defenders-continues/>

³⁹⁹ <https://www.fairtrials.org/articles/news/panayote-dimitras-fair-trials-denounces-criminalisation-of-human-rights-defenders/>

⁴⁰⁰ <https://www.theguardian.com/world/2023/jan/13/greek-court-drops-spying-charges-against-activist-migrant-rescue-team>

⁴⁰¹ https://rsaegean.org/wp-content/uploads/2023/01/RoL2023_JointSubmission_CSO_Greece.pdf

⁴⁰² <https://www.borderline-europe.de/eigene-publikationen/stigmatisiert-inhaftiert-kriminalisiert-der-kampf-gegen-vermeintliche-schleuser?l=en>

In May 2022, the 'Samos2'⁴⁰³ trial took place, where a young father faced charges for the drowning of his 6-year-old son during a shipwreck (endangering the life of his child) and would have faced a ten-year prison sentence, while one of his co-passengers faces life imprisonment for steering the boat. The father was acquitted, while the co-passenger was given a suspended sentence⁴⁰⁴. Furthermore, three Syrian nationals were recently sentenced to a combined 439 years in prison for "facilitating unauthorised entry", while another group of Syrian nationals was sentenced to 364 years of imprisonment by the court in Kalamata "for complicity in transferring into Greece third-country nationals".⁴⁰⁵ As pushbacks continue, there are concerns that such practices will increase.

Excessive force continuously deployed during protests

The use of police violence during assemblies is particularly worrying. For instance, on 6th April 2022, police used violence and arrested protestors in Thessaloniki,⁴⁰⁶ the country's second largest city. In the same city, the police repeatedly used⁴⁰⁷ violence against university students protesting against police presence at universities, which was made mandatory via an education bill.⁴⁰⁸ Other incidents included riot police attacks and injuries and arrests of demonstrators in Athens⁴⁰⁹ during several occasions and the arrest of a councillor during a solidarity march.⁴¹⁰ The unjustified use of chemicals during a protest concert was also reported.⁴¹¹

⁴⁰³ <https://freethesamostwo.com>

⁴⁰⁴ <https://www.infomigrants.net/en/post/40616/afghan-man-acquitted-over-sons-death-on-journey-to-greece>

⁴⁰⁵ <https://ecre.org/greece-crack-down-on-ngos-and-criminalisation-of-solidarity-continues-government-announces-blocking-thousands-of-arrivals-in-evros-amid-new-pushback-reports/>

⁴⁰⁶ <https://govwatch.gr/en/finds/astynomiki-via-kata-apergiakis-kinitopoiisis/>

⁴⁰⁷ <https://monitor.civicus.org/updates/2022/06/30/protests-academic-freedom-met-excessive-force-journalist-under-surveillance/> and <https://monitor.civicus.org/updates/2022/09/30/university-protests-against-riot-police-deployment-continue-predator-gate-scandal-raises-further-concerns-about-surveillance/>

⁴⁰⁸ <https://govwatch.gr/en/finds/aythaireti-syllipsi-amp-xylodarmos-foititon-sto-apth/>

⁴⁰⁹ <https://govwatch.gr/en/finds/xylodarmos-diadilonton-sta-exarcheia/> ; <https://govwatch.gr/en/finds/poreia-allileggyis-ston-g-michailidi-kataggelies-gia-via-kata-diadilonton/> ; <https://govwatch.gr/en/finds/astynomiki-via-kata-diadilonton-se-antikatastaltiki-poreia/> ; <https://govwatch.gr/en/finds/astynomiki-via-kata-diadilonton-sti-poreia-kata-tis-akriveias/> ; <https://govwatch.gr/en/finds/astynomiki-via-kata-diadilonton-se-diadilos-sta-sepolia/> ; <https://govwatch.gr/en/finds/astynomiki-via-kata-diadilontrias-se-poreia-kata-tis-panepistimiakis-astynomias/>

⁴¹⁰ <https://govwatch.gr/en/finds/poreia-allileggyis-ston-g-michailidi-via-kata-dimotikoy-symvoyloy/>

⁴¹¹ <https://govwatch.gr/en/finds/ripsi-chimikon-simeiothike-sti-synaylia-diamartyrias-toy-thanasi-papakonstantinoy-sto-apth/>

Journalists: under threat

Threats against journalists continue. The murder of reporter Giorgos Karaivaz in 2021 remains unpunished despite the government's promise to resolve the case promptly. Police violence targeting journalists covering demonstrations is still frequent.⁴¹² Furthermore, in November 2022 well-known photojournalist Nikos Pilos was arrested and detained during a police operation and 10 criminal charges were filed against him.⁴¹³ Strategic Lawsuits Against Public Participation (SLAPPs) are also on the rise,⁴¹⁴ in particular from multinational companies and executives, but there is no legislation to protect civil society and journalists from such lawsuits. In one case in September 2022 the director of a state hospital launched legal proceedings against journalist Ioannis Stevis who reported on the hospital's management of public funds.⁴¹⁵ The PM's former Secretary General and nephew Grigoris Dimitriadis took the same course of action against several journalists who reported on his involvement in the surveillance scandal.⁴¹⁶

the current government has strong links to and control of the media⁴¹⁷ affecting overall pluralism and the public's opinion.

Lack of media pluralism is also a challenge, with the journalists' union criticising the Athens news agency for presenting only the government's position on various issues.⁴¹⁸ More broadly, the current government has strong links to and control of the media⁴¹⁹ affecting overall pluralism and the public's opinion.⁴²⁰

⁴¹² <https://govwatch.gr/en/finds/astynomiki-via-kata-enos-amerikanoy-fotoreporter-kai-diadiloton/> , <https://govwatch.gr/en/finds/poreia-allileggyis-ston-g-michailidi-kataggelies-gia-via-kata-dimosiografon/> and <https://govwatch.gr/en/finds/synelavan-dimosiografo-epeidi-kategrapse-viaii-syllipsi-gynaikas/>

⁴¹³ <https://balkaninsight.com/2022/11/23/greek-police-filed-criminal-charges-to-photojournalist-while-reporting-in-athens/>

⁴¹⁴ <https://ipi.media/greece-journalists-targeted-in-several-slapp-lawsuits/>

⁴¹⁵ <https://govwatch.gr/en/finds/agoges-kai-minysi-se-varos-dimosiografoy-apo-ti-dioiktria-toy-nosokomeioly-chioly/>

⁴¹⁶ <https://europeanjournalists.org/blog/2022/08/06/greece-efj-demands-full-disclosure-on-illegal-surveillance-of-journalists/>

⁴¹⁷ <https://govwatch.gr/en/finds/public-service-broadcasting-placed-under-the-control-of-the-prime-minister/>

⁴¹⁸ <https://govwatch.gr/en/finds/anakoinosi-tis-esiea-gia-elleipsi-polyfonias-sto-ape-mpe/>

⁴¹⁹ <https://govwatch.gr/en/finds/public-service-broadcasting-placed-under-the-control-of-the-prime-minister/>

⁴²⁰ <https://eu.boell.org/en/2021/06/07/state-and-corporate-capture-media-threaten-quality-democracy-greece>

On a more positive note, in June 2022 the Supreme Court found four journalists, who revealed the Novartis scandal, innocent. The journalists were facing a prison sentence of up to 20 years⁴²¹. Also, in January 2022 the Athens Administrative Court of Appeal recognised Vouliwatch's (an NGO watchdog) right to receive a list with information about the media outlets that received government funds for an anti-COVID-19 advertisement campaign. The NGO as well as other civil society actors were concerned that the funds were not distributed evenly. Nevertheless, both the government and the National Transparency Authority (EAD) refused to share this information, even after the court ruling.⁴²²

⁴²¹ <https://www.mfrr.eu/greece-mfrr-partners-welcome-acquittal-of-journalists-in-novartis-criminal-case/>

⁴²² <https://ipi.media/greece-transparency-authority-must-comply-with-court-ruling-on-media-advertising-campaign/>

Funding for civil society

Funding for CSOs remains limited

2022 was yet another year during which developments in Greece prove that civic space and civil society's ability to act are shrinking. The government's hostile stance and negative narrative towards CSOs affects public trust, which was already low due to various historical reasons,⁴²³ while its control of most mainstream media leaves little space for alternative voices to be heard. As elections are planned for spring 2023 the government in power may intensify such efforts and try to silence civic actors who are seen as a threat to its re-election.

CSOs in Greece have limited access to funding and in particular national resources, which affects their sustainability, planning and impact.

At the same time, CSOs in Greece have limited access to funding and in particular national resources, which affects their sustainability, planning and impact. Funding opportunities by the state are limited which is also due to the fact that the government has yet to take adequate measures to include CSOs in the planning, monitoring and implementation of EU Funds, as per the EC's guidelines. Other sources of funding are usually project-based, preventing long-term planning and affecting growth and viability. New strict registration requirements, without which CSOs cannot access national resources, or receive certain benefits such as tax exemptions, are also a threat to the sector's viability.

⁴²³ <https://www.eliamep.gr/wp-content/uploads/2014/05/kas.pdf>

Civil dialogue and right to participation

Participation is merely a “formality”

While various committees and bodies exist in specific policy areas, they often convene sporadically, and civil society actors are not always included or adequately represented.

More broadly, a meaningful dialogue framework and cooperation between Greek governments and CSOs was never in place and remains lacking. While various committees and bodies exist in specific policy areas, they often convene sporadically, and civil society actors are not always included or adequately represented.

Public consultations which take place through a consultation portal, where draft laws and policies are published for comments, remain the main mechanism through which civil society organisations can provide feedback. However, civil society and other stakeholders are often not involved in the consultation process prior to the publication of the drafts, and, even then, the timeframe for submission of comments is limited. These consultations are not usually substantial nor effective, but rather a tick box exercise as feedback is not incorporated in the various documents.

CSOs push back in trying times

Active in tough times, with some positive victories

Despite the difficulties -or because of them- civil society has been very active in recent years, especially following the economic and refugee crises and during COVID-19. New initiatives are emerging to support people in need and defend democracy and the rule of law (Golden Dawn Watch,⁴²⁴ Vouliwatch,⁴²⁵ Govwatch⁴²⁶ are a few examples). In recent years independent investigative media, such as Reporters United,⁴²⁷ We are Solomon⁴²⁸ and Lighthouse Reports,⁴²⁹ have also emerged to hold authorities accountable.

While in these challenging times it is often hard to spot or acknowledge positive developments, there were occasions in 2022 that showcase the important role of civic actors. Examples include civil society's reports on pushbacks which drew international spotlight on these illegal practices, positive court decisions defended by CSO lawyers demonstrated the innocence of migrants accused of smuggling (for example the 'Samos 2' case) and reports by journalists about the Predatorgate surveillance scandal. Furthermore, student protests have temporarily put on hold the establishment of police in universities, while the eviction of a pensioner journalist from her home⁴³⁰ was prevented due to strong support and demonstrations by citizens.

To achieve their goals CSOs often work with independent authorities such as the Ombudsperson, journalists, academics or other civic actors. An example is the Informal Forced Returns Recording Mechanism that was established in 2022 to record pushbacks which includes 10 NGOs and is supervised by the National Commission for Human Rights (NCHR).⁴³¹

⁴²⁴ <https://goldendawnwatch.org/>

⁴²⁵ <https://vouliwatch.gr/about/en>

⁴²⁶ <https://govwatch.gr/en/>

⁴²⁷ <https://www.reportersunited.gr/en/>

⁴²⁸ <https://wearesolomon.com/>

⁴²⁹ <https://www.lighthousereports.nl/>

⁴³⁰ <http://www.idcommunism.com/2022/11/greece-peoples-solidarity-stops-seizure-of-pensioners-home-by-the-banks.html>

⁴³¹ <https://www.nchr.gr/en/news/1544-press-release-presentation-of-the-recording-mechanism-of-incidents-of-informal-forced-returns-and-its-first-interim-report.html>

Recommendations

The regulatory environment for civic freedoms

- 🔍 Repeal the Joint Ministerial Decision 10616/2020 for CSOs working on migrant and refugee rights;
- 🔍 Scrap the proposal to create a committee to monitor whether the principles of journalistic ethics and conduct have been observed which encourages censorship;
- 🔍 Amend the bill on suspending the confidentiality of communications, cybersecurity and the protection of citizens' personal data by engaging in thorough consultation with civil society;
- 🔍 Scrap the law (4703/2020) which restricts the right to peaceful assembly.

Safe Space

- 🔍 Drop all charges against Sara Mardini, Seán Binder, Nassos Karakitsos and refrain from further prosecutions against them;
- 🔍 Refrain from criminalising human rights defenders solely for helping refugees and migrants in need;
- 🔍 Immediately carry out a thorough and independent investigation into the arbitrary surveillance on journalists;
- 🔍 Conduct thorough investigations into violence against journalists and media, and adopt new protective measures to ensure their safety;
- 🔍 Protect civil society, by recognising the services provided by CSOs to marginalised groups and society as a whole;
- 🔍 Refrain from publically vilifying civil society and sharing negative public narratives about them;
- 🔍 Respect the right to peaceful assembly and ensure its free exercise without discrimination, allow assemblies to take place without unwarranted interference and ensure that protesters are protected.

Funding for civil society

- 🔍 Provide financial support to the NGO sector, including through EU funding, and increase clarity and transparency around EU funding and opportunities for NGOs participation;
- 🔍 Take adequate measures to include CSOs in the planning, monitoring and implementation of EU Funds, as per the EC's guidelines.

Civil dialogue and right to participation

- 🔍 Strengthen the role of civil society actors in policymaking, by supporting an open, transparent and regular dialogue between civil society and policymakers at national and EU levels;
- 🔍 Improve the operational framework for CSOs, following a meaningful consultation process with them, to ensure their effective protection against attacks and other forms of harassment;
- 🔍 Promote transparency and accountability within the government and government bodies.

About the contributor

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Civic Space Report 2023

HUNGARY



Key Developments

- Civil society subjected to administrative burdens and continuously vilified
- LGBTQI+ rights remain severely threatened, several cases of censorship
- Continuous renewal of state of emergency powers a concern for fundamental rights

Civic freedoms have further deteriorated in Hungary⁴³², and the FIDESZ government's April 2022 landslide victory, under Prime Minister Viktor Orbán, has led to renewed concerns for fundamental rights. Over the last two years, the government has used the COVID-19 pandemic as a pretext to limit rights.

In May 2022, the government passed yet another state of emergency this time on the grounds of Russia's war against Ukraine, thus enabling it to largely evade scrutiny and accountability. In this way, the government is likely to further cement its political power over the judiciary, media, cultural and educational institutions.

The government has made no efforts to implement the European Commission's recommendation in its 2022 Rule of law Report on Hungary to "remove obstacles affecting civil society organisations"⁴³³, but rather continued to hamper the work of civil society organisations (CSOs) through restrictive laws and smear campaigns. The April 2021 Act on organisations "capable of influencing public life," (i.e. those with an annual budget above HUF 20 million HUF, € ~55,000) created new administrative burdens for CSOs. Remarkably, civil society has continued to demonstrate resilience and showcased its strength at key moments: during the electoral campaign and during Russia's invasion of Ukraine.

The targeting of LGBTQI+ rights continued and featured prominently as part of the FIDESZ government's election campaign. A significant victory was achieved by CSOs and LGBTQI+ rights organisations during the election when the results of the anti-LGBT referendum were declared invalid. However, CSOs which supported the campaign have faced harassment and overall, the anti-LGBTI law has created a chilling effect. The right to freedom of peaceful assembly was also challenged when teachers staged labour rights protests. The government responded by making teacher strikes effectively impossible by a

⁴³² <https://monitor.civicus.org/HungaryWatchlistJune2022/>

⁴³³ https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf

Institutional, political and socio-economic landscape

The first months of 2022 were dominated by the electoral campaign leading up to 3 April 2022 general (parliamentary) elections. Unlike the previous two elections, the six main opposition parties (from various sides of the political spectrum) were able to come together and in autumn 2021 organised primary elections to run consensus candidates in each electoral district in a one-on-one competition against those of the FIDESZ governing party. This development gave rise to cautious optimism, which were shattered when Fidesz achieved another landslide victory, surpassing predictions and winning 53 per cent of the vote, translating into 135 of the 199 seats in Parliament, securing another comfortable 2/3 majority for the fourth time in a row. In an unexpected development, the radical right 'Mi Hazánk' (Our Homeland) party also crossed the threshold gaining seven seats. The united opposition performed worse than expected with 35 per cent of the vote (56 seats). The election once again reinforced the urban-rural gap the opposition won 14 of the 16 districts of Budapest, as well as the central districts of Pécs and Szeged – but nothing else.⁴³⁴

Many factors led to this result, among them the strongly distorted and gerrymandered electoral system which unfairly favoured the strongest candidate, the overwhelming media dominance with at least 2/3 of the outlets directly or indirectly controlled by the government and parroting its propaganda of untruths and simplistic messages, the captured institutions, the practically unlimited campaign resources relying heavily on state coffers which are way above the legal limit, and generous welfare spending in the last months (in form of e.g. extraordinary tax returns or freezing the price of gasoline below the market rates). During the last weeks of the campaign, the war in Ukraine added another key factor: after some initial hesitation, the government quickly found its main message, stating that Hungary must stay out of this conflict, remain “neutral” and implied that Fidesz is the only political force able to guarantee peace and security – without once condemning Putin’s aggression.

The FIDESZ victory left opposition parties frustrated and exhausted both in terms of financial and human resources, which lead to certain impotence in the months after the election, scapegoating and bickering amongst themselves. The reasons for their weak performance ranged from misunderstanding voters’ motives by mistargeting their communication to the inability to overcome their differences and personal tensions. Their main failure was however the lack of or weak understanding of Hungarian society, especially that of the countryside. Here, old reflexes of

⁴³⁴ See details: <https://vtr.valasztas.hu/ogy2022>

paternalism and helplessness coupled with strong individualism, inherited from before 1989 persist, where people look to the state for solutions to their problems. As research shows, daily welfare and survival are the main (and only) issues occupying people's minds, thus messages about democracy or corruption do not resonate with them.

In the second half of the year public attention shifted towards the unfolding economic and cost-of-living crisis. After eight to 10 years of steady growth and relative well-being neither people nor the government and its institutions were prepared for the soaring energy and food prices. Instead of introducing comprehensive economic policies adapted to the new situation, the government opted for short-term, ad-hoc measures including further price caps on some basic food items (e.g. sugar, milk), which were unable to change the course, resulting in ~25 per cent inflation by the end of the year, and a significant devaluation of the national currency. Yet again, the government left vulnerable social groups alone, and without support to cope with the situation, including municipalities, many of which were forced to close down local institutions (such as libraries, culture houses, theatres) for the winter in order to curb their energy bills. Similarly, small businesses also struggled.

The government's conflict with the European Commission further exacerbated this situation. A day after the general elections, EC President Ursula von der Leyen triggered the conditionality mechanism linked to the payment of EU Cohesion Funds, which obliged the Hungarian government to introduce measures and achieve improvements in several areas mainly related to fighting corruption and independence of the judiciary. For similar reasons, the EC did not approve Hungary's Reconstruction and Recovery Plan (RRP) either. In response, a series of new legislation was passed in the Hungarian Parliament and new institutions, notably an independent Integrity Authority was created. While the Commission honoured these efforts by giving a green light to the RRP, a significant part of the Cohesion Funds has been suspended pending additional measures and their implementation. It remains to be seen whether these can achieve any progress – some analysts believe that they will hardly be capable of changing the semi-authoritarian system and state capture consolidated over the past 12 years.

The regulatory environment for civic freedoms

CSOs overburdened by regulatory environment in practice

Freedom of association, assembly and expression are (along with other basic human rights) guaranteed by the Fundamental Law (Constitution) of Hungary (Articles VIII. and IX.). The freedom of association is embedded in Act CLXV. of 2011 which at the same time also contains detailed rules on the operation of non-profit organisations. The freedom of peaceful assembly is regulated by the Act. LV. of 2018, while the freedom of expression and the press is enshrined in Act. CIV. of 2010. Furthermore, the Civil Code (Act. V. of 2013.) contains provisions on the establishment and general functioning of associations and foundations.

The letter of these laws generally conforms with relevant international standards, and haven't changed in the past year, nor has there been new legislation relevant to civil society passed. Accordingly, anyone can freely register a civil society organisation (CSO) at the administrative courts (also online which made the process easier, though geographic differences among courts still prevail), and there have been no cases of deregistration either. Organisations can also operate freely, but in practice, both regulation and oversight place unnecessary administrative burdens on smaller organizations, while larger ones, especially those with public benefit status (20% of all) and those receiving public funding must meet rigorous reporting obligations: e.g. they must annually and publicly report separately on their accounts and activities, on their donations and the use of the 1 per cent personal income tax assignments – but thereby, their transparency is guaranteed, too.

At the same time several pieces of earlier legislation negatively affecting civil society remain in effect, though are not or only partially implemented, but still create a chilling effect. A notable example of the former is the 25 per cent punitive tax on donations to organisations that are “supporting” immigration. The government also failed to ensure that the so-called Stop Soros law package complies with EU law, despite the ECJ's 2021 ruling. Rather in December 2022, last-minute amendments to an unrelated omnibus bill were approved by the Parliament, including a new, vaguely defined criminal activity that hampers attorney-client privilege, and forces non-attorneys who provide aid to sacrifice the applicant's best interests in order to protect themselves from potential

prosecution⁴³⁵. Additionally, the 2021 acts on organisations “capable of influencing public life” (Act XLKIX) and on “homosexual propaganda to minors” (Act LXXIX, anti-LGBTI propaganda law) have also impacted CSOs – for more on the application of these, see the next section on safe space.

Right to protest tested by teacher’s labour protests

The freedom of peaceful assembly was tested primarily by teachers’ movements and unions throughout the year, who protested against their undignified pay, adverse working conditions, lack of autonomy and the general state of the centralised public education system. The first mass demonstrations took place in the beginning of the year along with strikes in some schools – in response the government severely curtailed teachers’ strike rights by issuing a decree under the upheld emergency legislation, effectively making it impossible to express their dissatisfaction in this manner. This response inspired some teachers to engage in civil disobedience. During the election period and the summer break teachers suspended their activism, but revitalised it with the start of the school year. This time, high school students, teenagers and to some extent parents’ organisations mobilised as well, staging some spectacular actions, such as living chains embracing the capital, sit-ins and flashmobs. Teacher strikes – both legal and illegal – and acts of civil disobediences continued, too. The government – specifically the Ministry of Interior now responsible for education matters – responded by firing 14 teachers of Budapest high schools in several waves, in a seemingly arbitrary manner (not necessarily the leaders of the activities) with a clear goal of deterring others.

Other demonstrations were also held. The Pride march in July 2022 took place mostly peacefully, with no undue police interference. In one incident, police used a taser on activists protesting against a new tax regulation by occupying one of the bridges in Budapest. On 23rd October 2022 to mark the anniversary of the Hungarian Revolution of 1956, Prime Minister Viktor Orbán held his commemoration speech in a town in Western Hungary at which participation was only open to residents and by registration only. The opposition also attempted to hold a protest nearby, but police did not approve the location and suggested another one further away. Additionally, participants were told that their Identity would be checked which resulted in the dissolution of the counter-event⁴³⁶.

⁴³⁵ <https://helsinki.hu/en/criminalisation-continues-hungary-fails-to-implement-cjeu-judgment/>

⁴³⁶ <https://monitor.civikus.org/updates/2022/11/11/economic-crisis-teachers-conditions-spark-mass-protests-fidesz-government-continues-its-battle-eu-funds/>

Threats to independent journalism remain a concern

The Orbán government's practice of arbitrarily denying journalists access to press conferences and pressuring independent media has continued. For example, in December 2022, journalists from several independent news outlets, including Media1, 444.hu and Magyar Hang, were denied entry into the Prime Minister's end-of-the-year press conference by a police officer who claimed that their names were not on the media list, despite the journalists' registration for the event. In November 2022, Zoltán Varga, owner and CEO of the Central Media Group which operates 24.hu, one of the very few independent news outlets in Hungary, was questioned by the National Tax and Customs Administration (NAV) as part of an investigation into alleged budget fraud. This raised further concerns of media ownership pressure⁴³⁷. In another move to stifle independent media, in April 2022 Hungary's media watchdog, the National Media and Communications Authority's (NMHH) Media Council blocked the frequency licence renewal of the independent station Tilos Rádió, which began operating in the 1990s as the first non-profit independent radio station in Hungary. The council stated that the station has violated legal requirements on four occasions. Press groups argue that the decision is harmful to media pluralism in the country⁴³⁸.

⁴³⁷ <https://www.mapmf.org/alert/25319>

⁴³⁸ <https://www.mapmf.org/alert/24846>

Safe space

Civil society: overburdened and harassed

Interference and harassment by governmental agencies based on legislation passed in previous years was again observed in 2022.

On 21 February, the tax authority conducted a raid at the headquarters of 'Oltalom' Charitable Association/Hungarian Evangelical Brotherhood, as a follow-up to an earlier fine imposed on them for the non-payment of due taxes. However, the root cause for this omission by the association was that following a 2016 ruling of the European Court of Human Rights, the government failed to restore the organisation's earlier church status, thereby resulting in them losing billions in subsidies to which they were rightfully entitled to, used to finance their services to homeless and poor people. (Hungarian church law was fundamentally amended in 2013 introducing restrictive conditions for registering a church and giving the Parliament power to award church status instead of the courts. Many small churches were thus demoted to "religious associations", with an accompanied decrease in their funding. The Evangelical Brotherhood contested this, and won the case in Strasbourg.)

Another instance of interference was based on the Act on organisations "capable of influencing public life," (i.e. those with an annual budget above HUF 20 million HUF, € ~55,000) passed in April 2021⁴³⁹. In late May 2022, coinciding with the deadline to submit their annual reports, hundreds of CSOs falling in this category received an order from the State Audit Organisation (SAO) to submit documents – internal financial rules and guidelines – through the agency's online platform with a deadline of about 10 days⁴⁴⁰. Financial regulations oblige that CSOs have these documents, such as accounting policy, rules on inventory, cash and asset management, but in practice, most organisations used templates more or less well adapted to their own circumstances, so that many of them need to update them in a hurry. In spite of the occasional malfunctioning of the online platform, affected CSOs complied with the request. However, to the author's best knowledge none of them received any follow-up or further requests from the SAO by the end of the year.

Additionally, CSOs continue to be routinely targeted by the pro-government media conglomerate (comprising about three-quarters of all outlets), with human rights, LGBTQI+ and advocacy groups

⁴³⁹ For more details on this act, see: Hungarian Helsinki Committee, LexNGO 2021 – a look into Hungary's second anti-NGO law on its first anniversary, 12 May 2012, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf

⁴⁴⁰ <https://444.hu/2022/05/30/az-asz-meg-a-serult-gyerekekkel-foglalkozo-civileket-is-vizsgalja-a-kozelet-befolyasolasa-miatt-de-a-cof-ot-nem>

being the main target. For example, after the elections Magyar Nemzet⁴⁴¹ ran a series of articles on US “interference” in Hungarian politics, claiming that these organisations are “agents” of foreign interests. In several concrete cases, courts ruled against these misleading statements in slander and libel suits brought by human rights organisations (e.g. Hungarian Helsinki Committee). In 2022, there were no outward signs of surveillance targeting CSOs.

LGBTQI+ rights remain targeted

There were several developments related to LGBTQI+ issues. During the electoral campaign Amnesty International Hungary and Háttér Society organised a joint campaign with 14 other major CSOs entitled “Invalid answer to invalid questions - CSO response to the anti-LGBT referendum”⁴⁴².

This referendum, held on the day of the parliamentary election, was the government’s response to the infringement procedure of the European Commission regarding the 2021 law banning “homosexual propaganda to minors” (anti-LGBTI propaganda law). The government claimed that the aim was to show the EU that Hungary will not allow LGBT activists to provide sex education in schools, which also had a further impact of stigmatising LGBTQI people in the public discourse, and mobilising the more homophobic and transphobic part of the society in the general elections. Due to the manipulative and leading nature of the referendum’s questions, the only way to ‘win’ was to invalidate it. The CSOs campaign to counter the government’s hate was successful in encouraging voters to cast an invalid vote in the homophobic referendum: 1.7 million people crossed both answers (Y/N) to all four questions rendering the whole referendum invalid, as the number of valid votes (47 per cent) remained under the threshold of 50 per cent⁴⁴³.

However, five days after the referendum, the 16 CSOs which signed up to the campaign received a ruling from the National Election Commission which ordered a fine of HUF 3,000,000 (€~8100) against the two main organisers and 176,400 (€~475) against each supporting organisation (in five separate decisions), with the justification that the campaign amounts to an “abuse of rights” and defeats the purpose of exercising power through a referendum. This move could only be interpreted as backlash for the success of the campaign. The affected organisations jointly appealed to the Supreme Court, which overturned three of the decisions, nullifying 15 of the 16 fines, but rejected to deal with two

⁴⁴¹ <https://magyarnemzet.hu/belfold/2022/11/amerikai-befolyas-magyarorszagon-6>

⁴⁴² <https://tasz.hu/cikkek/szavazzunk-ervenytelenul-a-kormany-kikozosito-nepszavazasan>

⁴⁴³ <https://www.bloomberg.com/news/articles/2022-04-04/orban-referendum-targeting-lgbtq-rights-fails-to-become-binding>

cases on the merits of lack of argument⁴⁴⁴. Háttér Society, the affected organisation, turned to the European Court of Human Rights in the matter.

The consequences of the 2021 anti-LGBTI Propaganda law are also being witnessed. After receiving several complaints, the NMHH said its Media Council had concluded that an animated Netflix series broke its anti-LGBTQI+ law when it showed "two girls profess their love and kiss each other." There have been several other instances, with the Council concluding in at least six cases that a media provider headquartered in another EU member state miscategorised content depicting homosexuality or transsexuality and that the age recommendation was too young. However, none of these complaints have resulted in fines or procedures⁴⁴⁵.

Several court judgments related to LGBTQI rights were also made in 2022. A Budapest Regional Court of Appeal court overturned an earlier administrative decision against the Labrisz Association, the publisher of the *Fairyland is for All! Childrens* book, which deemed the sale of the book "unfair commercial practice" because they didn't indicate that the book contains "non-traditional gender roles". In another judgment, in November 2022 the Curia (Hungary's Supreme Court) found that an article published in 2020 by the Hungarian media giant Mediaworks, which labelled the Labrisz association as a "pedophile organisation" did not violate the association's good reputation⁴⁴⁶. In another case, the same association lodged a complaint against the police for failing to act against extremists disrupting a public reading of the book in 2020, which the court found to be unlawful⁴⁴⁷.

⁴⁴⁴ <https://helsinki.hu/jogsertoek-voltak-a-birsagok-lehet-ervenytelen-nepszavazasra-buzditani/>

⁴⁴⁵ <https://monitor.civikus.org/updates/2022/11/11/economic-crisis-teachers-conditions-spark-mass-protests-fidesz-government-continues-its-battle-eu-funds/>

⁴⁴⁶ <https://helsinki.hu/en/curia-verdict-against-labrisz-lesbian-association-hungary/>

⁴⁴⁷ <https://helsinki.hu/meseország-pert-nyert-a-labrisz-a-kormányhivatal-es-a-rendorseg-ellen-is/>

Funding for civil society

Funding severely limited for independent CSOs

The total income of associations and foundations in 2021 (according to latest official statistics⁴⁴⁸ available) was HUF ~1070 billion (€ ~2.8 billion) a little more than the year before (900 billion). However, this income is very unevenly distributed in the sector with 35 percent of the organisations working with an annual budget of not more than HUF 500,000 (€ ~1350) and three-quarters below five million, with the average per organisation being around HUF 21 million (€ 57,000).

About 44 per cent of the sector's income is comprised of state funding, including EU Structural Fund support distributed by the Hungarian government, while 22 per cent comes from private sources, and the remaining is made up of the organisations own and other incomes. The central state support instrument to CSOs, the National Cooperation Fund⁴⁴⁹ provide grants annually to ~4,000 organisations with a total budget of HUF 11 billion (€ ~29 million) in 2022, and nine million in 2021. Additionally, the so-called Village and Town Civil Funds (for CSOs operating in settlements under and over 5, 000 inhabitants) each distributed HUF 5 billion (€ ~13 million). The operation of these funds is rather non-transparent (e.g. grants are not searchable on the webpage), and as investigative journalists revealed⁴⁵⁰, about half of the biggest beneficiaries were organisations directly controlled by local FIDESZ politicians or their affiliates. The government also did not provide any additional funding or relief to CSOs in response to the effects of the pandemic on the sector and lagged behind civil society in treating the refugee crisis stemming from the war in Ukraine.

There are no dedicated national public funding sources specifically supporting CSOs engaged in the areas of democracy, rule of law and fundamental rights. While independent CSOs are not excluded from applying for public funding per se, they rarely have a chance to secure a grant. Therefore, they remain dependent on international philanthropic and institutional donors (although foreign funding comprises a minor part of the sector's overall income, it plays a crucial role in the income structure of these organisations), of which more and more, such as Civitates, are active (again) in Central Europe, and individual giving. The latter has gained public recognition in the past years, and was

⁴⁴⁸ Hungarian Central Statistical Office, A nonprofit szervezetek működési jellemzők szerinti száma és bevétele szervezeti forma szerint [The number of non-profit organisations broken down by characteristics of their operations and their income broken down by organisational form], https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html

⁴⁴⁹ <https://bgazrt.hu/tamogatasok/nemzeti-egyuttmukodesi-alap/>

⁴⁵⁰ Fideszes vezetésű civil szervezetek sorát támogatja a magyar állam egy új pályázati alaptól [Hungarian state to support a range of Fidesz-led NGOs with a new grant fund], <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol>

instrumental in raising support to aid the refugees arriving from Ukraine in spring 2022. CSOs themselves are also becoming more and more professional in collecting donations, especially online (e.g. through the adjukossze.hu crowdsourcing platform) and through other creative tools, such as collections by “ambassadors” and Giving Tuesday. However, the cost-of-living crisis will likely negatively impact the success of future campaigns. Indeed, the amount of the one per cent income tax assigned, and the number of people that used this opportunity decreased in 2022 compared to the year before⁴⁵¹, but as the period of collecting these donations coincided with the election campaign, the latter probably drew people’s attention elsewhere. Domestic institutional philanthropy (grant making foundations) remains very underdeveloped, with just a handful of (relatively small) actors.

⁴⁵¹ Közel 15%-kal csökkent az adó 1% felajánlók száma 2022-ben [Nearly 15% reduction in the number of 1% tax donors in 2022], <https://www.nonprofit.hu/hirek/Kozel-15-szazalekkal-csokkent-az-ado-1-felajanlok-szama-2022-ben>

Civil dialogue and right to participation

Participation remains non-existent

In theory, Act CXXXI. of 2010. provides for public participation in legislation, however, it has hardly ever been implemented: in practice, draft legislation is – if at all – usually published for comments with a very short deadline (max. 8 days). However, important acts have often not been consulted on at all, or are submitted to parliament by individual MPs, thus circumventing participation. In an effort to meet the conditionality criteria to access EU funds, an amendment of the above act was passed in summer, introducing some new sanctions for non-compliance. But, as CSOs pointed out⁴⁵², it is no more than window-dressing in the absence of the proper implementation of existing rules. Indeed, the Minister of Justice submitted this very amendment to Parliament without any prior consultation. Also, CSOs (e.g. Hungarian Civil Liberties Union, Hungarian Helsinki Committee, K-Monitor Association) must regularly go to court to obtain public-interest data and even after a positive ruling, authorities often drag their feet to implement the court's orders.

While various consultative bodies with civil society representatives do exist (such as the National Council on Sustainable Development), they are rarely convened and their functions are often formal, without any substance. Again, in the framework of meeting EU criteria, a new Anti-corruption Working Group⁴⁵³ was established towards the end of the year including representatives of relevant CSOs (e.g. Transparency International-Hungary and K-Monitor Association), but it remains to be seen whether this body will have any real impact in practice. Other forms of dialogue and civic participation have practically become non-existent, as traditional channels of advocacy and consultation with state institutions ceased to work years ago. Open letters, petitions even on the scale of the ongoing teachers' demonstrations are routinely ignored – or even vilified – by the government. While some organisations are still able to maintain good contacts with lower levels of the public administration, their results are more often than not overruled by the higher levels.

Instead of real participation, the government introduced the so-called “national consultation” i.e. questionnaires on topical issues with leading questions and distorted statements that are sent occasionally to all households. In autumn 2022 such a “consultation” on the “damages” caused by “Brussels’ sanctions” were carried out. As the government never releases any verifiable information

⁴⁵² The Government's bill on public consultation does not offer real solutions, 27 July 2022, <https://civilizacio.net/en/news-blog/the-governments-bill-on-public-consultation-does-not-offer-real-solution>

⁴⁵³ <https://eutaf.kormany.hu/korrupcioellenes-munkacsoport-ih>

on the result of the questionnaires (return rate, division of responses, etc.), it is safe to say that these exercises rather serve to promote the government's narratives than offer a real opportunity for people to express their opinions.

On the local level, opposition-led municipalities (elected in 2019) are usually open to dialogue and experiment with various participation methods, e.g. citizen assemblies (Budapest, Miskolc, Érd), participatory budgeting (Budapest and some of its districts, Pécs). However, they often lack the necessary expertise, and even more importantly have little room to manoeuvre as their competencies and financing was severely curtailed (among others, under the guise of the Covid-crisis).

CSOs push back in trying times

CSOs fight back, despite restrictive environment

In spite of the adverse conditions, civil society showed strong mobilisation several times during the year. After Russia's invasion of Ukraine, CSOs and church charities were again the first responders providing aid, shelter and support to the waves of refugees, relying almost entirely on popular donations (the government joined the effort only after several weeks).

The election campaign also mobilised much civic effort with many independent CSOs engaging in some way both locally and on the national level, especially in voter mobilisation, election monitoring and fraud prevention. For example, civil society was able to mobilise almost 20,000 volunteers to serve as election observers/vote counters, securing the presence of two independent persons in each polling station for the first time ever. CSO coalitions also used the campaign to advocate for their causes, e.g. the Civil Minimum 2022⁴⁵⁴, an outline for a future government's civil society strategy compiled by Civilisation in the previous year was eventually included in the united opposition's election program. Other CSOs and networks made similar initiatives in their respective fields, e.g. in housing.

Civilisation, as the main platform engaged in the defence of civil space remained active throughout the year, and even grew in its membership which now has 40 major CSOs. Networks of CSOs working in specific thematic fields (e.g. environment, Roma) are also active, and in the autumn a new broad cooperation of teachers', students' and parents' organisations and unions developed parallel to the protests.

As regards to public opinion, the latest available data is the poll commissioned by Civilisation and carried out in late 2021⁴⁵⁵. According to this, the public still largely views civil society positively, in part thanks to CSOs' visible efforts in the face of the pandemic: 16 percent of respondents said they or their families or friends received some kind of assistance from a CSO, up from 11 percent in 2019. In turn, 36 percent said they gave help to a CSO. At the same time, fewer respondents (47 percent compared to 65 in 2019) believed CSOs should criticise the government. In a more recent poll by

⁴⁵⁴ See: <https://civilizacio.net/hu/civil-minimum-2022>

⁴⁵⁵ <https://civilizacio.net/hu/tevekenysegek/programelem/civilkutatas-2021>

Publicus institute (November 2022)⁴⁵⁶, 72 per cent of the adult population said they support the ongoing teachers' protest.

Remaining independent media covers CSOs' activities (and hosts blogs of organisations) quite intensively, e.g., the proactive roles they played in aiding refugees, and some CSOs are also important allies to investigative journalists e.g. in corruption cases. In the last few years YouTube channels and podcasts run by activists and regularly discussing matters relevant to civil society have gained in popularity, too, e.g. the Partizán Youtube channel offering a variety of interviews and debates has 325,000 followers by now.

Increasing openness can be observed in the corporate sector towards CSOs, too, with some variations though: while some companies openly engage with critical organisations on controversial issues (such as child abuse), others are more cautious, keep a low profile or only support large, traditional charities such as the Red Cross. The Commissioner of Fundamental Rights has remained silent in most sensitive cases (thus cannot be considered as an ally of CSOs), which in May 2022 lead to a demotion of his office to category B by the Global Alliance of National Human Rights Institutions⁴⁵⁷.

⁴⁵⁶ https://nepszava.hu/3175483_felmeres-pedagogusok-beremeles-tanarsztrajk-tuntetes-publicus

⁴⁵⁷ <https://helsinki.hu/en/peers-from-other-countries-recommend-that-the-ombudsperson-is-downgraded-as-a-national-human-rights-institution/>

Recommendations

- 🔍 Refrain from abusing the special legal order and eliminate the situation where the temporary state of emergency becomes de facto permanent.

The regulatory environment for civic freedoms

- 🔍 Repeal Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life.
- 🔍 Implement the ECJ judgment in case C-821/19 in its entirety and repeal the “Stop Soros” law, criminalising assistance to asylum-seekers in submitting an asylum claim.
- 🔍 Repeal the Anti-LGBTI propaganda law which is discriminatory and limits the expression of LGBTQI+ persons and CSOs.

The right to participation and civil dialogue

- 🔍 Fully implement Act CXXXI. of 2010. on public participation in legislation and Act CXII. of 2011 on the freedom of information.
- 🔍 Prescribe that bills submitted by the Government can only be placed on the Parliament’s agenda if they include an adequate and duly reasoned documentation of an open, transparent and inclusive consultation process.
- 🔍 Prescribe that the omission of obligatory public consultation or the failure to provide detailed reasoning for not conducting public consultation constitutes sufficient reason for the annulment of the adopted law (both governmental and ministerial decrees and Acts of Parliament) on procedural grounds by the Constitutional Court.

Funding for civil society

- 🔍 Guarantee access to funding for independent civil society and ensure that funding processes are open, transparent and inclusive.
- 🔍 Ensure that there is funding transparency and equal access for all CSOs to state funding, including the National Cooperation Fund and Village and Town Civil Funds.

Safe Space

- 🔍 Respect the right to freedom of peaceful assembly and expression in line with international standards, reverse restrictions which limit teachers' right to strike.
- 🔍 Reinstate the 14 teachers who were unjustly fired and refrain from further retaliating against teachers who participate in strikes or limiting their freedom of expression.
- 🔍 Refrain from smearing, harassing and attacking civil society and creating additional administrative burdens to hamper their work.
- 🔍 Refrain from smearing, attacking and harassing LGBTQI+ persons, their rights and the CSOs that advocate for LGBTQI+ rights.
- 🔍 Elect a Media Council with a composition that ensures the authority's independence from the government and refrain from censoring independent media.
- 🔍 Refrain from banning independent journalists from the Prime Ministers press conferences and guarantee simple access to all public interest information.

About the contributor:

The Ökotárs Foundation contributes to the development of a democratic, sustainable and just society and an institutional system based on public participation by supporting citizen self-organizations.





Civic Space Report 2023

LATVIA



Key Developments

- 🔍 Overall positive environment for civil society
- 🔍 More avenues needed for public participation at local levels
- 🔍 Availability & adequacy of funding resources a significant constraint to CSO activities

Civic space in Latvia is rated as “open” by the CIVICUS Monitor⁴⁵⁸ and is generally well respected. In its 2022 Rule of Law report on Latvia, the European Commission recommended continual efforts towards “adopting the draft legislation on lobbying” and “the setting-up of a special lobby register”. Additionally, it recommended, “measures to increase the participation of civil society in decision-making at local level”.

The government has only partially implemented these recommendations. It passed the Law on Transparency of Representation of Interests or the so-called lobbying transparency law, to improve transparency in the process of representing any interests. There have been attempts to improve public participation, such as through the online TAP portal, but further work is needed at local levels. While the availability and adequacy of financial resources is one of the most significant constraints to the activities of civil society organisations (CSOs), they still had access to increased government funding in 2022.

⁴⁵⁸ <https://monitor.civicus.org/country/latvia/>

Institutional, political and socio-economic landscape

After more than 30 years since the re-establishment of independent Baltic States, Latvia has built a stable democratic state and fruitful ground for active citizenship. But there are several challenges to be addressed in building a stable civil society based on democratic values.

One of the most important elements of civil society is that they are formally and informally created social networks. At the beginning of 2023, more than 2,600 associations and foundations⁴⁵⁹ are registered in Latvia. The number of these organisations is increasing annually by around 3 to 4 per cent. However, it should be noted that not all registered organisations are active and actually working. One of the indicators that indirectly allows the number of active organisations to be established is the submission of annual reports. Data shows that 14 per cent of all organisations in 2019, 18 per cent in 2020 and 29 per cent in 2021 did not submit annual reports. In order to address the high proportion of organisations in state-maintained registers that are not active for a long period of time, the Ministry of Justice drafted proposals to amend the Law on Associations and Foundations⁴⁶⁰. This will facilitate the liquidation procedure, where CSOs who have not been active for a long time and have not reported to the State Revenue Service or the Register of Enterprises will be removed from the register.

According to the researchers, there are approximately 1,000 organisations working in the field of civil society in Latvia⁴⁶¹. This estimate is also in line with the research carried out by the Civic Alliance-Latvia on the organisations involved in the civic participation mechanisms (working groups, official meetings, councils etc) of the ministries and the Parliament (Saeima), i.e. the total number of organisations working in the field of civil society is estimated at 720⁴⁶². Other organisations (more than 25, 000) are working in different fields – the most common are sports activities and amusement and recreation activities, real estate activities (housekeeping), education.

459 According to the official database of Lursoft Ltd ., https://www.lursoft.lv/lursoft_statistika/?&id=41

460 Resources of civil society organisations: current situation and needs 2022, page 5:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

461 <https://www.mk.gov.lv/lv/media/13802/download?attachment> slide 13

462 Public Participation in the Decision-Making Process (2021):
https://nvo.lv/uploads/public_participation_in_the_decision_making_2021_cal.pdf

The public image of CSOs is generally positive and there seems to be a growing public recognition and appreciation of CSOs' activities, especially in crisis management and helping the less fortunate in recent years. Above all, officials and politicians increasingly appreciate the importance of civil society in the development of the country. This is also reflected in the trend in recent years for more civil society actors to receive the country's highest honours.

In the beginning of the year, it seemed that the crisis of the COVID-19 pandemic was overcome, but in February Russia started a brutal war of aggression against Ukraine, which created a new crisis, that strengthened solidarity in Latvia and around the world. Latvia strongly condemned Russia's aggression against Ukraine as a grave violation of international norms and sovereignty and territory. It provided support including military support, humanitarian aid, aid for war refugees⁴⁶³ and ranked first among the countries that have donated the most to Ukraine in relation to its gross domestic product (GDP).⁴⁶⁴ Civic Alliance- Latvia organised a march in support of Ukraine "Together for Ukraine! Together against Putin!", with more than 30,000 participants- the biggest manifestation since the 1990s.⁴⁶⁵ There are a lot of support activities organised by CSOs and new social initiatives - volunteer coordination, fundraising campaigns, creation and maintenance of various platforms, translation etc. The organiser of the donation drive 'Twitterconvoy' from Latvia to Ukraine, Reinis Pozņaks, was named European of the Year 2022 in Latvian by the non-governmental organisation European Movement – Latvia⁴⁶⁶.

Seimas removed the legal obstacles for the demolition of the Soviet monuments in Latvia. Meanwhile, after there was a published fundraising campaign for the demolition of the Soviet-era obelisk in Riga, with 100 000 euros donated for the demolition in less than a day⁴⁶⁷. That was one of the expressions from civil society against Russian aggression.

2022 was Parliament election year in Latvia. The campaign for Latvia's parliamentary election was dominated by the war in Ukraine, democratic values, defense.

⁴⁶³ <https://www.mk.gov.lv/en/latvia-supports-ukraine>

⁴⁶⁴ <https://eng.lsm.lv/article/society/society/latvia-ranks-first-in-aid-to-ukraine-by-gdp-share.a477661/>

⁴⁶⁵ <https://zinas.tv3.lv/latvija/gajiena-kopa-ar-ukrainu-kopa-pret-putinu-nosoda-putina-sakto-karu-ukraina/>

⁴⁶⁶ <https://eng.lsm.lv/article/society/society/twitterconvoy-organizer-named-european-of-the-year-in-latvia.a489228/>

⁴⁶⁷ <https://zinas.tv3.lv/latvija/sabiedriba/okupacijas-pieminekla-nojauksanai-saziedoti-jau-100-000-eiro/>

The regulatory environment for civic freedoms

The Constitution of the Republic of Latvia recognizes and protect fundamental rights. The existing fundamental rights chapter in the Constitution guarantees freedom of speech and thought, press freedom, freedom of association and assembly, freedom of strike, inviolability of correspondence and home.

CSOs are governed primarily by two laws – the Law on Associations and Foundations and the Public Benefit Law. CSOs are generally able to operate freely under the law without harassment by the government and can freely address matters of public debate and express criticism. The registration process is easy and accessible, and all documentation may be submitted electronically.

The core legal document establishing citizen's rights to participate in state matters (Article 101) states that: "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service. Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language⁴⁶⁸. However, as explained below, challenges remain regarding participation.

CSO participation and new transparency law

Regulatory enactments, such as State Administration Structure Law and the Cabinet Rules of Procedure, determine civic participation in the state administration, and methods for the participation – including working groups, advisory councils, participating in public consultations, providing opinions, proposals and objections in the process of drafting political and legal acts. This means that at governmental level – at least each ministry has a consultative council, and parliamentary commissions which invite CSO representatives to participate in their meetings and provide input.

In practice, CSOs have relatively easy access to politicians and civil servants responsible for public policy issues. However, the quality of the dialogue between state and CSOs generally depends on the

⁴⁶⁸ <https://www.saeima.lv/en/legislative-process/constitution>

individuals involved. Meanwhile, in survey's, organised by Civic Alliance – Latvia in 2022, findings identified the most important obstacles to CSOs activities – including 37 per cent of organisations identifying the frequency of changes in laws and regulations as an obstacle, 33 per cent the donation regulatory framework and 26 per cent the tax regulatory framework. The share of organisations which found other aspects of the regulatory framework problematic is also significant, ranging from 10 to 25 per cent.⁴⁶⁹

In 2022, Latvian Parliament passed its final reading on the Law on Transparency of Representation of Interests or the so-called lobbying transparency law. The goal of the law is to ensure transparency for lobbying interests, promote society's trust in lobbyists representing interests in public suggestion of different decisions, their development, approval and implementation, as well as ensure equal and fair opportunities for all private persons to participate in representation of interests.⁴⁷⁰

Attempts to improve public participation

Active public participation requires individuals to be willing to participate in decision-making processes, to have the knowledge and skills to do so, and to have access to information. In order to promote access to information and public participation in democratic processes, several laws and regulations have been adopted, including the Law on Openness of Information and Cabinet of Ministers' Regulations, which require public participation in the drafting of laws and regulations and require public administrations to make information available on websites.

In order to facilitate public access to information on opportunities for participation, the latest public administration solution is the Single Portal for Drafting and Coordination of Draft Legislation, or the TAP Portal, which aims to improve the environment for public participation in the process of drafting legislation, as well as to modernise the decision-making process by ensuring a more efficient, transparent and faster process of drafting and coordination of draft legislation. The TAP portal is a digital information system that started operation in September 2022. It provides a single place for draft legislation to be developed, agreed and approved, and to be sent to government. Everyone can follow the progress of legislation on the portal and watch its consideration in the public part of Cabinet meetings – both live and in video archives.⁴⁷¹ It is important to note that the TAP portal does

⁴⁶⁹ Resources of civil society organisations: current situation and needs 2022, page 6: https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

⁴⁷⁰ <https://eng.lsm.lv/article/politics/saeima/saeima-adopts-lobbying-transparency-law-after-15-years-of-debate.a477802/>

⁴⁷¹ Single Portal for Development and Harmonisation of Draft Legal Acts (TAP portal): <https://www.mk.gov.lv/en/tap-portals>

not include the parliamentary and local government levels, so information on public participation at these levels is still fragmented.

Funding for civil society

Availability & adequacy of funding resources a concern

Annual reports show that over the last three years, the proportion of financially inactive organisations remains at around 25 per cent. Revenue data show that 34 per cent of organisations had membership fees or other annual contributions and 31 per cent had income from business activities. Donations and gifts were received by 21 per cent of the organisations and grants by 14 per cent. At the same time, only 3 per cent of organisations received income from various foreign foundations.⁴⁷²

Looking at the changes over the last three years, the number of organisations showing financial activity has gradually decreased in all revenue categories. This shows that the financial activity of CSOs is decreasing. This is particularly evident in the pandemic and post-pandemic years. Overall, expenditure is down by 28.4 million EUR, while revenue is down by 10.7 million EUR. In this respect, too, the sector's financial activity may be seen to be declining.⁴⁷³

The financial sustainability of organisations is largely linked to the diversification of revenue sources. However, annual accounts data show that most organisations typically have only one major source of revenue, while the others account for an insignificant share. In this respect, it can be concluded that the financial sustainability of associations and foundations is currently weak, as a large proportion of organisations are dependent on a single source of funding.

Over the last three years, the number of organisations with donations has decreased by almost 20 per cent⁴⁷⁴. In relation to the Tax Policy reform, adopted in Latvia in 2018, CSOs warned policy-makers that it could create crises in the sector.

The precarious financial situation and weak sustainability of organisations is also indirectly reflected in their assessments of the most important constraints to their activities in the survey. 38 per cent of organisations say that tax rates are a major obstacle, while 37 per cent say that the frequency of changes in laws and regulations is a major obstacle. One in three organisations have problems with the legal framework for donations and one in four with tax laws and regulations. One in five

472 Resources of civil society organisations: current situation and needs 2022, page 5:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

473 Resources of civil society organisations: current situation and needs 2022, page 10:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

474 Resources of civil society organisations: current situation and needs 2022, page 12:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

organisations identifies the regulatory framework for business activities and the procurement process as a barrier. These assessments show that in many aspects of the administrative framework, organisations face significant obstacles that affect their overall financial stability and sustainability.⁴⁷⁵

Data shows⁴⁷⁶ that the availability and adequacy of financial resources is one of the most significant constraints to the activities of organizations, with 69 per cent rating overall financial resources as insufficient and only 23 per cent regard them sufficient. With an analysis of the data in more detail by different categories of financial resources, it can be observed that the most lacking categories are: private donations (62 per cent say that this funding is insufficient), support from state budget funds (61 per cent), donations from the commercial sector (60 per cent), support from municipal budget funds (54 per cent), and revenue from economic activities (53 per cent). Slightly less frequently, but also very frequently, the following are identified as missing financial resources: membership fees (48 per cent), grants (47 per cent), project funding from foreign donors (42 per cent).

The survey also asked representatives of organisations to indicate which activities and needs are the most difficult for them to raise funding for. Majority of respondents answered that the most difficult task to raise funds for are core activities (salaries, administrative costs, running costs).

The possibilities for the state and local authorities to support organisations are regulated by various laws and regulations. The legal framework in this area offers a wide range of choices and imposes few restrictions. For example, The Law on Local Governments (also the new Law on Local Governments) provides that a local government may adopt binding regulations to ensure the performance of its autonomous functions and voluntary initiatives. In the Law on Public Administration, the most relevant provisions regarding the possibilities of providing state aid to organisations are those regulating the conclusion of public law contracts, including delegation and participation agreements. However, in practice, problems have been identified with delegation and participation agreements, including administrative burdens. The Law on Prevention of Waste of State and Local Government Financial Resources and Property includes a provision giving the right to a public body (public administration authorities) to transfer public property and allocate premises to a public benefit organisation or social enterprise free of charge.

CSOs had access to increased government funding, after receiving approximately EUR 2 million from the National NGO Fund, which is administered by the Society Integration Foundation. In addition, the Foundation provides other programs for CSOs, funded by state⁴⁷⁷. Line ministries in the fields of

475 Resources of civil society organisations: current situation and needs 2022, page 13:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

476 Resources of civil society organisations: current situation and needs 2022, page 13:
https://nvo.lv/uploads/cso_resources_current_situation_and_needs_2022.pdf

477 <https://www.sif.gov.lv/lv/nvo-fonds>

youth, culture, environment, and other sectors also provide different grants for CSOs. There were also specific programmes for CSOs who implement activities to help Ukrainians.

Given that support from the national budget is very limited, the alternative is to attract funding from the European Union Structural Funds, but this funding does not provide for a guaranteed quota for each EU Member State, and the project conditions are cumbersome, which allows only some organisations to be able to compete with organisations from other countries with much greater capacity and resources. This is also confirmed by the latest data provided by the Ministry of Culture: in the programme “Citizens, Equality, Rights and Values” (CERV) 2,067 project proposals were submitted and 787 were supported amounting to 181.45 million EUR. Latvia has attracted 1,01 million EUR, with Latvian organisations as lead partners in only two projects.⁴⁷⁸

⁴⁷⁸ Meeting of the Council for Implementation of the Memorandum of Co-operation between Non-governmental Organisations and the Cabinet, September 28, Presentation of Ministry of Culture: <https://www.mk.gov.lv/lv/2022-gada-28-septembra-darba-kartiba>

Civil dialogue and right to participation

Several avenues for dialogue

It should be stressed that with the abolition of the Secretariat of the Special Assignments Minister for Public Integration in 2009, Latvia no longer has an institution dedicated to civic society strengthening and development policy in the country, and there is no institution to oversee this cross-sectoral policy related to all areas of state and local government policy. The pandemic has changed public administration, working organisations and how civic participation is ensured. For years, meetings of the Cabinet of Ministers' and Parliament plenary sittings are live broadcasted to provide the opportunity for every stakeholder to follow the decision-making process, but during the pandemic a new format was set – sittings are organised on digital platforms, which is more accessible to the general public, including people from regions and diaspora.

In general, the legal framework for civic participation (not civic dialogue) is favourable and public administration both in local and national level follow the rules, but civil society more often asks for non-formal consultative processes with wider society and to provide more meaningful civic engagement and feedback. A challenge for public administration is to find new ways to be more engaged with citizens and to find balance between professional civic dialogue and deliberative process with different groups of society. Thus there needs to be a strengthening of all circulation of democratic process to hold heterogeneous society together and bring different and even competing interests together with citizens' willingness and ability to compromise and cooperate for common goals.

Parliament decided to add to the National Development Plan 2021-2027⁴⁷⁹, which commits to strengthening civil society, civic initiatives and promotion of volunteering, as well as to establish an equal approach to dialogue with civil society. But there was no action to implement this political commitment both in legal framework and practice. After active lobbying from CSOs, the new government's in their Declaration⁴⁸⁰ included a paragraph with commitment to develop and support self-organisation and resilience mechanisms, and implement civic dialogue, and allocate permanent state budget funding for capacity building and strengthening of civil society. This may result in a new

⁴⁷⁹ https://www.pkc.gov.lv/sites/default/files/inline-files/NAP2027__ENG.pdf

⁴⁸⁰ Declaration of the Intended Activities of the Cabinet of Ministers headed by Arturs Krišjānis Kariņš: <https://www.pkc.gov.lv/sites/default/files/inline-files/20221214MKDeklaracija%20%281%29.pdf> Article 303

level of civic participation, but it is too early to tell. One of the civic dialogue platforms - the Council for Implementation of the Memorandum of Co-operation between Non-governmental Organisations and the Cabinet – should have implemented the reform model that was confirmed in 2018, but as it requires financial investments, this was postponed. CSOs have developed a proposal to decision-makers on how civic dialogue should be regulated and implemented.

In 2022, the New Law of Local Governments was adopted. It includes new formats of civil society cooperation, such as residents' councils.

CSOs push back in trying times

Civil society: an important actor in crises

CSOs are key actors for a strong, independent, and democratic society with a focus on a common good, on social impact and increasing societal resilience. CSOs provide critical social services, which are even more important in crisis situations, especially with rising social tensions, which can also lead to an increase in crime and violence, exacerbate other diseases and their spread, and reduce the protection of vulnerable groups. The COVID-19 pandemic proved that CSOs can reach out to the new social groups that have been failed by government safety nets, leaving no one behind. They have also mobilised resources for flexibility in ensuring social services, especially in the first few days of the crisis, where governments failed to operate effectively due to new circumstances. CSOs mobilise and coordinate local communities in crisis situations, including organising crisis response as humanitarian aid, shelter or transportation support. CSOs also coordinate activists, including volunteers, to support those in need in a crisis.

The willingness of citizens to participate and engage in social and civic activities is largely determined by indicators of social capital – trust in other people, and willingness to cooperate. The SKDS research centre has been regularly measuring various indicators of social capital for many years. The data⁴⁸¹ shows that the social capital of the Latvian population has increased significantly since 1998 where only 34 per cent rated that most people could be trusted, while in 2021 it was already 46 per cent. In the long term, only the 45-54 age group has shown a clear and consistent increase in trust, while the other age groups have been variable over the years. In cities outside Riga, trust between people has been consistently on the rise (reaching 56 per cent in 2020). In contrast, trust among those living in Riga has decreased (from 52 per cent in 2016 to 41 per cent in 2020).

The extent to which residents establish and maintain contact with their immediate neighbours, especially in terms of joint activities, can also be measured in terms of cooperation between residents. In 2021, a total of 44 per cent of the Latvian population had discussed issues related to problems in their neighbourhood with their neighbours. Significantly, this figure is almost identical to the mutual trust figure which has increased very slightly over the last decade, from 38 per cent in

⁴⁸¹ Here and in the following paragraphs, data and interpretation from the evaluation: Impact assessment of the implementation of the Latvian National Centenary Programme for the period from 1 January 2019 to 1 December 2021. Ministry of Culture. Latvian Academy of Culture, "Analytical Research and Strategy Laboratory" Ltd. Available at: <https://www.km.gov.lv/lv/media/21713/download>

2010 to 44 per cent in 2021. By socio-demographic group, mutual cooperation is more common among Latvian speakers, the population aged 45 and over and the rural population.

These findings show that activities of local communities have the potential to contribute to the cultivation of shared social capital, resulting in greater civic and social participation in the long term.

As a result of CSOs active involvement, especially in crisis management, there seems to be increasing media coverage of their local and national initiatives, as well as the inclusion of civil society representatives as experts in numerous articles in newspapers and magazines, and on TV and radio programmes.

Recommendations

To the government of Latvia

- 🔍 identify the institution responsible (at political and civil servant level) for the development of civic society and the strengthening of democracy, through cross-sectoral policies to guide and coordinate reforms;
- 🔍 develop and support mechanisms for societal self-organisation and resilience, as well as the establishment and implementation of a crisis management system, which is particularly relevant in the current geopolitical situation;

Civil dialogue and the right to participation

- 🔍 recognize and put into practice civil dialogue as equal dialogue to social dialogue;
- 🔍 take measures to increase the participation of civil society in decision-making at all levels, including local, national and parliamentary levels

Funding for civil society

- 🔍 ensure public participation in the planning and monitoring of public funding;
- 🔍 implement a targeted civic society development policy, with permanent state budget funding to strengthen civil society capacity.

About the contributor

The Civic Alliance – Latvia (CAL) is the largest umbrella organization that advocates for non-governmental sector (NGO) interests. CAL's aim is to strengthen civil society in Latvia, support the common interests of NGOs and create a favorable environment for their activities. The Civic Alliance – Latvia unites 138 members, making up a total of approximately 70,000 individuals or 70% of all persons involved in NGOs in Latvia and 27,500 individuals abroad or 11% of the Latvian diaspora.





Civic Space Report 2023

POLAND



Ogólnopolska
Federacja
Organizacji
Pozarządowych

INSTYTUT SPRAW
PUBLICZNYCH



Key Developments

- 🔍 Human rights defenders, including those working on women's rights, asylum seeker rights and LGBTQI+ rights remain under serious threat
- 🔍 Strategic Lawsuits Against Public Participation (SLAPPs) used to harass activists and independent journalists
- 🔍 Civil society quickly responds to multiple crises under difficult circumstances

Civic space has further deteriorated in Poland. In December 2021, the CIVICUS Monitor downgraded the country rating to “Obstructed” signalling this decline⁴⁸². Since then, conditions for civil society, women and LGBTQI+ defenders and journalists have worsened. Despite the European Commission's recommendation in its 2022 Rule of Law report on Poland to “improve the framework in which civil society and the Ombudsperson operate”⁴⁸³, the government has failed to do this.

Civil society resources were significantly constrained due to the refugee crisis following Russia's aggression against Ukraine and the ongoing situation at the Poland/Belarusian border, coupled with the economic crisis. Several restrictive pieces of legislation targeting civil society are currently being considered. Harassment against women human rights defenders (WHRDs) advocating for reproductive justice has continued, with several activists from the Polish Women's Strike facing renewed charges for their role in the 2020 and 2021 pro-abortion protests. Freedom of expression is significantly challenged, with journalists, LGBTQI+ activists and whistle blowers facing SLAPPs and the further erosion of media pluralism and independence.

⁴⁸² <https://findings2021.monitor.civicus.org/country-ratings/poland.html>

⁴⁸³ https://commission.europa.eu/system/files/2022-07/48_1_194008_coun_chap_poland_en.pdf

Institutional, political and socio-economic landscape

Refugee crisis: Russia's war on Ukraine & pushbacks at the Polish-Belarusian border

In 2022, NGOs in Poland tried to recover from the damage caused by the effects of the COVID-19 pandemic.⁴⁸⁴ However, this was worsened by another huge crisis, which defined the operating conditions of many organisations in Poland. As a result of Russia's armed aggression against neighbouring Ukraine, people fleeing the war, mainly women and children, arrived in Poland at the end of February 2022. More than two million refugees crossed the country's borders in a very short time (a few weeks). By the end of the year, the number of people who had crossed the Polish-Ukrainian border amounted to more than 8.5 million, of whom more than 1.5 million had registered in the country and applied for any form of assistance⁴⁸⁵.

In the absence of prior preparation for such a situation and the lack of coordination on the part of the Polish government, NGOs and individual activists took it upon themselves to organise and coordinate the entire support system. Over time, they were also supported by local self-governments. However, this meant another huge burden for organisations, which for a long time have not received any government support. The first, severely inadequate, programmes dedicated to organisations helping refugees from Ukraine appeared in mid-March 2022⁴⁸⁶. However, at the same time the organisations working with refugees receiving these funds received discriminatory directives from the government that they could not use these funds to support asylum seekers from Asia Minor, Central Asia and North Africa crossing the Polish border with Belarus.

In addition, since August 2021 some CSOs had to carry the responsibility for thousands of lives at the Polish-Belarusian border without support from the public authorities, but rather in an atmosphere of hatred caused by the official propaganda.⁴⁸⁷ As a result of the dramatic situation on the Polish-Belarusian border due to the actions of the services on both sides, including Polish state authorities towards people who want to apply for international protection in Poland (sending a foreigner back

⁴⁸⁴ <https://fakty.ngo.pl/raporty/rok-w-pandemii-2020-2021>

⁴⁸⁵ <https://data.unhcr.org/en/situations/ukraine>

⁴⁸⁶ <https://niw.gov.pl/10-mln-zl-dla-ngo-pomagajacych-uchodzcom-i-uproszczenie-procedur-zlecania-zadan/>

⁴⁸⁷ <https://oko.press/kryzys-humanitarny-na-granicy-polsko-bialoruskiej-grupa-granica-pomogliśmy-14-tys-osob>

to the border line), there have already been 30 documented deaths and 195 people are considered missing⁴⁸⁸. The crisis remains unresolved, and there have also been dangerous accidents related to crossing the border where a so-called technical barrier has been erected.

The routine use of detention of persons (including minors) who are waiting for their applications for international protection to be examined is also concerning. This results in overcrowding in guarded centres. Asylum seekers should stay in the centre for up to three months, yet this period is de-facto prolonged. Although this is not illegal, detention is in most cases also not required by law. Given that the living conditions in the centres are poor and medical and psychological care is insufficient, the routine use of detention under these circumstances is alarming.⁴⁸⁹ This has also been highlighted in a report by National Mechanism for the Prevention of Torture (NMPT) on living conditions in Polish detention centres.⁴⁹⁰

In 2022, courts have reached several decisions regarding the legality of pushbacks. The Public Prosecutor's Office discontinued proceedings against persons providing humanitarian assistance. Previously, it had initiated proceedings for smuggling people and assisting in illegal border crossings. (These mainly concerned volunteers of the Club of Catholic Intelligentsia). Additionally, several courts have confirmed that border guard officers broke the law by using pushbacks.⁴⁹¹ However, pushbacks continue.

Ongoing rule of law crisis

The events presented above were accompanied by a continuing dispute between the Polish government and the European Commission and other European Union institutions regarding violations of the rule of law in Poland. The Polish government has not adopted any law that would remove the legal defects of Poland's most important judicial bodies. It has also failed to take any action that would lead to the implementation of the judgments of the Court of Justice of the European Union that have already been handed down or to safeguard measures adopted by the same court. In contrast, the Constitutional Tribunal, controlled by the parliamentary majority, has issued several

⁴⁸⁸ https://hfhr.pl/upload/2022/12/sprawozdanie-grupa-granica-pazdziernik-listopad_1.pdf, Kryzys na granicy polsko-białoruskiej. Ponad 6 tys. próśb o pomoc, pół tysiąc interwencji medycznych. Grupa Granica podsumowała rok 2022 (wyborcza.pl)

⁴⁸⁹ <https://bip.brpo.gov.pl/sites/default/files/2022-06/Raport%20KMPT%20-Sytuacja%20cudzoziemc%C3%B3w%20w%20o%C5%9Brodkach%20strze%C5%BConych%20w%20dobie%20kryzysu%20na%20granicy%20Polski%20i%20Bia%C5%82orusi.pdf>

Art. 403. - Ustawa o cudzoziemcach (lexlege.pl)

⁴⁹⁰ Raport KMPT -Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi.pdf (brpo.gov.pl)

⁴⁹¹ <https://hfhr.pl/upload/2022/12/hfhr-legal-brief-on-push-back-judgements-eng.pdf>

rulings declaring the provisions of the EU Treaties incompatible with the Polish Constitution⁴⁹². The ongoing dispute with the European Commission resulted in the freezing of the transfer of funds from the National Recovery Plan to Poland. By the end of the year, the Polish government had not even sent an appropriate payment request to Brussels.

Culture of impunity for those in power

The parliamentary majority postponed the date of the local elections by six months through a law adopted by Parliament under the express procedure (without any consultation and after rejecting amendments tabled by the opposition parties or the opposition-controlled upper house of Parliament). Originally, these elections should have been held in the early autumn of 2023, probably about a month before the parliamentary elections. According to the parliamentary majority, such a collision of dates would have made it difficult to organise the elections and to separate the financing of the two campaigns transparently. However, a new date has been set for spring 2024, when this vote will clash with the European Parliament elections. Some experts believe that the main reasons for this change was political.⁴⁹³ Some underline that it was also unconstitutional.⁴⁹⁴ It also creates a dangerous legal precedent for the possibility of moving other elections in the future if they are inconvenient for some in the ruling party.

A culture of impunity amongst those who hold political office is growing. At the end of 2022, the legislature introduced impunity for mayors who broke the law to support the United Right's drive to organise the 2020 presidential election based entirely on postal voting (which was a great failure but generated huge costs from public funds).⁴⁹⁵ The incumbent president at the time, Andrzej Duda (associated with the United Right), was the only candidate who could campaign for the election given his Presidential status. He did so under the pretext of fighting the COVID-19 pandemic, with his counter-candidates complying with health restrictions. NGOs successfully fought in the courts for the rule of law, holding those breaking the law at the time accountable. Therefore, the ruling majority introduced an abolition and amnesty.

These events have been accompanied by the persistence of a high degree of polarisation in Polish society fuelled significantly by the government-controlled public media, private media close to the

⁴⁹² https://poland.representation.ec.europa.eu/news/postepowania-ke-wobec-polski-2022-07-15_pl,informacja-wyroki-ws-push-back-grudzien-2022.pdf (hfhr.pl)

⁴⁹³ <https://www.rp.pl/polityka/art37390611-flis-wybory-samorzadowe-w-2024-r-pis-sie-przestraszyl-i-zrobil-glupote>

⁴⁹⁴ <https://www.rp.pl/opinie-prawne/art37486101-marek-zubik-przesuniecie-terminu-wyborow-nie-ma-podstaw>

⁴⁹⁵ <https://notesfrompoland.com/2020/04/23/polands-postal-election-enveloped-in-confusion-as-government-pushes-ahead-before-legislation-passed/>

authorities and lavishly funded by them. All these trends have only strengthened over the time and were even more visible during 2022.

Economic crisis

There was also growing social discontent related to the deteriorating economic situation, especially inflation, which approached 17 per cent by the end of the year.⁴⁹⁶ In addition to the government's economic decisions and social policies, the war in Ukraine and the associated rise in global energy commodity prices contributed to this. As the events at the beginning of 2023 showed, the Polish government's manual control of energy commodity prices, especially fuel prices, may also have contributed to the inflation rate in the preceding year.⁴⁹⁷ The entire situation and the fall in the purchasing power of money exacerbated negative public sentiment during the year. An intensification of this trend can be expected in the following months of 2023.

⁴⁹⁶ <https://stat.gov.pl/wykres/1.html>

⁴⁹⁷ <https://tvn24.pl/biznes/pieniadze/orlen-inflacja-grudzien-2022-ile-wynioslaby-inflacja-gdyby-orlen-nie-stabilizowal-cen-ekonomisci-mbanku-komentuja-6596634>

The regulatory environment for civic freedoms

Article 57 of the Polish Constitution guarantees the right to the freedom of peaceful assembly. The Act on Assemblies, adopted in 2015, met all modern requirements of regulating peaceful assembly. However, in 2016, the ruling majority made an amendment, subject to wide criticism. It introduced provisions on cyclical assemblies, which raise objections. Among other things, they are vague and favour one type of assembly. In particular, it restricts the ability of civil society to stage counter-protests or spontaneous protests at the same time as a designated cyclical protest.⁴⁹⁸

Most problems connected with protection of peaceful assemblies took place in 2020 and 2021 in relation to the COVID-19 pandemic and the verdict of the Constitutional Tribunal which ruled to impose a near-total abortion ban in October 2020.

Further information on the practice of freedom of peaceful assemblies is described in the section on safe space.

Draft laws concerning for CSOs

The Act on Associations was significantly amended in 2015.⁴⁹⁹ It introduced new solutions to reduce conflicts of interest and eased the rules for the establishment of associations. The law itself meets international standards and executes Article 58 of the Polish Constitution.

With regards to the conditions for operations of NGOs, in 2022, some regulations affecting the civil society were introduced, but none of them came into force.

With amendments to the regulations of education organisations (the Education Act), the so-called "Lex Czarnek" (vetoed by the President of Poland in March 2022⁵⁰⁰) was revived, once again enacted

⁴⁹⁸ <https://obserwatoriumdemokracji.pl/ustawa/projekt-ustawy-o-zmianie-ustawy-prawo-o-zgromadzeniach-druk-sejmowy-1044/>

⁴⁹⁹ <https://publicystyka.ngo.pl/dwa-lata-po-wejsciu-w-zycie-prawa-o-stowarzyszeniach;>
<https://publicystyka.ngo.pl/nowelizacja-stowarzyszen-tak-powinny-wygladac-konsultacje>

⁵⁰⁰ <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=51EDC1B730F3D2AFC125879D006B1B40>

and once again vetoed in December 2022.⁵⁰¹ The Minister of Education and Science claims he is going to submit the same bill for the third time.⁵⁰² Each time the legislative process drains the resources of NGOs, who constantly have to oppose and mobilise against this restrictive legislation. As a consequence, they cannot focus on their mission and are burning out. The proposed bill includes provisions directly regulating the operation of NGOs in schools. These provisions introduce certain bureaucratic procedures that in practice make it very difficult for NGOs to function in educational institutions. There are concerns around how long it will take for an NGO to obtain a "permit" to operate in a school, as well as the fact that in the end one person - the superintendent - will arbitrarily decide on such a permit (they may issue a negative opinion even if the school and the parents give a positive opinion).

A draft law on foreign funding of NGOs is currently with the Parliament since the end of March 2022 and is yet to be passed.⁵⁰³ The draft imposes new obligations on some groups of organisations and will lead to stigmatisation and additional burdens on NGOs. As National Federation of Polish NGOs underlines it is harmful because:

- 🔍 Additional, very extensive reporting duties would be imposed on a large part of organisations, and they would have to identify all of their media communications by adding information about donors.
- 🔍 Private donors would lose their privacy (their personal data will be made public, which will include individuals both from Poland and from abroad).
- 🔍 Revenues of organisations, including foreign funds, would be displayed and presented as 'suspicious'.
- 🔍 The mechanism of control over organisations would be expanded and it would have new financial and penal sanctions at its disposal.

The act is similar to the Hungarian Act on transparency (LexNGO) which the Court of Justice of the European Union deemed incompatible with the EU law.

Freedom of Expression characterised by SLAPPs and lack of pluralism

⁵⁰¹ <https://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=9CDBBCB1C8E1A0F0C12588E200308ED9>

⁵⁰² <https://fakty.tvn24.pl/oglada-j-online,60/przemyslaw-czarnek-zapowiada-ustawe-lex-czarnek-3-0,1129554.html>

⁵⁰³ <https://drive.google.com/drive/folders/1lnopDtq2syN5ujkhFfMsHUuLSF853m1d>

Articles 54 and 61 of the Constitution, the Press Law⁵⁰⁴ and Access to Information Law⁵⁰⁵ regulate media freedom in Poland. According to the Press Law (Articles 43 and 44.1), *"Whoever uses violence or unlawful threats in order to force a journalist to publish or refrain from publishing press material or to undertake or refrain from intervening in the press (...) shall be subject to the penalty of deprivation of liberty for up to 3 years; Whoever obstructs or suppresses press criticism (...) shall be subject to a fine or the penalty of restriction of liberty. (2) The same punishment shall be imposed on anyone who, abusing his position or function, acts to the detriment of another person on account of press criticism published in a socially legitimate interest."*

At the same time, the press law emphasises the role of the press: Art. 1. *The press, in accordance with the Constitution of the Republic of Poland, shall enjoy freedom of expression and shall realise the right of citizens to reliable information, openness of public life and social control and criticism.*

However, these laws do not work in practice. Several journalists have been sued or are facing prosecution. This commonly takes place through Strategic Litigation Against Public Participation (SLAPPs), through the criminalisation of defamation under Article 212 of the Criminal Code. The use of SLAPPs which has a chilling effect on critical journalism has been condemned by the journalistic community, civil society organisations and the Ombudsman who have called for a change in these provisions for years.⁵⁰⁶

For example, on 9th May 2022, *Gazeta Wyborcza* and its journalist Agnieszka Kublik received a pre-litigation warning regarding alleged defamation. This comes after she wrote a report which quoted testimony during the Senate Investigative Committee on Pegasus spyware in which an individual alleged that Piotr Woyciechowski, former head of the Polish Security Printing Works and a member of the Polish National Foundation, was involved in a blackmailing scheme. According to the International Press Institute (IPI), *Gazeta Wyborcza* faces approximately 90 SLAPP cases.⁵⁰⁷ Additionally, civil lawsuits for high amounts are sometimes brought by publicly funded institutions, financed with state money. At the end of 2022, the chairman of the National Broadcasting Council, the state regulator of the audio visual market, Maciej Świrski, initiated administrative proceedings against the authors of award-winning journalistic investigation on the use of the Smolensk catastrophe to build political capital by Antoni Macierewicz, a Law and Justice (PiS) politician. The chairman is accusing the authors of promoting false information and actions contrary to the Polish state and endangering public safety. The President of the Council must determine whether the possible dissemination of untrue and unreliable information may violate the terms of the broadcasting concession granted to TVN S.A., the television station that broadcasted the report.

⁵⁰⁴ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19840050024>

⁵⁰⁵ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20011121198>

⁵⁰⁶ <https://oko.press/knebel-dla-mediow-zwlaszcza-lokalnych-wyrzucmy-art-212-2-z-polskiego-prawa;>

⁵⁰⁷ <https://ipi.media/increased-attempts-to-silence-polands-free-media-through-lawsuits-gazeta-wyborcza/>

Numerous media outlets published the journalist's material with free access and the journalistic community acted in solidarity with the authors.

Another well-intentioned but unfulfilled provision refers to pluralism (Art. 2 of the Press Law), which states: *"The state authorities, in accordance with the Constitution of the Republic of Poland, shall create the conditions necessary for the press to perform its functions and tasks, including enabling the editorial offices of daily newspapers and magazines that are diversified in terms of their programme, thematic scope and presented attitudes."* These conditions are not fulfilled by state institutions in any way. On the contrary, state-controlled companies and central government institutions use public money to ideologically or politically support the press close to them. This happens through state subsidies and the allocation of advertisements. Advertisements by central government and state-owned companies are targeted at selected media (close to the ruling party), regardless of their circulation and how that circulation is purchased.⁵⁰⁸ In different institutions, this process takes place with varying degrees of intensity. However, there is certainly no system in place to ensure pluralism.

The provisions of the Press Law stipulate in Article 3 that: *"A printing and distribution employee shall not restrict or otherwise impede the printing and acquisition of newspapers, magazines or other press publications accepted by the company for printing and distribution because of their editorial line or content."* However, in practice, entities linked to the authorities - state-owned companies - violate the law's provisions by obstructing the distribution of the press without suffering consequences. For instance, Ruch S.A. a company owned by state-controlled oil company, Polski Koncern Naftowy Orlen S.A. (PKN Orlen), has refused to distribute the new newspaper *Zawsze Pomorze*, founded by journalists who left *Dziennik Bałtycki* after it was taken over by PKN Orlen.

PKN Orlen takeover- a massive blow to media independence

PKN Orlen is a powerful company in which the state treasury owns 49.9% of the shares and a decisive vote. In 2021, Orlen took over the Polska Press Group, from a private owner, which comprises of 20 regional dailies (and about 150 local weekly newspapers and 10 thematic internet portals with a wide reach). Outside this group, there are only five regional titles, owned by smaller owners. The change of Polska Press' ownership signals serious concerns since PKN Orlen's chairman - Daniel Obajtek - has close ties to Poland's ruling party and has even been typecast as Poland's Prime Minister.

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https://www.researchgate.net/publication/359603356_OKRES_RZADOW_ZJEDNOCZONEJ_PRAWICY_Analiza_wydatkow_reklamowych_spolek_skarbu_panstwa_SSP_w_latach_2016-2021_Aneks_Wydatki_reklamowe_ministerstw_i_centralnych_urzedow_w_2021_roku_na_podstawie_monitorin

Immediately after taking over the media company, Obajtek introduced Dorota Kania, a journalist, to its board of directors. She is associated with private media and has favourably reported on the activities of the United Right, which has been in power since 2015, with PiS leading the way.

While the takeover was approved by Poland's competition regulator, UOKiK, the previous Ombudsman Adam Bodnar challenged the decision at the regional court of competition which on 7th June 2022, dismissed the appeal. Poland's current Ombudsman, Marcin Wiącek decided against filing a secondary appeal against a recent court ruling, which several media outlets condemned.

Access to information frequently blocked

Freedom of information is guaranteed by Article 61 of the Polish Constitution and regulated by the Access to Information Act. Everybody is entitled to request information. The right to information and the Act is crucial for civic participation. In addition, the Press Law mentioned above, refers to this Act as a procedure in which journalists can obtain information.

2022 was not as fraught with problems related to the right to information as in 2021 during which access to information was blocked by several pieces of legislation and a request by the Supreme Courts' First President for the Constitutional Court to declare several provisions of the Act on Access to Public Information unconstitutional.⁵⁰⁹

However, in 2022 Poland was subject to the Universal Periodic Review (UPR), which further highlighted the challenges of access to information.⁵¹⁰ As identified, the right to information does not work and if public authorities "skillfully" use existing procedures to withhold information, there is a good chance they will succeed, with no real sanction for doing so.

Court procedures for protecting the right to information are structured in such a way that it is possible to delay the answering of FOI requests for years. First, the obligated entities can claim that the requests do not concern public information. When they lose in court, they restrict it on grounds such as the protection of other rights. Ultimately, the cases may end up in court for several years.

A common tactic used is changing the reasons for withholding information and the only sanction is usually a small reimbursement of court costs to the winner, paid from the public budget anyway (if the public entity loses). In very rare cases, a fine can be enforced and is also paid from public money. A viable sanction may be the criminal provision of Article 23 of the FOI Act. But in the absence of the rule of law, it does not work either. The prosecution cannot be counted on to bring an indictment against institutions associated with those in power. With persistent efforts, private parties can

⁵⁰⁹ <https://siecobywatelska.pl/problems-with-freedom-of-information-in-2021-state-of-play/?lang=en>;

⁵¹⁰ <https://siecobywatelska.pl/watchdog-polands-submission-in-the-4th-cycle-of-the-universal-periodic-review/?lang=en>

become subsidiary prosecutors. But this route was also undermined by a judgement of the District Court in Warsaw (IX Ka 815/22). The court ruled that in cases involving access to information, as concerning the general good of transparency in public life, neither a natural person nor a legal entity can have the status of a victim, and therefore cannot become a subsidiary accuser. A cassation has been filed in the case. If the verdict is upheld, there is no sanction for failure to realise the right to information. Nor is there any possibility for citizens to act on their own in the face of the inaction of a prosecution service which is dependent on the ruling majority.⁵¹¹

Protection of minority rights

The lack of an encompassing statutory definition of hate speech (with the exception of Article 257 of the criminal code) or hate crime has remained a key problem for years.⁵¹² As the Ombudsman points out, *crimes committed on the basis of prohibited grounds of discrimination, such as sexual orientation, gender identity, sex, disability and age do not constitute specific crimes (so-called hate crimes) under the current criminal law.*⁵¹³ This translates into the ineffectiveness of prosecuting crimes committed on the basis of protected characteristics, or the possibility of failing to reliably estimate the scale of the phenomenon.⁵¹⁴

Moreover, as the association of independent prosecutors Lex Super Omnia points out, with this lack of rules, there are also cases of discretionary interference by superiors in ongoing proceedings.⁵¹⁵

Discrimination against the German minority

On 4th February 2022, the Minister of Education and Science issued a decree according to which, as of 1 September 2022, the language of all national and ethnic minorities will be taught at the current rate of three hours per week - with the exception of the German minority, for which a reduced rate of one hour per week is envisaged. Another decree of the Ministry of Education and Science has changed to the detriment of the rules for calculating subsidies for pupils or students belonging to the

⁵¹¹ <https://siecobywatelska.pl/apelacja-w-sprawie-fundacji-lux-veritatis-ustne-uzasadnienie-wyroku/>

⁵¹² [Napaść z powodu ksenofobii, rasizmu lub nietolerancji religijnej] - Art. 257. - Kodeks karny. - Dz.U.2022.1138 t.j. - OpenLEX

⁵¹³ Marcin Wiącek wskazuje rządowi, co trzeba uczynić na rzecz równego traktowania. Odpowiedź Pełnomocnik Rządu ds. Równego Traktowania (brpo.gov.pl)

⁵¹⁴ <https://bip.brpo.gov.pl/pl/content/rhttps://drive.google.com/file/d/1auwLmpeaNPTitn66TbgFC7I43rWE-Wh0/viewpo-rowne-traktowanie-rzad-odpowiedz>

⁵¹⁵ PRZEJAWY EROZJI SYSTEMU EGZEKOWANIA PRAWA – raport LSO na temat ścigania przestępstw z nienawiści w praktyce polskiej prokuratury w latach 2016 – 2022 – Stowarzyszenie Prokuratorów "Lex super omnia" (lexso.org.pl)

German minority, for whom the minority language is taught in the form of additional study of that language.

The Ombudsman pointed out that these ordinances led to a significant worsening of the legal situation of a certain group of Polish citizens solely based on their German origin.⁵¹⁶ In addition, writing to the President of the Council of Ministers, he pointed out that the ordinances exceeded the statutory delegation and indicated that they were unconstitutional. However, he received a reply that the Constitutional Tribunal is responsible for deciding on compliance with the Constitution. This course of action shows once again how the protection of minority rights is affected by the crisis of the rule of law, as the Constitutional Court is not considered an independent body. At the same time, for the last two years it has considered only one complaint referred by the Ombudsman, and in 2022 it held only nine hearings related to six cases. Thus, referring the Ombudsman to the Constitutional Court can only be a manifestation of the cynicism of the authorities.

In April 2022, however, a complaint of discrimination was filed with the European Commission by the Association of German Socio-Cultural Associations.⁵¹⁷

⁵¹⁶ <https://bip.brpo.gov.pl/pl/content/rpo-premier-mein-jez-niemiecki-ograniczenia-odpowiedz>

⁵¹⁷ <https://edukacja.dziennik.pl/aktualnosci/artykuly/8395976,mniejszosc-niemiecka-skarga-polski-rzad-komisja-europejska.html>

Safe space

Intimidation and harassment, including through administrative proceedings, against activists taking part in the 2020-21 Women's Strike and other demonstrations have been ongoing.

Pro- abortion and other activists targeted

Activists who help with access to safe abortion are subject to ongoing repression. In 2022, there was a high-profile trial against Abortion Dream Team activist Justyna Wydrzyńska, the first of its kind in Europe. The activist decided to assist a person who came to her for help with a pharmacological abortion. Possession of drugs for pharmacological abortion brought from abroad for personal use is not illegal in Poland, but assisting in abortion itself is. Wydrzyńska, who was charged with “helping with an abortion” and “possession of medicines without authorisation for the purpose of introducing them into the market,” was found guilty of aiding with an abortion and sentenced to eight months of community service⁵¹⁸. During the trial several counter-protests have been staged by the pro-life activists and other religious fundamentalists.⁵¹⁹

On 20th October 2022, the District Public Prosecutor's Office in Warsaw again filed an indictment against the leaders of the Women's Strike- Marta Lempart, Klementyna Suchanow and Agnieszka Czerederecka-Fabin, who are accused of 'bringing danger to the life and health of many people' in connection with the organisation of October 2020 protests against the Constitutional Tribunal's verdict to impose a near-total ban on abortion.⁵²⁰ They may face up to eight years in prison. In addition, Lempart⁵²¹ also faces charges for insulting police officers and publicly praising crimes during an interview where she discussed vandalism of churches and disruption of masses by protesters and is facing over 100 criminal charges in total.⁵²²

⁵¹⁸ <https://europe.ippf.org/media-center/poland-ippf-en-appalled-guilty-verdict-case-justyna-wydrzynska>

⁵¹⁹ <https://monitor.civicus.org/updates/2022/04/30/judicial-harassment-pro-abortion-activist-activists-helping-refugees-polandbelarus-border/>

⁵²⁰ <https://civicspacewatch.eu/poland-prosecutors-indict-abortion-protest-leaders-for-causing-epidemiological-threat/>

⁵²¹ <https://defendthedefenders.eu/marta-updates-people-moving-more-towards-love-and-not-hate/>

⁵²² <https://monitor.civicus.org/updates/2022/11/04/prosecutors-file-indictment-against-womens-rights-activists-government-continues-target-whrds/>

Additionally, on 29th November 2022 Joanna Scheuring-Wielgus, a member of the Left (Lewica) party, was charged with "offending religious feelings" and "malicious interference with religious worship" under the Polish Criminal Code punishable with up to two years in prison. The charges stem from the MPs' participation in the October 2020 pro-abortion protests, where she and her husband held a banner in a Toruń church reading, "Woman, you can decide for yourself". In December 2020, Prosecutor General Zbigniew Ziobro initiated a motion to strip Scheuring-Wielgus of her parliamentary legal immunity for the protest, which the Polish Parliament voted in favour of in November 2022.⁵²³

Dominika Przychodzeń from the Warsaw-based activist group "Cień Mgły" has several proceedings filed against her for taking part in different protests.⁵²⁴ Charges against her are initiated under the pretext of "blocking the road" (Article 90 of the Code of Offenses), "not obeying orders", "refusing to identify oneself" (Article 54), "failure to comply with COVID restrictions" (Article 116 of the Code of Petty Offences), "placing advertisements in a place not intended for this" (Article 63a of the Act) - mainly concerning writing on the pavement with chalk spray, i.e. washable. Police have visited the activists' mother on several occasions which she believes is aimed at harassing her.⁵²⁵

Activists are also sometimes punished in connection with 'emotional' statements. In the case of Elżbieta Podleśna, the activist was found guilty of insulting a police officer. Charges were brought against her after she led the rescue of refugees drowning in a swamp. During the rescue, a non-uniformed police officer approached her demanding identification and tried to push her away. The court of first instance found her guilty of insulting the police officer as she had used the words 'rogue', 'murderer' and 'boor' against him. She had therefore shown "contempt during and in connection with activities in the nature of official duties".⁵²⁶

While activists are prosecuted under frivolous pretences, police officers who have used excessive force on several occasions against people exercising their right to peaceful assembly, have faced no consequences for breaking the law.⁵²⁷

LGBTQI+ defenders face lawsuits

⁵²³ <https://civicspacewatch.eu/polish-mp-charged-for-taking-part-in-pro-abortion-protest/>

⁵²⁴ <https://oko.press/cien-mgly-na-celowniku-dominika-przychodzen>

⁵²⁵ <https://en.odfoundation.eu/a/471729,dominika-przychodzens-two-polands-how-an-activist-oppressed-by-the-state-ruled-by-the-law-and-justice-helps-refugees/>

⁵²⁶ <https://oko.press/policjanta-masz-sie-sluchac-zawsze-i-wszedzie-sad-we-wlodawie-skazuje-elzbieta-podlesna>

⁵²⁷ <https://oko.press/policja-sciga-osoby-ktore-skrytykowaly-brutalnego-wobec-manifestantki-policjanta>

There have also been several Strategic Lawsuits Against Public Participation (SLAPPs) brought against LGBTQI+ defenders. One of the most famous cases is that of the LGBTQI+ campaign, the Atlas of Hate. Four activists began monitoring anti-LGBTQI resolutions against "LGBT ideology" passed by several municipalities. When they found out that local governments had adopted such a resolution, they created the Atlas of Hate, a map to document the anti-LGBTQI+ resolutions.⁵²⁸ In response, local governments filed several lawsuits against the activists for defamation. They are supported by the fundamentalist religious organisation Ordo Iuris. At the end of 2021 the first judgement of acquittal was delivered in a lawsuit brought by the Przasnysz powiat and Ordo Iuris. The court dismissed the case against the Atlas of Hate and charged the plaintiff with costs in the amount of PLN 4,337 (924 €). At the end of 2022, the court in Piotrków Trybunalski dismissed the suit and acknowledged that the activists were acting in the public interest.⁵²⁹

In 2019, the Ombudsman filed nine complaints to administrative courts regarding resolutions passed by local governments against LGBTQI+ persons. All the contested resolutions were found by the provincial administrative courts to have been adopted without legal basis and to be invalid due to a gross violation of the law. In 2022, the courts started to consider the cassation complaints of the municipalities, which were dismissed. As a result, in 2022, the Ombudsman wrote to 24 municipalities and 12 counties that had upheld the discriminatory resolutions (as of July 2022, there were still about 80 of them) asking them to be repealed. Most of the local governments to which the Ombudsman wrote did not change their approach.⁵³⁰

However, thanks to the advocacy work of NGOs, provisions have been included in the Partnership Agreement and individual programmes (FENIKS) to prohibit grants that use discriminatory and illegal practices. This follows directly from Article 9(3) of EP and Council Regulation 2021/1060. The effectiveness of these provisions will depend on the work of the monitoring committees of EU funds. Organisations upholding fundamental rights are members of these committees. At the same time, the Ordo Iuris Foundation, which provides legal support to local authorities adopting anti-LGBT resolutions, has also entered the committees.

⁵²⁸ <https://atlasnienawisci.pl/>

⁵²⁹ <https://notesfrompoland.com/2022/12/22/activists-mapping-polands-anti-lgbt-zones-win-in-court-against-county-that-sued-over-atlas-of-hate/>

⁵³⁰ RPO: uchylić samorządowe uchwały "anty-LGBT" tam, gdzie jeszcze obowiązują. Odpowiedzi samorządów (brpo.gov.pl)

Funding for civil society

Closer to elections: funding remains a challenge

As regards to national public funding, in 2020, 26 per cent of the incomes came from the self-governments, 17 per cent from the central government and 6 per cent from tax designation by Polish taxpayers.⁵³¹ These proportions may change a lot as a result of the new tax system and the upcoming elections.

Firstly, personal income tax was significantly reduced in 2022, and this means that in 2023 less money from the budget will be received by local governments whose income is strongly linked to this tax. Local governments will be forced to forego some of their expenditures, and this will likely affect the funding of NGO activities.

On the other hand, however, it is possible that some organisations will benefit from the tax changes. Due to the tax reduction, the government had to compensate for the losses of organisations benefiting from the so-called “one percent mechanism”. The organisations who applied for the special statute of Public Benefit Organisation are entitled to get funding from individual taxpayers who decide to assign one per cent of their income tax to such an organisation. Almost 16 million taxpayers⁵³² decided to use the mechanism in 2022. There are 9,191 organisations entitled to get such funding in 2023⁵³³ (out of 138,000)⁵³⁴. Therefore, the mechanism is an important source of income for several organisations.

Some CSOs have stepped in to replace the state in terms of treatment and rehabilitation. However, they need to have money for these activities. Under public pressure, the government in mid-2022 increased the share of social organisations in this income tax mechanism from one per cent to 1.5 per cent, which will relate to the income tax due for 2022. Another benefit may accrue to organisations involved in sport, culture and education, as the tax changes introduce additional relief for taxpayers supporting such activities.

⁵³¹ <https://drive.google.com/file/d/1SMFeQ9KgYbdBo9u7Bt62GLYBUrDZRRnQ/view>

⁵³² <https://www.podatki.gov.pl/media/8580/informacja-dot-kwot-1-nale%C5%BCnego-podatku-dochodowego-od-os%C3%B3b-fizycznych-za-2021-r-przekazanych-organizacjom-po%C5%BCyku-publicznego-w-2022-r.pdf>

⁵³³ https://niw.gov.pl/opp/wykaz-opp/?export=XLXS&data_scope=all&catalog=150

⁵³⁴ <https://publicystyka.ngo.pl/nawosc-raport-kondycja-organizacji-pozarzadowych-2021-zaangazowane-mimo-przeciwnosci>

However, the upcoming elections mean that some of the grant money from the central budget will probably only start to go to certain social organisations. This is because non-transparent procedures and manual control over state subsidies mean that many organisations have long been excluded from receiving subsidies or, at the very least, are less likely to receive them than organisations associated with the authorities. This is because analyses of the grants awarded show that the National Freedom Institute, a governmental agency responsible for allocating funding to civil society, allocates the largest grants to organisations associated with the ruling PiS party. An even more pronounced use of public funds for the benefit of organisations close to the ruling parties takes place in various ministries. The best example is the Justice Fund, controlled by the Minister of Justice (according to the report of the Supreme Chamber of Control,⁵³⁵ these funds were spent in violation of the principles of openness and purposefulness and economy of expenditure and did not serve the implementation of separate and specifically defined state tasks, but rather served the political interests of the party controlling the ministry). Similar irregularities were observed within the dedicated funds distributed at the end of 2022 by the Minister of Education and Science.⁵³⁶ The temptation to subsidise friendly and sympathetic organisations can be even greater closer to the elections⁵³⁷.

State sources are also lower than they should be because of the lack of funds from the National Recovery Plan and the Cohesion Fund as a result of the rule of law crisis.

Although there is no research yet, it can be assumed that the share of donations from private individuals in the budgets of organisations assisting refugees from Ukraine have increased significantly in 2022.

⁵³⁵ <https://www.nik.gov.pl/aktualnosci/realizacja-zadan-funduszu-sprawiedliwosci.html>

⁵³⁶ See more: <https://tvn24.pl/premium/dotacje-ministerstwa-edukacji-i-nauki-przemyslaw-czarnek-rozdal-kolejne-31-milion-zlotych-kto-je-otrzymal-6209719> and <https://oko.press/willa-na-mokotowie-dla-fundacji-zwiazanej-z-pis-to-prezent-od-ministra-czarnk>

⁵³⁷ https://docs.google.com/document/d/1d88W3uZevPq0MYfE2RL_latysK9-oMbq/edit; <https://oko.press/willa-na-mokotowie-dla-fundacji-zwiazanej-z-pis-to-prezent-od-ministra-czarnka>

Civil dialogue and right to participation

Public Benefit Works Council fails to promote civic dialogue

The Public Benefit Works Council is the only body that institutionalises the principle of civic dialogue and cooperation between the public sector and the third sector. It complements the institutions implementing the principle of social dialogue including the Joint Commission of Government and Local Government, the Joint Commission of Government and Episcopate, and the Council for Social Dialogue. It is made up of representatives of government administration bodies and units subordinate to them or supervised by them; representatives of local government units; representatives of non-governmental organisations, unions and alliances of non-governmental organisations. The term of office of the Council is three years, with the current Council's term beginning at the end of 2021.

While an important body, the Council is heavily overburdened and does not serve as a place for conversation between civic organisations and the government. The civil society representatives on the council are ultimately decided by the Minister and his advisory body called the Chairman of the Public Benefit Committee. Unfortunately, as a result of NGO representatives being appointed by politicians, the Council does not include people who have been working in the NGO sector for years and, among others, the CSOs representatives who won the most votes. Due to the lack of elections (and the fact that Council members are ultimately appointed by the Chair of the Public Benefit Committee), the Council does not represent the NGO sector in Poland.

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Convention of Voivodship Councils of Public Benefit Activity

Another form of dialogue, although not formally established, is the Convention of Voivodship Councils for Public Benefit Activity, which is a voluntary agreement with no legal personality. It is not included in any regulations, which the Convention members strongly defend. The reason for this is so that it does not become dependent on any administration. It was established to:

- 🔍 provide a platform of cooperation and exchange of information for representatives of the councils operating on the voivodeships level (regional),
- 🔍 expressing common opinions on matters relevant to the functioning of the voivodeship councils in their sphere of interest,
- 🔍 as well as in the scope of cooperation between public administration and NGOs.

Monitoring Committees

In 2022, through the use of European Union rules, NGOs found themselves on the Monitoring Committee of the National Recovery Plan. Although the government called elections twice, and annulled the elections to the Committee when it turned out that independent organisations were elected,⁵³⁸ in the end the same organisations - those working on fundamental rights - were elected to the NRP Monitoring Committee. Moreover, thanks to the involvement of civil society, most of the Cohesion Fund Monitoring Committees included organisations that uphold fundamental rights.⁵³⁹

⁵³⁸ <https://www.money.pl/pieniadze/pieniedzy-z-kpo-jeszcze-nie-ma-ale-rzad-majstruje-przy-obsadzie-komitetu-monitorujacego-wydatki-6831736249957056a.html>

⁵³⁹ <https://ofop.eu/znamy-juz-prawie-caly-obywatelski-sklad-komitetow-monitorujacych-programy-krajowe-finansowane-z-funduszy-europejskich/>

CSOs push back in trying times

Civil society has played a crucial role in alleviating crises: whether in dealing with the rule of law crisis, the Polish-Belarusian border crisis, helping refugees from Ukraine or assisting discriminated groups.

More than half of Poles trust NGOs. Some of them trust foundations and associations, although they have not had any contact with specific organisations. This means that the very term "non-governmental organisation" evokes positive connotations, especially in comparison with other institutions such as the government or public media. At the same time, contact with NGOs, especially personal, results in even greater trust.⁵⁴⁰

A major campaign to discredit organisations took place a few years ago and consisted of linking different people from organisations with politicians and public institutions. Using informational campaigning, there are now materials about individual organisations, including dealing with sex education, LGBTQI+ rights, women's reproductive rights and refugee rights.

Organisations are generally collaborative, as only three per cent of the sector has no relationship with any other entity, and the average foundation or association works with 11 types of partners. The number of contacts with external partners increases with the organisation's budget - more than 80 per cent of organisations with revenues of more than PLN 100,000 (21,270€) cooperate with at least 10 types of entities.

The most important partners of associations and foundations are other Polish CSOs. Contacts within the non-governmental sector most often mean cooperation at the regional and local level. 81 per cent of the organisations maintain relations with other organisations operating in the same field, with 19 per cent of them being in contacts of a frequent and regular nature.

Polish organisations have less collaboration with foreign foundations and associations. Contacts with such entities are maintained by 25 percent of the organisations and are only frequent for three per cent of these contacts.

⁵⁴⁰ <https://publicystyka.ngo.pl/pod-lupa-coraz-lepszy-wizerunek-organizacji>

Organisations declare contacts within the NGO sector and mutual support. 31 per cent of organisations are members of various types of national or international agreements, e.g., unions, federations, networks.⁵⁴¹

⁵⁴¹ <https://drive.google.com/file/d/1SMFeQ9KgYbdBo9u7Bt62GLYBUrDZRrNQ/view>

Recommendations

To the government of Poland:

The regulatory environment for civic freedoms

- 🔍 Refrain from supporting Lex-Czarnek, which may eliminate significant expert and diverse education by NGOs and engage in a dialogue with a broad representation of civil society organisations on the support they need to be active in Polish schools.
- 🔍 Scrap the draft law on foreign funding ("Lex Woś") and refrain from any work on other drafts from the field of reporting and transparency, which increase the burden on organisations
- 🔍 Respect and apply the access to information law in accordance with the Tromsø Convention and international standards.
- 🔍 Repeal the regulation which discriminates against German minority by reducing the teaching of the language of German minorities to one hour weekly.
- 🔍 Regulate the management of publicity and information orders from public bodies to external bodies and ensure that the regulation rules take into account the diversity of media and their coverage.

Safe Space

- 🔍 Immediately drop all charges against women human rights defenders who are currently being prosecuted on various charges, including for their role in pro-abortion protests.
- 🔍 Refrain from harassing and intimidating protesters and activists through criminal charges and other means and respect the right to freedom of peaceful assembly as per international law
- 🔍 Drop all SLAPPs against LGBTQI+ defenders and respect their right to freedom of expression
- 🔍 Recognise the central importance of media freedom, pluralism and independence to sustaining democracy in Poland

- 🔍 Drop all SLAPPs against independent journalists and citizen activists concerned with the transparency of public life, refrain from harassing and intimidating them and promote an enabling environment for media independence.
- 🔍 Stop criminalising solidarity with refugees and refrain from harassing activists at the Polish-Belarusian border

The right to participation and civil dialogue

- 🔍 Engage in open, transparent and inclusive consultation with civil society organisations to promote an enabling environment for civil society.
- 🔍 Ensure that organisations have the opportunity to participate in public consultations (on central and local levels), in accordance with the principles belonging to the canon of their conduct.
- 🔍 Reform the Public Works Benefit council to ensure that its representatives, including CSO representation, are independently and transparently selected and appointed.
- 🔍 Introduce effective social dialogue mechanisms, inter alia, through the creation of dialogue bodies with a significant voice, formed by civil society itself, with functioning both in the governmental structure and in the Parliament.

Funding for civil society

- 🔍 Guarantee access to funding for civil society and ensure that funding processes are open, transparent and inclusive.
- 🔍 Ensure that there is funding transparency and equal access to funding for all CSOs, allocated by the National Freedom Institute by reforming the appointment process of the Council to ensure that representatives are not politically affiliated.
- 🔍 Ensure equal access to resources for all organisations in accordance with the law.

About the contributor

The National Federation of Polish NGOs (Ogólnopolska Federacja Organizacji Pozarządowych, OFOP) was established in 2003 by the initiative group of Polish organisations – as a result of a participatory process aimed at establishing a representation body for the third sector in Poland. Currently, OFOP has 132 member organisations.



Ogólnopolska
Federacja
Organizacji
Pozarządowych

The Institute of Public Affairs (IPA) is a leading Polish think tank and an independent centre for policy research and analysis, established in 1995. Its mission is to contribute to informed public debate on key Polish, European and global policy issues.

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Civic Space Report 2023

ROMANIA



Fundația pentru
Dezvoltarea
Societății
Civile



Key Developments

- 🔍 New amendment limits CSOs ability to challenge administrative acts in courts
- 🔍 Lack of adequate consultation in policymaking a concern
- 🔍 Smear campaigns, raids, and SLAPPs against journalists

Civic space is rated as narrowed by the CIVICUS Monitor⁵⁴². In its 2022 Rule of Law report on Romania⁵⁴³, the European Commission recommended that the government “Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media” and “ensure effective public consultation before the adoption of draft legislation.” However, the government has failed to implement these recommendations.

Rather, major concerns have been expressed by civil society over the limited timeframes and lack of consultation in policy-making processes, which continued in 2022. In addition, some MPs proposed amendments which would negatively impact CSOs ability to challenge any administrative acts in courts. Meanwhile, the Roma minority, women, LGBTQTI+ and other excluded groups remain disproportionately targeted by discrimination, hate speech, and violent attacks. There are worrying cases of journalists facing harassment and other obstructions to their work, while some environmental rights CSOs have been forced to close due to SLAPPs.

⁵⁴² <https://monitor.civicus.org/country/romania/>

⁵⁴³ https://commission.europa.eu/system/files/2022-07/52_1_194026_coun_chap_romania_en.pdf

Institutional, political and socio-economic landscape

In 2022, one of the most affected pillars of the rule of law in Romania was the justice system. Renewed discussions about changing the pension schemes for judges coupled with worsening working conditions lead to an unprecedented number of judges and prosecutors leaving the Romanian judiciary, which has sparked widespread concern about how this may affect the justice system and access to courts.⁵⁴⁴

One of the more widely known Romanian judges, Cristi Danileț was sanctioned three times and excluded from the justice system.⁵⁴⁵ One of these exclusions is particularly worrisome as it seems to be due to his activity in two NGOs that deal with rule of law issues. The Council of Magistrates considered that this activity constitutes political activity which is forbidden to judges and decided to exclude him from the profession.⁵⁴⁶

Concerningly, the main legal instruments of the justice system were modified in 2022 in an expedient manner, with little public consultation, a procedure which was criticised by the Venice Commission which was asked for an urgent opinion on these laws, but they were passed before the opinion was adopted.⁵⁴⁷ The amendments also implement a CJEU decision from February 2022 which reinforces the supremacy of EU law and establishes that national judges who apply EU law to the detriment of Constitutional Court decisions should not be subject to disciplinary sanctions.⁵⁴⁸

⁵⁴⁴ According to a Hotnews article from 3.11.2022, available in Romanian at <https://www.hotnews.ro/stiri-esential-25882142-situatie-fara-precedent-60-cereri-pensionare-ale-judecatorilor-aprobate-intr-singura-sedinta-gabriela-baltag-nu-dorm-cateva-nopti.htm>

⁵⁴⁵ According to a G4media new article from 20.07.2022, available in Romanian at <https://www.g4media.ro/judecatorul-cristi-danilet-exclus-pentru-a-treia-oara-din-magistratura-de-catre-sectia-pentru-judecatori-a-csm-pentru-o-eroare-materiala-decizia-luata-de-catre-gruparea-savonea-cu-majoritate-de-5.html>

⁵⁴⁶ According to a G4media new article from 25.05.2022, available in Romanian at <https://www.g4media.ro/breaking-csm-l-a-exclus-din-nou-pe-judecatorul-cristi-danilet-din-magistratura-pe-motiv-ca-a-activat-in-ong-uri-care-ar-fi-facut-politica.html>

⁵⁴⁷ Venice Commission, Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022 available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)045-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)045-e)

⁵⁴⁸ CJEU, Judgment of the Court (Grand Chamber) from 22 February 2022, In Case C-430/21.

Romanian civil society also contested the increased militarisation of the state and contested in particular one proposal that would offer increased powers to the Secret Services, narrow parliamentary control over them, and allow them to own and operate companies.⁵⁴⁹

As the 2022 EU Commission rule of Law report shows, civil society space continues to be assessed as narrowed, with NGOs facing significant struggles. Civil Society Organisations (CSOs) have limited access to funding, which constraints their activity, and are experiencing difficulties in participating in the consultation process during the legislative procedure.⁵⁵⁰

⁵⁴⁹ According to an open letter signed by several NGOs, from 31.05.2022, available at <https://www.stareademocratiei.ro/2022/05/31/republica-militara-romania-impunitate-si-puteri-sporite-pentru-sri/>

⁵⁵⁰ European Commission, 2022 Rule of Law Report , Country Chapter on the rule of law situation in Romania, available at https://commission.europa.eu/document/download/bf52b443-7a64-4a54-8584-533c866bf902_en?filename=52_1_194026_coun_chap_romania_en.pdf

The regulatory environment for civic freedoms

Proposed amendments threaten freedom of association

The main law on associations and foundations is Government Ordinance no 26/2000 which prescribes how an NGO is set up, how it functions, and what its main rights and obligations are.⁵⁵¹ There are calls to modify this law. NGOs themselves have consistently been asking for less bureaucracy in the process to set up, run and even close an NGO.⁵⁵² Although legislation has improved, it is still difficult, particularly for smaller NGOs to comply with bureaucratic needs because there is a lot of inconsistency and uncertainty in existing procedures. The law itself has already been modified 14 times and there are wide discrepancies in how it is applied across the country.

In 2022 there were three new law proposals that sought to modify existing legislation, one of which would bring minor amendments only for national minority organisations.⁵⁵³ The second looks at NGOs that have public utility status and would enshrine an obligation for them to publish any public good they were given and also would establish an obligation on behalf of the Government to verify every three years if the NGO still has public utility.⁵⁵⁴ The public utility topic is critical in itself and should be clarified in legislative terms and procedures, but the proposal on the table is insufficient. For instance, it would be more important to clarify the access to local public resources (i.e. according to the Administrative Code issued in 2019, the public local and county councils decide upon allowing the free use of public goods for public utility institutions) as several local administrations were

⁵⁵¹ Romania, Government Ordinance 26 from 30 January 2000 on associations and foundations, *Ordonanță nr. 26 din 30 ianuarie 2000 cu privire la asociații și fundații*, available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/20740>

⁵⁵² According to an open letter from July 23, 2020, signed on behalf of 209 NGOs, available in Romanian at: http://www.fdsc.ro/library/files/pozitie_pre_consultare_og_26_2000_iulie_2020.pdf

⁵⁵³ Law proposal no 620/2022 which can be tracked here: https://www.senat.ro/legis/lista.aspx?nr_cls=L620&an_cls=2022

⁵⁵⁴ Law proposal 847/2022 which can be tracked here: https://www.senat.ro/legis/lista.aspx?nr_cls=L847&an_cls=2022

reluctant in 2022 to offer free functioning space for community services CSOs, which do not have formal public utility status.

The third law proposal is however worrisome, since it would impose severe restrictions on the ability of NGOs to challenge any administrative acts in courts.⁵⁵⁵ Basically, if an NGO would like to challenge an administrative act in court, it would need its members to vote on it and the members in favor would be held liable if they lose the case. The NGO would also need to have two years of proven activity in the area affected by the administrative act in question and would need to put forward a court bond, in order to challenge administrative acts. This proposal is heavily opposed by NGOs who argue that it would limit their right to access the courts and would limit the ability of environmental NGOs in particular to challenge development projects.⁵⁵⁶

Outdated legislation on freedom of peaceful assembly receives criticism from the ECHR

The freedom of assembly is regulated by law 60/1991, a law adopted soon after Romania became a democracy.⁵⁵⁷ Many civil society groups would argue that this law is outdated and needs to be amended to reflect current needs and to effectively ensure the right to freedom of assembly.⁵⁵⁸ The main modifications requested by NGOs are:⁵⁵⁹

- 🔍 Removing excessive restrictions and prohibitions – the law includes a lot of limitations on when and where you can protest and it imposes heavy burdens on organisers who bear a lot of responsibilities for the protests and participants, which are difficult to observe
- 🔍 The law requires organisers to notify authorities of the protest before it happens. However, this notification in practice is more of an authorisation procedure and authorities routinely

⁵⁵⁵ Law proposal 857/2022 which can be tracked here https://www.senat.ro/legis/lista.aspx?nr_cls=L857&an_cls=2022

⁵⁵⁶ According to an open letter from November 29, 2022, signed by tens of NGOs and available in Romanian at: <https://www.stareademocratiei.ro/2022/11/29/parlamentul-romaniei-manifesta-tendinte-iliberale-dreptul-ong-urilor-la-litigare-strategica-limitat-drastic/>

⁵⁵⁷ Romania, Law 60 of 23 September 1991 of organizing public gatherings *Lege nr. 60 din 23 septembrie 1991 privind organizarea și desfășurarea adunărilor publice*, available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/156395>

⁵⁵⁸ See for example a press-release released by a group of NGOs working on rule of law, on 12 October 2022, available in Romanian at <https://www.stareademocratiei.ro/2022/10/12/de-ce-vrem-schimarea-legii-adunarilor-publice/>

⁵⁵⁹ Please find all of the requested modification, in Romanian, at https://www.stareademocratiei.ro/wp-content/uploads/2020/06/Propunere-de-modificare-a-legii-adunarilor-publice_11iunie.pdf

deny protests that occur at certain times, or certain places or deny them altogether. NGOs are asking for these notifications to be more of an exception than a rule.

- 🔍 The current law does not allow for spontaneous protests, for example when people react to a current event and express their concern through a protest.
- 🔍 The sanctions prescribed should be proportional to the acts committed – for example, participation in an undeclared assembly should not be punishable, as long as the participant was not obliged to declare it.

Some of the practices were also subject to criticism from the European Court of Human Rights (ECHR) which in 2022 condemned Romania in the case of *Bumbes v. Romania* (Application no. 18079/15)⁵⁶⁰ where the applicant was fined for organising a spontaneous protest with three other people in front of the Government, in response to a law adopted that day. He was fined because he did not declare the protest three days in advance, which the ECHR ruled to be in breach of the applicant's rights to freedom of peaceful assembly and expression.

New threats against online privacy rights

At the beginning of 2022 civil society actors raised concerns about a proposed mechanism of fake news⁵⁶¹ which would establish an automated platform that would identify fake news based on algorithms. This raised concerns of censorship. NGOs have already condemned the fact that several websites have been closed down without warning and reasoning by the Romanian National Cyber Security Agency, also based on fake news provisions.⁵⁶²

A new Emergency Ordinance was adopted by the Romanian Government on cloud services.⁵⁶³ The law has been criticised by the Romanian civil society which argues that there is a lack of clear

⁵⁶⁰ *Bumbes v. Romania*, Application no. 18079/15, available at [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-216937%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216937%22]})

⁵⁶¹ As shown in a press release issued by APADOR-CH (human rights NGO) on 11.03.2022, available in Romanian at <https://apador.org/en/opinia-apador-ch-privind-intentia-guvern-ong-uri-de-a-infiinta-ministerul-adevarului/>

⁵⁶² As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 15.03.2022, available in Romanian at <https://activewatch.ro/blog/roskomnadzor-ul-romanesc-in-actiune-noile-victime-ale-dnsc-un-blog-de-carti-un-site-al-unui-magazin-din-beius-doua-subdomenii-google-firebase-si-un-subdomeniu-al-unui-furnizor-de-publicitate-din/>

⁵⁶³ Romania, Emergency Ordinance no. 89 from 27 June 2022 regarding the establishment, administration and development of cloud infrastructures and IT services used by public authorities and bodies (*Ordonanța de Urgență*

safeguards protecting the private data of citizens and concerns about the involvement of the Romanian Secret Services.⁵⁶⁴

In August 2022, the Romanian public broadcaster aired an investigation, revealing that the personal data of millions of Romanians (more than 3 million) who were infected with COVID or tested were available to any doctor that had access to the database Coronaforms (more than 10,000 people had access to that database).⁵⁶⁵

nr. 89 din 27 iunie 2022 privind înființarea, administrarea și dezvoltarea infrastructurilor și serviciilor informatice de tip cloud utilizate de autoritățile și instituțiile publice) available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/256832>

⁵⁶⁴ Romania, NGOs for Citizens (2022) 'We request the Ombudsman to evaluate the constitutionality of the GEO regarding the Government Cloud' (*Solicităm Avocatului Poporului să evalueze constituționalitatea OUG-ului privind Cloud-ul guvernamental*) 30 June 2022, available at <https://www.stareademocratiei.ro/2022/06/30/solicitam-avocatului-poporului-sa-evalueze-constitutionalitatea-oug-ului-privind-cloud-ul-guvernamental/>

⁵⁶⁵ TVR (2022), 'Personal data on millions of Romanians can be easily viewed in the Coronaforms platform. The representatives of patients and doctors demand urgent measures, the Ministry of Health says it respects all legal provisions' 23.08.2022 ('*Date personale privind milioane de români pot fi văzute ușor în platforma Coronaforms. Reprezentanții pacienților și medicilor cer măsuri urgente, Ministerul Sănătății spune că respectă toate prevederile legale*') available in Romanian at http://stiri.tvr.ro/date-personale-privind-milioane-de-romani-pot-fi-vazute-u-or-in-platforma-coronaforms-reprezentan-ii-pacien-ilor-i-medecilor-cer-masuri-urgente-ministerul-sanata-ii-spune-ca-respecta-toate-prevederile-legale_912538.html#view

Safe space

A worrying trend of smear campaigns, raids, and SLAPPs

A well-known Romanian investigative journalist, Emilia Sercan was targeted by a smear campaign, with several of her intimate pictures posted without consent on several adult websites. She filed a criminal complaint about this and part of the evidence she submitted to the police was also leaked into the media and used in the smear campaign against her. The investigation into who stole and shared her pictures and who leaked evidence from her case is at a standstill, with authorities having no clear suspect, albeit this case has stirred a significant outcry.⁵⁶⁶ The campaign started soon after she published an article showing that the current Romanian Prime minister plagiarised his PhD thesis. In the past, she exposed several high-profile politicians of plagiarism.⁵⁶⁷

Prosecutors raided the house of a local journalist, searched his parent's house, and the office of the publication and they seized phones and computers. The journalist and the publication were accused of child pornography because the publication wrote an article about a local case of aggression against a minor. Media freedom NGOs claimed that the raid and criminal charges were a means of intimidation against the journalist who a few days prior to the raid wrote a series of damaging articles about the head of local police.⁵⁶⁸ The charges were dropped later in the year and a court confirmed that the journalist and the publication did not commit any crime, but media freedom NGOs are calling for an inquiry into how it was possible for the journalist to be harassed for almost a year for just doing his job.⁵⁶⁹

Worryingly, environmental NGOs are targeted by real estate developers in a series of SLAPP cases by which they seek their closure. This year two NGOs have been closed at the request of real estate developers, due to cases where NGOs contested real estate projects before national courts, but lost,

⁵⁶⁶ Updates on the investigation are resumed here: <https://context.ro/dosarele-sercan-zece-plangeri-noua-luni-de-ancheta-niciun-rezultat/?fbclid=IwAR2asAkQ9l8yRGEpINvbPBs4vcLDnaEyZdfm9YvzkdKFj8fY6zp9DxirSpl>

⁵⁶⁷ As shown in an article published on 8 April 2022 by the Committee to Protect Journalists, available at <https://cpj.org/2022/04/romanian-investigative-journalist-emilia-sercan-targeted-by-smear-campaign/>

⁵⁶⁸ As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 19.01.2022, available in Romanian at <https://activewatch.ro/blog/diicot-recidiveaza-in-hartuirea-jurnalistilor/>

⁵⁶⁹ As shown in a press release issued by ACTIVEWATCH (freedom of speech NGO) on 29.11.2022, available in Romanian at <https://activewatch.ro/articole/instanta-de-judecata-confirma-abuzul-diicot-braila-impotriva-jurnalistului-alin-cristea-si-a-publicatiei-debrailaro/>

and had to pay legal fees of the real estate investors. Because they did not have the means to pay for these costs, the investors asked for and obtained their closure.⁵⁷⁰

Media freedoms in decline

According to the 2022 World Press Freedom Index published by Reporters Without Borders (RSF), Romanian media freedom dropped down eight spots from 2021 when it ranked 48th⁵⁷¹. One particular issue of concern with the media is financing coming from political parties. An investigation from an independent media outlet showed that large sums of money are spent by political parties on favorable media reports and coverage, mostly through various intermediaries.⁵⁷² A report by anticorruption NGOs shows that although political parties receive large sums of money from the state, there is very little transparency with respect to how and on what these sums of money are spent.⁵⁷³

Minorities, Women's rights, and LBGTQI+ groups especially targeted

Specific groups have been targeted. The USA Country Reports on Human Rights Practices show that Roma people face widespread societal exclusion, police violence, and forced eviction. The report also shows that other particularly affected groups are people with disabilities who face obstacles in accessing the education system, basic services, and even the justice system.⁵⁷⁴

⁵⁷⁰ The first case is against an NGO from Bucharest called Militia Spirituala closed down by a decision from 28.09.2022 (available in Romanian here: https://portal.just.ro/301/SitePages/Dosar.aspx?id_dosar=3010000000718787&id_inst=301) upheld by the appeal court on 12.12.2022 (https://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=3010000000718787&id_inst=3). The second one is an NGO from Cluj Napoca, called SOS ORASUL closed down on the 18.11.2022 (https://portal.just.ro/211/SitePages/Dosar.aspx?id_dosar=2110000000488256&id_inst=211) decision which is now contested before the appeal court.

⁵⁷¹ 2022 World Press Freedom Index published by Reporters Without Borders (RSF), available at <https://rsf.org/en/country/romania>

⁵⁷² According to an investigation from Recorder from 14.10.2022, available in Romanian at <https://recorder.ro/pretul-tacerii-o-investigatie-in-contabilitatea-presei-de-partid/>

⁵⁷³ ExpertForum analysis from 22.06.2022, available in Romanian at <https://expertforum.ro/raport-finantarea-partidelor-2021/>

⁵⁷⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *2021 Country Reports on Human Rights Practices: Romania*, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/romania/>

Women's rights groups have shown that there is widespread violence against women, including domestic violence. In the first half of 2022, there were over 40,000 cases of domestic violence in which the police intervened, of which over 9,400 were situations of imminent risk, whilst women who have been sexually assaulted have nowhere to go to seek help and receive the much-needed support after such violence.⁵⁷⁵ NGOs have also shown that women's access to reproductive services is also severely restricted in practice, with more and more public hospitals refusing to perform pregnancy termination procedures, whilst sexual education is non-existent in Romanian schools and teen pregnancies continue to be a huge problem.⁵⁷⁶

There has also been an increasing trend of violence against members of the LGBTQI+ community, including physical assaults, and threats that contribute to an increasingly hostile environment.⁵⁷⁷ NGOs have also criticised a proposed law that would basically ban any information or communication about sex changes or homosexuality, claiming it is a clearly homophobic proposal.⁵⁷⁸

⁵⁷⁵ According to a press release from Feminism Romania, from 7.10.2022, available in Romanian at <https://www.feminism-romania.ro/activism/1349-marsul-impreuna-pentru-siguranta-femeilor-editia-2022>

⁵⁷⁶ According to a press-release from Filia Center, from 16.11.2022, available in Romanian at <https://centrulfilia.ro/peste-250-de-organizatii-ale-societatii-civile-din-romania-si-internationale-cer-ministrului-sanatatii-si-cnas-decontarea-procedurii-de-avort-la-cerere-asigurati-accesul-gratuit-la-servicii-medicale/>

⁵⁷⁷ As shown in a press release issued by MOZAIQ, on 10.08.2022, available in Romanian at <https://www.mozaiqlgbt.ro/2022/08/comunicat-de-presa-violenta-si-discurs-al-urii-impotriva-lgbtq/>

⁵⁷⁸ As shown in a press release issued by MOZAIQ, on 10.06.2022, available in Romanian at <https://www.mozaiqlgbt.ro/2022/06/urgent-trimite-e-mail-pentru-respingerea/>

Funding for civil society

According to the Index on Civil Society Organisations Sustainability for 2021 there is a wide variation between NGOs, with smaller NGOs relying mostly on volunteer work and individual donations and larger NGOs managing to obtain national and international funds for their work.⁵⁷⁹ The index shows that financial resources for NGOs vary, they may consist of individual donations, public funding, international funds, or funds distributed by corporations and individuals as part of a tax deduction scheme.

The Global Philanthropy Indices for 2022 rate Romania as having a favorable philanthropic environment, with an overall score of 4.03 out of 5, the highest score of the Central European countries, largely due to its ease of operation and political environment, which measures the relationship between Government and philanthropic organisations as well as public policies and practices regarding philanthropy.⁵⁸⁰

In Romania existing legislation allows citizens to divert 3.5 percent of their income tax to NGOs or faith groups. This year we have had two new law proposals which would include also public libraries⁵⁸¹ and schools⁵⁸² among the entities eligible to receive this 3.5 per cent. Both proposals would go against the spirit of the 3.5 per cent mechanism that is meant to encourage people to increase their public participation through choosing an NGO they consider the most appropriate to represent their interests. It would also create a parallel mechanism of funding for public entities thus legalising the incompetence and incapacity of state in ensuring the functioning of public schools and public libraries. Following the reactions of several NGOs and discussions with civil society representatives, the initiators of the second proposal withdrew it from the official track in Parliament on 12th December 2022.

⁵⁷⁹ Civil Society Development Foundation (FDSC) Index for Civil Society Sustainability 2021, issued on 22.11.2022, available in Romanian at <https://www.fdsc.ro/library/files/index-usaid-romnia-fdscro-1669107244.pdf>

⁵⁸⁰ Global Philanthropy Indices 2022, available at <https://globalindices.iupui.edu/environment-index/regions/central-europe/index.html>

⁵⁸¹ As explained in this article from 16.06.2022 <https://www.juridice.ro/787934/propunere-legislativa-procentul-de-3-5-din-impozitul-pe-venit-poate-fi-directionat-si-catre-biblioteci.html>

⁵⁸² As explained by the authors of this proposal on 14.10.2022 <https://www.usr.ro/2022/10/14/mai-multi-bani-pentru-scoli-usr-a-depus-o-initiativa-legislativa-pentru-redirectionarea-a-35-din-impozitul-venit-pentru-scoli/>

Civil dialogue and right to participation

Participation exists in law, not in practice

In terms of access to information and participation of citizens and organisations in policy-making there are two main legal instruments. Law 544/2001 is the main legal instrument that ensures access to public information.⁵⁸³ In theory, this law allows citizens and NGOs to ask for and obtain access to public information but in practice there are many instances where authorities are reluctant to share this information, invoking either General Data Protection Regulation (GDPR) rules or other excuses to hinder access to public information. For example, feminist NGOs have been asking for a national strategy for equality between men and women for 2021-2027 which was put in public debate on the 9th March 2022 and adopted only recently in December 2022 because of opposition from the Ministry of European Projects. NGOs have been asking what exactly the Ministry of European projects opposed, and what was the position they expressed, but the Ministry has consistently refused to share its opinion with the public, albeit it was shared internally in a written document which they have failed to share with the public.⁵⁸⁴

In terms of consultations with citizens and civil society in policy-making, the main legal instrument is Law 52/2003 on transparency in public administration.⁵⁸⁵ This law prescribes the obligations of public administration to consult with citizens and civil society when developing public policies and laws. It also establishes how public consultations are to be organised. One of the obligations enshrined by this law is that proposed laws be published thirty days in advance, before being subjected to formal

⁵⁸³ Romania, Law 544 from 12 October 2001 on free access to public information (*Lege nr. 544 din 12 octombrie 2001*

privind liberul acces la informațiile de interes public) available in Romanian at: <https://legislatie.just.ro/Public/DetaliiDocument/31413>

⁵⁸⁴ According to a article from 22 July 2022, available in Romanian at <https://ongen.ro/2022/07/22/cum-blocheaza-ministerul-investitiilor-si-proiectelor-europene-avizarea-strategiei-nationale-privind-egalitatea-de-sanse-intre-femei-si-barbati/?fbclid=IwAR0CMaTfQsXNWNONMMTqeE7zNgshlq7ddXqxYn7z4UVvgrQ--U4v-lmuE3Y>

⁵⁸⁵ Romania, Law no. 52 from 21 January 2003 on transparency in in public administration (*Lege nr. 52 din 21 ianuarie 2003 privind transparența decizională în administrația publică*) available in Romanian at

approval procedures, to give an opportunity to citizens and interested parties to send feedback and suggestions on the proposed law.⁵⁸⁶

However, in 2022 an exception was introduced to this rule and now, in exceptional and urgent cases, laws can be adopted even before the thirty-day time limit in which citizens can send their feedback on the proposed law.⁵⁸⁷ This modification was criticised by NGOs, including the untransparent manner in which these modifications were made, which show that Romanian authorities have developed a practice of avoiding public consultations by citing urgent needs to pass specific legislation.⁵⁸⁸ Transparency is a major issue when dealing with local governance. For example, NGOs have shown that from October 2021 to October 2022, the City of Bucharest's local governance put up only 3,23 percent of the acts it adopted for public debate.⁵⁸⁹

This year, after much debate the Whistleblower directive was transposed into law. The process of transposition was contested by civil society groups which managed to block an early version but have still expressed discontent with the adopted version, particularly with the provision of anonymous complaints.⁵⁹⁰ As opposed to the former law where the whistleblower was allowed to use the information disclosure option directly to the press or CSOs without any additional procedure, the adopted law imposes prior internal reporting to the institution concerned or to the National Integrity Agency, along with fulfillment of some conditions⁵⁹¹ such as imminent or immediate danger to the public interest. As the language used to define the conditions is vague and open to interpretation, the whistleblowers will have difficulties in reasonably assessing their compliance with the law thus being discouraged from acting.

⁵⁸⁶ According to art 7 (2) of Law 52/2003 cited above

⁵⁸⁷ According to art 7 (13) of Law 52/2003 cited above

⁵⁸⁸ According to a press-release signed by 31 NGOs on 4.03.2022, available in Romanian at <https://expertforum.ro/avp-oug-transparenta-decizionala/>

⁵⁸⁹ According to a press-release from CeRe (NGO), from 20.12.2022, available in Romanian at <https://cere.org/2022/12/20/bucuresti-al-cui-esti-selectie-2-2/>

⁵⁹⁰ According to a letter signed by several NGOs from 13.12.2022, available in Romanian at <https://activewatch.ro/articole/legea-avertizorilor-de-integritate-adoptata-psd-si-pnl-au-aratat-inca-o-data-ca-nu-doiesc-o-protectie-reala-a-acestora/>

⁵⁹¹ The breach may constitute an imminent or manifest danger to the public interest or a risk of damage which cannot be remedied OR, in the case of external reporting (i.e. to the National Integrity Agency), there is a risk of retaliation or a reduced likelihood that the breach will be effectively remedied given the specific circumstances of the reporting.

CSOs push back in trying times

Widespread distrust of the authorities and decision-makers

The Romanian civil society sector is generally marked by mistrust between organisations and the public. There is also a general mistrust of Romanian citizens in their institutions and elected officials. According to a recent poll, 33.7 percent declare they only have little faith in political parties.⁵⁹² Another poll shows that the situation is even worse among youth: more than 60 percent of young Romanians believe that Romania is going in the wrong direction. They do not trust the Parliament, the Government or the Presidency, and the number of young people who permanently leave Romania has doubled in the last ten years.⁵⁹³

There is no publicly available recent survey on the trust in CSOs in general but one recent survey, looking at just environmental organisations, shows that 66 percent of the participants in the study have a good or very good opinion about environmental NGOs while the level of trust in Governmental agencies with responsibilities for the environment score significantly worst. For example, the Ministry of Environment, Water and Forests enjoys a positive image only among 14 percent of respondents, while 43 percent have neither a good nor a bad opinion of the Ministry, and 34 per cent have a bad or very bad opinion.⁵⁹⁴

⁵⁹² According to a news articles published by Hotnews on 14.12.2022, available in Romanian at <https://www.hotnews.ro/stiri-esential-25965380-romanii-cea-mai-mica-incredere-partide-parlament-guvern-biserica-armata-continua-topul-increderii-sondaj.htm>

⁵⁹³ According to a news articles published by G4Media on 2.10.2022, available in Romanian at <https://www.g4media.ro/fenomen-ingrijorator-pesto-60-din-tinerii-romani-considera-ca-romania-merge-intr-o-directie-gresita-si-nu-au-incredere-in-parlament-guvern-si-presedintie-numarul-tinerilor-care-parasesc-definitiv-r.html>

⁵⁹⁴ According to a press-release issued by Nature 2000 coalition, on 16.05.2022, available in Romanian at <http://natura2000.ro/sondaj-incredere-minima-in-institutiile-de-mediu-arata-un-studiu-realizat-de-coalitia-natura-2000-si-ires/>

Recommendations

The regulatory environment for civic freedoms

- 🔍 Scrap the amendment to the law on associations and foundations (Government Ordinance no 26/2000), which would impose severe restrictions on the ability of NGOs to challenge any administrative acts in courts.
- 🔍 Modify the law 60/1991, regulating freedom of peaceful assembly in thorough, open and transparent consultation with civil society organisations and in line with the CJEU ruling.
- 🔍 Scrap the proposed law (PL-x no. 243/2022 for the amendment and completion of law 272/2004 on the protection and promotion of children's rights which discriminates against LGBTQI+ people

Safe Space

- 🔍 Urgently investigate the case of investigative journalist, Emilia Sercan, who was subjected to a smear campaign, and ensure that perpetrators are held to account
- 🔍 Refrain from harassing and obstructing the work of journalists, and ensure an enabling environment for press and media freedoms
- 🔍 Prevent the discouragement of the whistle blower to act through effective administrative procedures at the level of institutions that will embrace the spirit of the law. Public institutions should be encouraged to consult on their procedures in this area with civil society, and report publicly on the substance of the consultations.
- 🔍 Provide guidance and training for public institutions for internalising the beneficial role of whistle blowers and ensure that systematic monitoring on the functionality of the procedures in place should be undertaken and publicly available.
- 🔍 Ensure that monitoring of the implementation of the adopted law is publicly available and, if needed, consider corrections to the adopted law.

Funding for civil society

- 🔍 Withdraw the proposal on including the public libraries in the list of recipients of the 3.5 per cent of citizens' income tax.
- 🔍 Address constructively and clarify in legislative terms and procedures the public utility status and the corresponding issues related to access to local public resources for NGOs (i.e. free functioning space for community services CSOs not having formal public utility status).

Civil dialogue and the right to participation

- 🔍 In order to build trust the Government should increase its transparency and engage in honest consultation with citizens and the civil society sector when developing policies and legislation.
- 🔍 Input's and feedback from the sector should be appropriately considered, including as part of the numerous consultative structures set up at different levels of policy making. In particular, both the Parliament and the Government should respect the role assigned by law to the Social and Economic Council (it should provide opinions on new legislative proposals, but too often it results in a mere formality for the initiator, as long as proposals are provided to SEC very late, with too little time to react and, in case of negative opinions issued by SEC, they are seldomly really considered by the initiator).
- 🔍 ensure greater predictability in policymaking and a clear, transparent and predictable legal framework for policymaking that would allow citizens and NGOs to engage in consultation
- 🔍 Respect and implement laws which promote access to information and participation, including Law 544/2001 which ensures access to public information and Law 52/2003 on transparency in public administration and clarify effective enforcing mechanisms in particular related to access to information.

About the contributor

Civil society Development Foundation (FDSC) is a non-governmental, independent organisation, founded in 1994, promotes a strong and sustainable civil society that contributes to defending democratic values by supporting civil society actors, mobilizing resources, fostering an enabling environment, and strengthening co-operation with other sectors.



Fundația pentru
De dezvoltarea
Societății
Civile



Civic Space Report 2023

SLOVENIA



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Key Developments

- 🔍 Significant improvements for civil society following change in government
- 🔍 New government commits to participation and dialogue, but room for improvements
- 🔍 Concern over ongoing political interference at RTV Slovenia

New hope was sparked for civic freedoms, following the last two years which were considered some of the most challenging years for civil society in the history of Slovenia, under Janez Janša and his SDS party. The former government repeatedly targeted civil society through funding cuts and public smearing campaigns. Anti-government protesters faced significant restrictions while independent journalists faced harassment and intimidation. This resulted in a downgrade of Slovenia's civic space rating to 'narrow' by the CIVICUS Monitor⁵⁹⁵. However, the new government under Robert Golob has begun promoting a positive environment for civil society.

While there is room for improvement, the government has already taken steps to undo several restrictive proceedings of the former government and committed to civic dialogue. While concerns remain regarding the independence and ongoing political inference at the public broadcaster RTV Slovenia, a proposed reform of the RTV Slovenija Act is currently being considered. Additionally, improvements for the overall safety of journalists are needed.

595 <https://findings2020.monitor.civicus.org/rating-changes.html#slovenia>

Institutional, political and socio-economic landscape

New hope for civic freedoms following election outcome

The April 2022 parliamentary elections saw an end to the far-right government which has been led by Janez Janša and his SDS party since 2020. Newcomer Robert Golob and his Freedom Movement (launched in January 2022) won with nearly 35 per cent of the votes⁵⁹⁶. Since the new Government came into office on 1 June 2022, civic space, the rule of law and democracy have been slowly improving. There have been several positive actions from different actors.

At the beginning of May 2022, the Internal Affairs Inspectorate decided that the inspectorate procedure against civil society organisation 8 March Institute will not be opened against them. Namely, the 8 March Institute was collecting public signatures for submitting the Law for reducing inequality and harmful policy interventions and ensuring respect for the rule of law to the Parliament (under the Referendum and Popular Initiative Act, the draft law can be submitted directly to the Parliament with the support of 5,000 citizens' signatures). The intention of this law was to change all the harmful legislative decisions of Jansa's government through one law. As the I8M collected signatures before parliamentary elections, the same inspectorate claimed that they are violating the Election and Referendum Campaign Act and demanded that the institute submits evidence that they are not violating the respective law. This was clearly an intimidation law as the Act on inspectorate clearly states that the burden of proof is on the inspectorate. The Institute responded with the lawyer's support but in May the Inspectorate decided that they do not have enough documentation to even start the procedure.

Immediately at the beginning of June 2022, Ministry of Interior withdraw their consent to the lawsuits against protesters⁵⁹⁷. This comes after the Ministry of interior of the previous government issued fines to the alleged organisers of the Friday protests for the police protection of the protests. For example, one of the most well-known protesters, Jasa Jenull, received three such fines amounting to cca. €40,000. As they didn't pay the fines, the ministry demanded that the State Attorney's Office file

⁵⁹⁶ https://www.theguardian.com/world/2022/apr/25/pro-eu-politicians-herald-defeat-slovenia-hard-right-janez-jansa-robert-golob?CMP=share_btn_tw

⁵⁹⁷ <https://n1info.si/novice/slovenija/ministrstvo-umaknilo-soglasje-za-prve-tozbe-zoper-protestnike/>

lawsuits against the protesters. Positively, the Ministry under the new Government withdrew their consent and thus the lawsuits were withdrawn.

In July 2022, the parliament passed the Law for reducing inequality and harmful policy interventions and ensuring respect for the rule of law (see above). SDS and NSI, political parties that formed the previous Government, filed a request for Constitutional review of the law and proposed a temporary suspension until the Constitutional Court's final decision. The proposal for temporary suspension was declined, but the Constitutional Court has not reached a final decision yet.

Legal network for Defence of Democracy (coalition of five NGOs) with the help of several lawyers continued to dispute the fines issued by police based on previous government's COVID-19 decrees that were deemed unconstitutional by the Constitutional Court. They won several cases. At the end of November 2022, the Government confirmed starting points for the preparation of the legal basis necessary for "returning all fines paid and the costs of misdemeanor proceedings and the costs of forced recovery, which were introduced during the pandemic on the basis of illegal or unconstitutional legal grounds"⁵⁹⁸. The deadline for the preparation of the draft law is 31 January 2023.

⁵⁹⁸ <https://www.delo.si/novice/slovenija/izhodisca-za-vrnitev-in-razveljavitev-pet-milijonov-glob-iz-casa-pandemije/>

Regulatory environment for civic freedoms

Proposed media reforms for RTV Slovenia

In July 2022, the Golob government promoted a reform of the RTV Slovenia Act currently subject to referendum proceedings, which would hopefully restore the autonomy of the broadcaster⁵⁹⁹. The bill aims to modify the governance of RTV Slovenia by creating a new RTV council predominantly composed of members of civil society and RTV staff. The remaining members will be appointed based on public calls by the Italian and Hungarian minorities, Slovenia's president, the Academy of Sciences and Arts (SAZU), the National Culture Committee, Slovenian Olympic Committee, Information Commissioner, Council for Sustainable Development, and the Human Rights Ombudsman. According to the government this will significantly reduce the impact of political interference on RTV Slovenia. The new governance model eliminates the post of director general to replace it with a four-member management board, featuring all major senior directors at the broadcaster, with one of them being a workers' director.

The bill also introduces some limits on the dismissal of editors, which can no longer be an arbitrary decision of the management. Editors will be dismissed only if they lose the trust of the staff, and the RTV Slovenia council will have to agree with the move. The bill sets a clear line between the powers of the RTV Slovenia council and of editors when it comes to media content. The council will not be allowed to interfere in specific parts of the content before publication and may only discuss them on the basis of reports from the broadcaster's advocate of the rights of viewers and listeners.

The bill also introduces a new consultative body advising the RTV Slovenia council – a financial board of five financial experts. Its members will be appointed by the RTV Slovenia council upon proposal by the culture and finance ministers, the RTV works council, the Slovenian Directors Association and the Association of Bookkeepers, Financial Experts and Auditors. For more on developments related to RTV Slovenia, see section on safe space.

⁵⁹⁹ <https://sloveniatimes.com/govt-adopts-bill-to-overhaul-rtv-management-oversight-model/>

Safe space

Attack against 8 March Institute

The 8 March Institute, a CSO engaged in promoting citizen participation and denouncing injustices and inequalities, and its director Nika Kovač has repeatedly faced harassment. In October 2022 Kovač was physically attacked in the centre of Ljubljana⁶⁰⁰. She was walking with her colleague Maja Koražija when a man deliberately knocked Nika over. He then insulted the activists and threatened them with physical harm before leaving. After reporting the attack to the police, the activists were targeted by online hate speech and some media affiliated with the former ruling party SDS questioned their credibility. Two weeks later, the suspect responsible was identified based on the CCTV and is now being prosecuted.⁶⁰¹ Another perpetrator that issued online death threats against Nika and the 8 March Institute team has already been convicted⁶⁰².

NGOs in Metelkova

Faced with the threat of eviction since October 2020, cultural and human rights NGOs at Metelkova 6603 building in Ljubljana have been approached by the new Minister of Culture with the promise of a permanent legal solution. The former Minister of Culture launched eviction proceedings against every individual NGO, which they separately challenged in the courts, resulting in a considerable amount of legal defence costs. While the proceedings are still ongoing, the Ministry of culture of the new government prepared a new loan contract for additional 5 years⁶⁰⁴.

⁶⁰⁰ <https://www.dnevnik.si/1042999688/slovenija/po-napadu-na-niko-kovac-ne-moremo-vec-hoditi-po-ulici-ne-danas-bi-bilo-strah>

⁶⁰¹ <https://n1info.si/novice/crna-kronika/napadalca-na-niko-kovac-in-branka-grimsa-kaj-so-ugotovili-policisti/>

⁶⁰² <https://hudo.com/si/2022/04/08/fb-prijatelj-antona-olaja-grozil-niki-kovac-z-nasilno-smrtjo-odziv-policije-saj-ji-ne-bo-hudega-ce-je-v-new-yorku/>

⁶⁰³ <http://www.metelkovamesto.org/>

⁶⁰⁴ <https://monitor.civikus.org/updates/2022/11/03/Concerns-remain-over-rtv-slovenia-new-government-opens-dialogue-civil-society/>

Targeting of journalists

While the overall environment for civil society has improved, concerns for the environment for independent journalism remain, as they are subject to online harassment and intimidation. In one case, in November 2022, RTV Slovenija presenter Rosvita Pesek received an anonymous letter containing threats and insults⁶⁰⁵. The journalist has reported receiving⁶⁰⁶ such threats regularly for the last ten years, which come "before any notable show". In another case, journalist Anja Intihar from the daily newspaper Delo received an insulting email after she had written about the new employment of the former Slovenian Minister of Education, Simona Kustec. Among the comments in the email, which insulted her appearance, she was called a "cheap prostitute".⁶⁰⁷

Media independence at RTV Slovenia threatened

Threats to the independence of RTV Slovenia through political interference continued in 2022. RTV Slovenia staff have staged strikes since June 2022 due to ongoing tensions between the staff and the management appointed by the previous government. In its third strike on 26th September 2022, journalists and other employees at public broadcaster RTV Slovenija demanded editorial autonomy over content. Hundreds of protesters gathered in front of the National Assembly expressing support to RTV staff and demanded the resignation of the management. The normal broadcasting schedule was disrupted with only the flagship 7pm news airing.

RTV Slovenija staff have been subject to mobbing and smearing, as RTV management have continued to pressure individual desks, journalists and programme editors, threatening some staff with dismissal. Trade unions have filed dozens of complaints with the relevant authorities such as the Commission for the Prevention of Corruption and the Labour Inspectorate, as well as criminal complaints over alleged pressure exerted on staff by the leadership of RTV Slovenija and threats of disciplinary action.

In one example, in August 2022, TV Slovenija director Uroš Urbanija questioned the professionalism of news anchor Saša Krajnc and editor Vesna Pfeiffer. He called on the editor-in-chief to evaluate their actions. This was due to how they decided to present a report on the broadcaster ending its business with the magazine Mladina⁶⁰⁸. Urbanija, who was head of the Government Communication

⁶⁰⁵ <https://www.mapmf.org/alert/25476>

⁶⁰⁶ <https://www.facebook.com/pesek.rosvita/posts/679443920414130>

⁶⁰⁷ <https://www.mapmf.org/alert/24984>

⁶⁰⁸ <https://english.sta.si/3073034/tv-slovenija-anchor-and-editor-face-transfer-over-mladina-report>

Office (UKOM) under the previous government, took over as director in mid-July 2022⁶⁰⁹. Trade unions of RTV Slovenija and TV Slovenija have called his dismissal.

In September 2022, a court found that RTV Slovenija director general Andrej Grah Whatmough unlawfully dismissed TV Slovenija director Natalija Gorščak in August 2021⁶¹⁰. After Gorščak's dismissal, TV Slovenija was without a fully-fledged director for almost a year, until Urbanija was appointed.

⁶⁰⁹ <https://english.sta.si/3061856/urbanija-appointed-tv-slovenija-boss-despite-opposition-from-employees>

⁶¹⁰ <https://www.rtvlo.si/slovenija/delovno-sodisce-pritrnilo-pritozbi-razresene-direktorice-tv-slovenija-natalije-gorscak/639009>

Funding for civil society

Positive moves for NGO funding

In general, NGO sector is doing quite well financially. Its annual income and public funding have increasing year on year⁶¹¹. NGOs were recognised as recipients of COVID-19 support measures, which contributed to good financial situation. However, the previous government's actions negatively affected NGOs, especially those working in the fields of environmental protection and culture.

Environment protection is traditionally the least supported NGO field. However, in the period of the previous Government, even the existing calls for proposals were abolished. Furthermore, the minister declined to sign the contracts of already selected organisations⁶¹² jeopardising their European projects. However, the new minister signed the contracts quite soon after coming into office.

The budget of ministry of culture was also significantly reduced, resulting in a delay of some of the calls for proposal. Some organisations, interestingly the loudest critics of the Government, were left without funding even though they are established organisations with 50 plus years of tradition and activity in contemporary art. The new Government decided to address the issue and are currently solving the organisations on the case-by-case basis.

Under the new government there have been positive moves for NGO funding. The Ministry of Culture has published a calendar of scheduled calls for tenders for creators and producers in the field of culture⁶¹³. In addition, Ministry of Public Administration announced a new call for proposals from the national NGO fund for empowerment of civic rights and NGOs. The call should be published by the end of February 2023⁶¹⁴.

⁶¹¹ <https://www.cnvos.si/en/ngo-sector-slovenia/>

⁶¹² <https://civicspacewatch.eu/wp-content/uploads/2022/02/Slovenia-.pdf>, see p. 2.

⁶¹³ <https://www.gov.si/novice/2022-10-12-objavljen-koledar-predvidenih-javnih-razpisov-in-pozivov-ministrstva-za-kulturo/>

⁶¹⁴ Posvet o razpisu za krepitev aktivnih državljskih pravic in opolnomočenje nevladnih organizacij | GOV.SI

Civil dialogue and right to participation

Consultation processes require strengthening

In theory, civil dialogue has not changed since 2009. However, it was severely breached by the previous Government. For example, the consultation deadlines were breached in 70 per cent of cases⁶¹⁵, with some of the regular working groups abolished or NGO representatives excluded from them.

The new Government reinstated several of these working groups (e.g. dialogue group between Ministry of culture and NGOs, they again included NGO representatives in the Monitoring committee of the European Structural funds, etc.) and also established some new groups (e.g. Council of the minister for protection of environment and spatial planning for cooperation with NGOs.).

Some ministries also appointed several liaison officers for cooperation with NGOs. The Ministry of public administration published draft Guidelines for cooperation with NGOs⁶¹⁶. However, as NGO representatives in the Government Council for cooperation with NGOs had quite a few proposals for improvements, the new document is being drafted.

On the other hand, the current government has not fared better than the previous one with respecting consultation deadlines. The percentage of breaches is currently at 63 per cent⁶¹⁷. More NGOs are expressing their dissatisfaction⁶¹⁸ about policy preparation, namely criticising the fact that NGOs have not been included in the debates about state measures to counter increasing energy costs or intervention law to support access to health services.

615 <https://www.cnvos.si/nvo-vseved/stevec-krsitev/arhiv-prejsnjih-vlad/>

616 Zainteresirano javnost vabimo k sodelovanju pri pripravi Smernic za sodelovanje Vlade Republike Slovenije z nevladnimi organizacijami (gov.si)

617 <https://www.cnvos.si/stevec-krsitev/>

618 <https://n1info.si/novice/slovenija/vlada-zeli-okrepiti-sodelovanje-z-nevladniki-ki-pa-so-do-sestanka-kriticni/>

CSOs push back in trying times

Civil society resilient in trying times

Civil society has been a key factor in defending democracy, the rule of law and fundamental rights in Slovenia. It has covered all aspects, from using legal remedies, protesting, mobilising people, raising awareness about the importance of elections and updating international institutions and organisations. It is safe to say that we have witnessed the revival of civil society in the past two years. Civil society was the driving force behind the water referendum (April 2021), parliamentary elections (April 2022) and the referendums on the Laws on Government, RTV Slovenia and long-term care.

Public trust in civic actors significantly increased, resulting in big support of all campaigns run by 8 March Institute and Voice of the public. Of course, on the other hand, smear campaigns against them are also still present. Due to the increase of smear campaigns, a working group in the scope of Ministry of Justice is discussing a re-definition of hate speech in the Criminal Code, which is a sign of Government's fight against it.

Cooperation between civic and other sectors has never been continuous and general, but rather ad hoc, depending on the issue. For example, there is now a joint fight for the increase in salaries of pre-school teachers, while civic actors and trade unions do not agree on the question of doctors' salaries. As civic actors and journalists in the past two years witnessed similar harassment, financial situation, etc., they are now more connected, implementing joint campaigns, etc. And it appears that this kind of cooperation is long-lasting.

Recommendations

The regulatory environment for of civic freedoms

- 🔍 Reform RTV Slovenija Act (particularly in relation to the appointment and composition of the governance structures) through open, transparent and inclusive consultation with civil society and press groups to ensure editorial independence
- 🔍 Immediately pass a legal basis for returning all fines paid based on the previous government's constitutional decrees

The right to participation and civil dialogue

- 🔍 Improve public and civil society inclusion in decision-making process in order to ensure better regulation,
- 🔍 Ensure that consultation with civil society is open, transparent and inclusive and that there is regular feedback in consultation processes
- 🔍 Include CSOs, similarly as social partners, in discussion about minimum wage, social and other important reforms

Funding for CSOs

- 🔍 Increase state funding for watchdog, monitoring and advocacy activities, as well as support to civic activism.

About the contributor:

CNVOS is the umbrella network of Slovenian non-governmental organizations, which unites more than 1,500 different associations

and individual societies, institutes and institutions. With knowledge and experience and experts from the fields of advocacy, law, project management, finance and communication, CNVOS provides comprehensive and professional support to the Slovenian non-governmental sector, develop the potential of the sector and encourage creative and critical thinking.



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Civic Space Report 2023

SPAIN



Key Developments

- 🔍 Gag law continues to restrict the right to protest and freedom of expression
- 🔍 Anti-terrorist laws instrumentalised by the State to restrict activism
- 🔍 Authorities continue to use excessive force against protesters with impunity

Civic space in Spain is rated as “narrow” by the CIVICUS Monitor⁶¹⁹ and has continued to decline with the 2015 Gag Law being used to target protesters and journalists. Although the government initiated a reform process for the law, it has failed to consult with civil society organisations adequately, who raised concerns over several problematic provisions which remain.

Additionally, amendments to the Criminal Code, relating to public disorder are vague and may criminalise political dissent and pose further threats to the right to peaceful assembly. Environmental movements, housing CSOs, the LGBTQI+ community and people of colour remain targeted by police measures, sanctions, and restrictions. 2022 was defined by “Catalangate” with cases of severe espionage, massive surveillance schemes and infiltration of youth organisations by the government.

⁶¹⁹ <https://monitor.civicus.org/country/spain/>

Institutional, political, and socio-economic landscape

2022 was announced to be the year when the Gag Law had to be reformed, but that did not happen. At the beginning of 2022, the government put forward a light reform proposal, which did not address any of the main issues that the law contained. As a result, CSOs mobilised for an international advocacy campaign that ended successfully with the publication of a letter issued by the European Commission stating that “the review of the 2015 Law on Citizens’ Safety should result in a better protecting human rights”.⁶²⁰ The letter was sent to the Spanish Congress and Senate. These concerns have already been⁶²¹ addressed by the Council of Europe in 2018, highlighting issues related to the wide margin of discretion that the law grants to law enforcement to interpret it, which allows for possible disproportionate and arbitrary application.

The reform negotiations continued up to April 2022, when the espionage case against Catalan and Basque leaders, known as Pegasus, was exposed. In May, CSOs gathered again in order to protest against the reform of parliamentary blockage⁶²². In July, due to the 7th anniversary of the Gag Law, CSOs protested and continued to express the law’s deficiencies. Finally, in October the political negotiations were resumed, and CSO kept pressuring for the reform. In November, simultaneous demonstrations took place around Spain calling on the government to keep its word and reform the Gag Law. However, the reform has not taken place as yet.

The Penal Code was reformed in December 2022, as a result of a very quick reform process, which barely gave time for CSOs to analyse the proposal and organise themselves. However, a unitarian CSOs’ public statement and a demonstration took place due to the seriousness of the situation. The reform proposed was perceived as an attack on the right to assemble as, apart from other modifications, it included the modification of the public disorder offence. Specifically, it typified the invasion or occupation of public or private premises or spaces, even when done without violence or intimidation (art. 557 bis), which is typically how the housing movement protests. The text that was

⁶²⁰ <https://www.coe.int/en/web/commissioner/-/commissioner-urges-spain-to-ensure-that-the-law-on-citizens-safety-upholds-the-rights-to-freedom-of-expression-and-freedom-of-peaceful-assembly>

⁶²¹ <https://www.coe.int/en/web/commissioner/-/commissioner-urges-spain-to-ensure-that-the-law-on-citizens-safety-upholds-the-rights-to-freedom-of-expression-and-freedom-of-peaceful-assembly>

⁶²² <https://nosomosdelito.net/article/2022/05/30/comunicado-de-prensa-organizaciones-en-defensa-de-los-derechos-humanos-denuncian>

finally passed did not contain this potential threat to CSOs, but still includes ambiguous concepts, and the typification of an aggravated offence of public disorders when committed by a “multitude” whose number, organisation, and purpose are suitable for seriously affecting public order, without specifying exactly how many people is considered a “multitude”. The articles have not yet been applied, which means that the impact they will have on activists is still unknown.

Regarding the situation of the judicial system, there is a system of random distribution of cases between courts and pre-existing rules to determine the competence of a judge or court to rule on litigation with no possibility of interference. More specific jurisdictions are held by the Audiencia Nacional (National Court), a central court set up to deal with matters of legal, economic and political importance (terrorism, felonies against the crown, drugs, etc.), with rules on competencies that are flexible and can be reinterpreted according to circumstances, with the power to take over matters that should not be tried in ordinary regional courts. A traditional way to do this is to classify the most radical forms of political dissidence as possible terrorist offences. This can lead to the criminalisation of movements and can have a deterrent or chilling effect on CSOs' activities. The political use of the concept of “terrorism” to allocate a case in the National Court is constant in Spain.

Independence movements, youth organisations, and associations accused of “terrorist activities”

In 2022 the massive confidential case against *Tsunami Democràtic*, a platform that organised peaceful protests against the prison sentence of Catalan leaders in 2019, remained open in the National Court. This investigation has been conducted in secret for more than three years by National Court's inquiry number six, with judges Joaquín Gadea and Garcia Castellon. It has been allocated in the National Court because the investigation is on the basis of “terrorism activities” by Tsunami Democràtic. On 12th December 2022, the Criminal Court of the National Court demanded clarification on why the case is still secret, three years later. This fact causes a breach in the right to defiance of the investigation and is a clear misuse of the Court allocation system and of the charges of terrorism.

Moreover, the National Court's Inquiry seems to be specialised in prosecuting the activists of the self-determination movement. According to published information, in 2018 the Spanish National Police demanded the National Court to open a case for terrorism against a mix of political parties, youth organisations, and associations that defend the far-left independence of Catalonia, because it posed a “threat to the stability and social peace”. The police added names of MPs, spokespersons of anti-oppressive organisations, political parties, etc. into the investigation. The National Court judge Castellon allowed telephonic interventions of at least 38 people, who were wired for at least seven months. The information obtained from the investigation was used by the National Court to open the aforementioned case of the “CDR” members accused of terrorism.

As the eco-social and economic crisis deepens, inequality and barriers to access social rights and losses of labor rights grow, mobilising civil society organisations on the issue. On 25th January, the Metal Workers Coordinator denounced the arrests of dozens of workers, the use of rubber bullets, and disproportionate use of force during the metal strikes in Cádiz, led by worker unions. They reported injuries to several people as a result of police charges. Climate activism has increased as the Government fails to urgently address the climate crisis. Instead, it has taken measures to criminalise some actions of nonviolent disobedience: The case of the arrest of 14 climate activists for the protest action that they carried out on the 6th April 2022 in the Congress of Deputies is a relevant example. This persecution also impacts the exercise of the right to information: two journalists were detained and are on trial after covering the actions of the civil disobedience protest on the 5th November 2022.

The regulatory environment for civic freedoms

Several cases of surveillance of CSOs

The main laws that regulate freedom of association are the Spanish Constitution, Article 22, the Organic Law regulating freedom of association (LO 1/2002, 22 March), and the Penal Code (LO 10/1995, 23 November). The Penal Code has been recently reformed, but the modifications introduced do not affect freedom of association. These laws are in line with human rights and international standards.

In April 2022, the Pegasus case was uncovered, after an investigation led by The Citizen Lab of Toronto University showed that Catalan and Basque journalists, political and social leaders, and their lawyers, had been spied on using the Pegasus and Candiru spyware programs. The report “An Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru,” published on 18th April 2022, confirmed that at least 65 people in Catalonia have been attacked and were under surveillance with spyware between 2015 and 2021. It is considered a huge and flagrant violation of the right to privacy and secrecy of communications⁶²³.

Victims include the President of the Catalan Government, the President of the Catalan Parliament, dozens of politicians and senior officials, MEPs, members of civil society organisations, journalists, lawyers, and relatives. Moreover, this illegal surveillance extended far beyond the Spanish borders. The use of Pegasus against Catalan citizens traveling or living abroad has been documented in four different European countries: Belgium, France, Germany, and Switzerland.

This case, known as ‘Catalangate’, is the largest forensically documented cluster of mercenary spyware attacks and the biggest espionage case in Europe and in the world using Pegasus to date. It is considered as a huge and flagrant violation of the right to privacy and secrecy of communications. Technical experts from Amnesty International’s Security Lab have independently verified evidence of the attacks.

⁶²³ <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

In October 2022 an investigative report was published by the news outlet "Directa."⁶²⁴ This investigation showed that 38 left-winged independentist activists were victims of a massive police surveillance scheme, under the justification of "the anti-terrorist fight". Again, "terrorism" is being used as a pretext to unlawfully prosecute and create a chilling effect amongst political dissidence. In this case, the espionage took place at least between November 2017 and March 2019. Members of youth organisations (such as Sindicat d'Estudiants del Països Catalans-SEPC), political parties (such as Candidatures d'Unitat Popular-CUP), or anti-repressive organizations (such as Alerta Solidària) were among the victims.

The surveillance scheme was ordered by the Spanish police forces (National Police and Civil Guard), and it included for example localisation and interception of calls and messages, use of spyware, physically following people, installation of localisation devices in cars. This massive surveillance case was allocated to the National Court (again, against the normal rules of case allocation, it was declared as "terrorism" so this investigation could be approved by the National Court) and approved by judges Diego de Egea, Carmen Lamena and Manuel García Castellón.

Earlier on 7th June 2022, the magazine La Directa⁶²⁵ revealed that the Spanish police had infiltrated at least one police officer in the youth independentist organization SEPC (a university student's union) and tried to do so the same with the youth organisation of the ERC party, revealed by La Directa and Ara on 27th June 2022. When asked about these police infiltrations in youth groups, through a complaint filed by Òmnium Cultural, on 5th September the Spanish Government answered, admitting and justifying the illegal planting of undercover officers. In the five pages in which the Interior Ministry justified its actions against the two pro-independence youth organisations, it pointed out aspects such as the membership in multiple groups as a dangerous element of the fabric of the sovereigntist movement. The ministry claimed that such groups are "giving origin to dynamics that are violent and philo-terrorist" - that is to say, pro-terrorist dynamics.

The document from the Ministry that Òmnium received as a response argued that it considers it "legitimate, suitable and appropriate" to place undercover agents in youth movements to capture information, linking this directly with the usual practices in the prevention of terrorism on the basis of, according to the ministry, alleged violent actions and strategies in the independence movement: "people who belong to the sphere of pro-independence associations, encompassing a wide range of associations, work towards the achievement of the illegal independence of Catalonia, even carrying out in some cases radical-violent types of actions within the framework of the global secessionist strategy". These types of proceedings create, among other serious consequences, a chilling effect for potential activists promoting human rights.

⁶²⁴ <https://directa.cat/el-ministeri-de-linterior-espanyol-ha-punxat-massivament-les-comunicacions-de-lesguerra-independentista-i-dels-cdr/>

⁶²⁵ <https://directa.cat/un-espia-camufelat-en-lactivisme/>

The Gag Law not in line with international human rights standards

The main laws that regulate freedom of assembly are article 21 of the Spanish Constitution, the Organic Law regulating Freedom of Assembly (LO 9/1983, 15th July), the Organic Law regulating Citizen Security (LO 4/2015, 30th March), also known as 'Gag' Law, and the Penal Code (LO 10/1995, 23 November), which has recently been reformed.

According to civil society organisations, and some political parties, the Gag Law and the new version of Penal Code are not considered to be in line with international human rights standards. In 2015 current prime minister Pedro Sanchez, promised to derogate the Gag Law if he had the power to do so.

The Gag Law has been criticised since it was passed due to multiple factors⁶²⁶, such as the discretionary powers that it gives to police officers, the increase of infractions that it establishes compared to the previous law, and the difficulty to appeal against a sanction (because of the veracity presumption that police officers have, and because of the bureaucracy and technicality to do so). The language that is used in the law has been a target of criticism because it is very ambiguous, which, in practice, allows irregular and arbitrary actions in police interventions.

The reform of the Gag Law has been a missed opportunity to fully adapt it to European and international human rights standards, particularly regarding the provisions that affect the right to freedom of expression, the right of peaceful assembly, the right to request asylum and the prohibition of refoulement. While the negotiations on the reform are ongoing, civil society space has continued to be mainly constrained, because of the severe effects which the current legal framework has on important rights for political participation such as the right to peaceful assembly and freedom of expression.

In this sense, it is important to note that the Catalan movement for self-determination was directly impacted by the law punishing sedition, which condemned nine of its leaders to hundred years in prison in 2019. This criminal category was eliminated by the Spanish Parliament in December 2022, stated already in the recent Penal Code reform.

⁶²⁶ <https://www.elsaltodiario.com/ley-seguridad-ciudadana/comision-europea-critica-actual-reforma-ley-mordaza-violando-libertad-expresion-manifestacion>

Criminal Code amendments restrict right to protest

The new Criminal Code also modified the crime of public disorders and is a step closer in the criminalisation of political dissent and persecution of the right to protest.⁶²⁷ This reform dangerously expands the crime of public disorder, by incorporating the concept of “intimidation” - a broad category that can be applied to many actions, even if they are peaceful, and aggravate a crime if committed by “a well-organised crowd”. This will be especially harmful to activists who form part of an organised, coordinated and strong movement, and will leave the door open for restrictive interpretations of the right to peaceful assembly.

This aggravated criminal category carries a punishment of three to five years of prison which makes it impossible to negotiate with the public prosecutor to avoid serving jail time, as this can only be done with crimes with minimum punishments of less than two years. CSOs are afraid that way more participants in demonstrations could end up serving prison time under this new wording.

Several violations of the right to the freedom of peaceful assembly have taken place. While the police did not gain any additional powers in 2022, anti-riot equipment was used disproportionately. For example, in Melilla on the 24th June when hundreds of people tried to jump over the fence that separates Morocco from Spain⁶²⁸ the Guardia Civil shot 65 rubber bullets and threw 86 tear-gas canisters, and at least 23 persons died.

Multiple demonstrations were prohibited due to the breach of formal criterion, such as failing to respect the notification time formalities established in the law. It is important to underline that in Spain, in order for demonstrations to take place, authorisation from the administration is not needed. The organisers only need to notify them. For instance, the demonstration against the deportation of Mohamed Said and Amarouch Azbir in Madrid was prohibited because the administration was notified 21 hours before the protest was supposed to take place, instead of 24 hours⁶²⁹. Apart from prohibiting demonstrations, the Spanish administration tends to modify some of their structural elements of protests in order to lose all their meaning. For example, the government did not prohibit the weekly demonstration that was taking place in Madrid which asked for more pedestrian spaces, but prohibited the protesters from stopping traffic, which was clearly needed in order to send their message.

Proportionality is not being ensured when using police force in assemblies, and when applying fines to protesters. A clear example is the disproportionate number of fines that the CSO *Desarma Madrid*

⁶²⁷ <https://www.elsaltodiario.com/codigo-penal/puntos-mas-polemicos-reforma-delito-desobediencia>

⁶²⁸ La Guardia Civil usó 65 balas de goma y 86 botes de gas lacrimógeno en el salto a Melilla (theobjective.com)

⁶²⁹ <https://www.facebook.com/sosmadrid/photos/5749053828485178/>

received after a peaceful civil disobedience action against the NATO Summit on 26th June⁶³⁰ amounting to €16,800 for painting the *Escuela de Guerra*.

Attacks on journalists by law enforcement

Attacking on journalists by police officers while they are covering demonstrations and rallies is a common phenomenon in Spain. The Censorship Map of the Catalan organisation of journalists *Media.cat*⁶³¹, which analyses the situation of the right to information in Catalonia, shows that officers have hindered journalistic work, either by identifying them restricting their movements, threatening them with the opening of disciplinary procedures or even assaulting them. During 2022, journalists have faced threats, intimidation, identification, and assaults while working on the street, circumstances that represent over 30 per cent of the incidents collected by Media.cat. Once again, the coverage of evictions is a significant part of the cases. Several photojournalists complained about the difficulties they encounter in working when the Mossos d'Esquadra operation is deployed and force them to stand behind the police perimeters without visibility.

In January 2022, for example, journalist Andreu Merino from TV3 denounced that the Mossos d'Esquadra "pushing" had "swept the press" of an eviction in Badalona and had left them outside the police cordon without visibility. On the 9th November the National Police also denounced journalist Pilar de la Fuente, from À Punt, when she tried to report live on, an eviction in the Orriols neighborhood of Valencia. Police formed a security cordon, asked the journalist for her ID and sanctioned her under the Gag law for "alleged disobedience"⁶³². The judicial harassment and punishment of communication professionals limits the right to information, discourages other journalists from carrying out this work and inevitably violates the right to protest.

On a positive note, The Constitutional Court ruled that the Spanish judicial system did not thoroughly investigate enough the complaint file by journalist Sira Esclasans, who was shot a foam bullet impact in her leg while working during a demonstration.

⁶³⁰ <https://www.elsaltodiario.com/antimilitarismo/16800-euros-multas-pintadas-escuela-guerra-durante-cumbre-otan#:~:text=Antimilitarismo-,16.800%20euros%20en%20multas%20por%20hacer%20pintadas%20en%20la%20Escuela,Defensa%20ha%20renunciado%20a%20denunciar.>

⁶³¹ El pes de les amenaces i pressions creix en un context de menys mobilitzacions (media.cat)

⁶³² La periodista de À Punt multada durante un desahucio en Valencia: "He visto una cara de la Policía que me da miedo" (eldiario.es)

Inadequate control and impunity of law enforcement officers

The government has failed to take steps to ensure accountability for disproportionate policing of assemblies, as some of the data in a report published in 2022 found.⁶³³

- 🔍 Internal police investigations regarding unlawful actions committed by police officers are not independent and efficient enough, which has a negative impact on court proceedings.
- 🔍 There is no public access to the protocols, guidelines for action, or internal instructions that regulate the use of force and police tools and weapons of the Spanish police forces.
- 🔍 Police officers are not correctly identified. For instance, during the demonstration that took place in Madrid on the 26th June against the NATO Summit, the vast majority of antiriot police officers were unidentified.
- 🔍 Public prosecutors in court proceedings regarding unlawful actions committed by police officers tend to have an insufficient role.
- 🔍 The Ombudsman's power is limited when investigating police actions. For example, in its response to the platform *Defender a quien Defiende* over the lack of police identification at the demonstration that took place in Madrid on the 26th June, Spanish Ombudsman simply stated that, as the Ministry of Interior assured that all police officers were correctly identified, the complaint had to be filed.

On 8th November 2022 the Parliament of Catalonia passed a motion for the riot police officers of the *Mossos d'Esquadra* to display the Police Operational Number (NOP) in a visible and obligatory manner on the back, chest and helmet⁶³⁴. In addition, the numbering changes from nine digits to six, with a new, shorter alphanumeric coding. These changes have been made effective in Catalonia since March 2022.

On the other hand, the Interior Commission of the Congress of Deputies urged the government to adopt strict protocols for the use and supervision of the Taser electric pistols among the police. A No Law Proposition (PNL) was approved to guarantee the introduction of adequate control measures in the use of taser pistols. In this proposal, it is made explicit that the taser pistols are accompanied by a video recording that allows guarantees regarding their use. However, as of today, there is still no

⁶³³ <https://novact.org/2022/10/informe-transparencia-i-rendicio-de-comptes-dels-cossos-policials-a-lestat-espanyol/?lang=es>

⁶³⁴ <https://www.elpuntavui.cat/politica/article/17-politica/1695327-el-parlament-aprova-que-els-mossos-vagin-correctament-identificats.html>

publication on specific regulation for its use, as requested by the Ombudsman and the Congress of Deputies.⁶³⁵

Many of the irregular actions of the law enforcement officers, such as police officers, maintain strong impunity in the excessive use of force. Many of the incidents remain without judicial review due to the lack of effective transparency and accountability mechanisms. Correct police identification is still a pending task and an important demand of CSOs. The lack of clear and visible identification on the uniforms of the officers makes it difficult to clear responsibilities in cases of malpractice or criminal indicia. This lack of transparency, justified in a generalised way for reasons of public and national security, makes adequate accountability difficult and prevents public control of certain weapons.

On a positive note, the Audiencia Nacional ruled that the Public Administration has an obligation to compensate Aingeru Zudaire, who lost his eye in 2012 due to the impact of a rubber bullet shot by the Policía Nacional the amount of 100.000€⁶³⁶. It agreed that "a rubber ball fired by a National Police agent was the cause of the injuries that caused the loss of an eye to Aingeru Zudaire, and that they occurred when he was participating, without any assault, at the demonstration [held at 12:00 noon on September 26, 2012]."

Freedom of expression and the right to privacy

The main laws that regulate freedom of expression are art. 20 of the Spanish Constitution, the Organic Law regulating Citizen Security (LO 4/2015, 30th March), and the Penal Code (LO 10/1995, 23rd November).

Regarding the Gag Law, the main articles that affect freedom of expression are art. 36.23 and 37.4. On the one hand, article 36.23 "The unauthorized use of images or personal or professional data of authorities or members of the Security Forces that may endanger the personal or family safety of the agents, of the protected facilities or those at risk success of an operation, with respect to the fundamental right to information", is used by police officers to prevent protesters from recording their actions and to frighten them, even if the articles per se does not typify this action. On the other hand, article 37.4 "The lack of respect and consideration whose addressee is a member of the Security Forces and Corps in the exercise of their functions of protection of the security, when these behaviors do not constitute a criminal offence", allows police officers to fine protesters because of their words.

As established previously, the Penal Code has been reformed. However, this reform doesn't affect the articles regarding freedom of expression. The articles that are mostly used to repress protest are

⁶³⁵ Interior entrega pistolas táser a Policía y Guardia Civil sin las instrucciones para su uso que pidió el Defensor del Pueblo (20minutos.es)

⁶³⁶ <https://www.noticiasdenavarra.com/sucesos/2022/11/04/indemnizan-100-000-euros-aingeru-6194689.html>

glorification of terrorism (art. 578 PC), injuries against the monarchy or public agents (art. 490.3 PC) and offences against religious feelings (art. 525 PC). One of the most important cases, even if it happened in 2021, is the imprisonment of the rapper Pablo Hasel, sentenced to nine months in prison because of his lyrics against the monarchy.

Freedom of expression on social networks has also been affected in 2022. Sanctions and prosecutions of Twitter users for their comments on social networks or journalists for publishing certain issues related to police malpractice have been constant since the implementation of the Gag Law⁶³⁷, although it currently occurs less frequently. Legal proceedings and investigations have been opened against twitter users: in one of the cases charges were brought against about fifty people, who made critical comments about the court ruling that imposed a 25 per cent Spanish language in Catalan schools. In another case, in May 2022 journalist Diego Díaz Alonso was fined after the publication of an article in May 2022 about disproportionate police actions. The complaint and the disciplinary file explicitly mentioned the article: "Chronicle and video of a disproportionate police intervention." Alonso is also the director of Nortes, the Asturias newspaper

The right to privacy has not been protected in Spain in 2022. Racial and ethnic profiling in Spain is a worrying issue regarding the right to privacy. Organisations like SOS Racisme or Rights International Spain have largely denounced this situation. As SOS Racisme states in its latest report ⁶³⁸, in Spain, non-white communities are disproportionality identified on the streets by police officers, criminalising them and exposing them to risk.

⁶³⁷ https://www.infolibre.es/politica/tuitea-si-atreves-amnistia-internacional-denuncia-vulneracion-libertad-expresion-espana_1_1156200.html

⁶³⁸ https://sosracisme.org/informe_perfil_racial/

Safe space

Environmental and housing CSOs especially targeted

During 2022 some groups in Spain have been treated more severely than others. Environmental groups are especially being detained and fined, as happened in the action that *Rebelión Científica* organised in front of the Spanish Congress in Madrid on 6th April, or the action of *Futuro Vegetal* in El Prado on 5th November 2022. Housing organisations had to pay 300,000€ in fines, 44 people have been detained, and 86 people are accused of committing criminal and civil offences only in Catalonia between 2019 and 2022⁶³⁹. Already in October 2021, groups from the Catalan housing rights movement denounced that they had accumulated 364 fines since March 2020 on charges of obstruction, disobedience, or disrespect for authority.

The judicial and administrative harassment of activists is not new: the application of the 'Gag' Law, the Civil Code, and the Penal Code in order to discourage protests or civic actors' actions was common in 2022. The housing movement is one of the most affected. For instance, two members of the *Sindicat de Llogateres* were accused of coercion after a 2018 protest was staged to convince the owner of a house to negotiate with the tenants about the price decline of the rent. Finally, in February 2022 both activists were acquitted.⁶⁴⁰

Unequal sanctions, arrests, and deportations of anti-racism activists

Public space remains subject to unequal access for some, particularly excluded groups. Specifically, migrants with an irregular administrative status cannot fully exercise their right to peaceful assembly, given that they risk deportation due to a punitive vision of demonstrations in which identifications and sanctions of protesters have become the rule. Even migrants with a regular administrative status (such as a residence permit) have expressed that the risk of being sanctioned during a peaceful assembly prevents them from participating, given that a sanction can imply a denial of residence permits' renewal. CSOs point to a racist bias in the access to public space as a space for political participation. Discrimination in the access to public space and exercise of freedom of peaceful

⁶³⁹ <https://www.elsaltodiario.com/vivienda/manifestacion-represion-multas-barcelona>

⁶⁴⁰ https://cronicaglobal.elespanol.com/vida/condena-sindicat-llogaters-coacciones-propietaria_546864_102.html

assembly is intersectional and creates specific security risks for women and the LGBTQI+ people, who may suffer concrete discrimination in their interactions with police officers because of their gender identity and/or expressions.

The lack of rule of law in the application of antiterror measures in Spain has been instrumentalised by the State to restrict activism supporting ethnic and religious minorities. In 2022, activists Mohamed Said and Amarouch Azbir were unjustifiably arrested and forcibly deported after thirty years of living in Catalonia (with a residence permit), after being accused of "radicalism" and "participating in activities contrary to national security" without a trial nor presenting any evidence. Both activists who were very active in denouncing institutional racism and pointing out state Islamophobia, received the support of local and independent institutions who advocated for their freedom. The importance of detention and expulsion of these activists is a deterrent to freedom of expression and participation in political life. Furthermore, demonstrations organised in Madrid against the deportation of these activists were banned, as denounced by *Defender a Quien Defiende* and *SOS Racismo*. The two organisations also point out that at the time of the demonstrations, police forces racially profiled protesters.

Protesters have been disproportionately detained (for instance activists from Futuro Vegetal), disproportionately fined (for example activists from Desarma Madrid), and physically attacked. For instance, during the protest against the international congress named The District, a police officer, twisted a protesters' arm,⁶⁴¹ while during the eviction of La Higuera, a building in Madrid, a girl suffered multiple fractures in her arm as a result of police force).⁶⁴²

Attacks against women's rights and the trans community

Attacks against trans feminist collectives and intersectional feminists were carried out by movements, organisations, and political parties. An example of this was the events at Ca La Dona, a meeting place for the Barcelona trans feminist movement. The headquarters were attacked by trans-exclusionary abolitionists in October 2022, in response to the call for intersectional feminist conferences⁶⁴³.

⁶⁴¹ https://twitter.com/La_Directa/status/1582655794163568640?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1582655794163568640%7Ctwgr%5Ec6dabe46977a61a779aa1f5e1a4e7f93559b199a%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fdirecta.cat%2Fcentenars-de-manifestants-ocupen-la-cimera-de-fons-dinversio-the-district-que-se-celebra-a-fira-de-barcelona%2F

⁶⁴² https://www.eldiario.es/madrid/somos/tetuan/final-bajaron-tejado-desalojo-resistencia-cargas-policiales-demolicion-higuera_1_9622915.html

⁶⁴³ <https://twitter.com/caladona/status/1583754082027974656?t=exnzAArLicvyzlr6-qTUbW&s=35>

On the institutional level, the president of the Feminist Party, Lidia Falcó, is being investigated for a hate crime for her statements against the trans community.⁶⁴⁴ This same party aligns itself with the positions of the extreme right and against the laws that ensure protection of the fundamental rights of trans people. Its positions crystallised in the street, with counter-demonstrations staged during the historic feminist protests (March 8 and November 25).⁶⁴⁵

On 6th April 2022, the Senate approved a Law that modifies the Penal Code which prohibits harassment of women who are going to have an abortion⁶⁴⁶. Despite this, ultra-groups and anti-abortion organisations such as *Hazte oír* have continued their actions of harassment even in front of the voluntary termination pregnancy clinics. The feminist movement claims the protection of women and recalls the importance of ensuring that abortions can still be performed in public health care and not only in private clinics.

⁶⁴⁴ El partido feminista y Vox se unen contra la Ley trans que consideran "peligrosa" y anticonstitucional (europapress.es)

⁶⁴⁵ El movimiento feminista se fractura este año con dos manifestaciones a la misma hora por el centro de Madrid (europapress.es)

⁶⁴⁶ Aprobada la ley que penaliza el acoso ante clínicas abortivas con el voto en contra de PP y Vox | Público (publico.es)

Funding for civil society

The main problem related to funds is that none of the Spanish autonomous communities has reached the commitment to allocate 0.7 per cent to public cooperation policy⁶⁴⁷. The third sector, during 2022, denounced this fact, which in a context of crisis, becomes more decisive. The organisations propose to gradually increase the funds allocated to this use, establishing a calendar to meet the 0.7 per cent before 2030 and to prevent, in addition, a reduction in the number of resources allocated for cooperation.

Another barrier is the strong bureaucratisation when working with public administrations. Entities such as Lafede.cat and the Table of Entities of the Third Social Sector of Catalonia⁶⁴⁸ have denounced this problem when requesting and justifying projects, which hinder the work of social and cooperation entities in Catalonia.

⁶⁴⁷ Las comunidades autónomas, lejos del compromiso del 0,7% - Coordinadora de Organizaciones para el Desarrollo (coordinadoraongd.org)

⁶⁴⁸ 10 propostes de les entitats socials per simplificar la relació burocràtica amb l'administració pública - Lafede.cat

Civil dialogue and right to participation

The dialogue that exists between government and civil society is insufficient and opaque. A clear example of the shortcomings of this type of process has been the reform process of the Citizen Security Law (Gag Law). Organisations in defense of human rights and civil society have had very few opportunities for dialogue with the government in an open and public way to express their demands.

CSOs push back in trying times

During the month of June 2022, the Network for the Observation of Rights in the Context of Protest was born in Madrid⁶⁴⁹, in order to monitor possible violations of rights in the context of protest by state security forces and bodies. The observers are voluntary and independent people who have been trained by the state Platform Defender a quien Defiende (DqD), a plural network made up of organisations that work to defend and protect the human rights of civil society. These observers monitor police interventions that may involve violations of rights.

The network has been activated twice in the capital, during demonstrations against the NATO summit in Madrid and during protests against gender-based violence. In both cases, the lack of identification by the police officers was denounced before the government delegation and the ombudsman. The network has recorded a total of 17 cases where National Police agents were not identified with the Police Operational Number (NOP), including during the feminist movement demonstration on 25 November and 33 cases of agents who were not identified properly during protests against NATO in June 2022. The network in Madrid would not exist without the previous work carried out in Catalonia by Som Defensores, which since 2017 systematises human rights violations in the context of protests and legally and psychologically assists in cases of institutional violence.

Observation contributes to the free, full and effective exercise of the basic rights of citizenship, grants greater security to those who exercise their freedom of protest and on occasions, can dissuade and/or prevent, with its presence, possible violations of rights by the security forces and bodies. If these violations have taken place, the observer can inform the public and competent authorities in order to demand the examination and investigation. For all these reasons, the task of the Network for the Observation of Rights in the context of protest, has the dual objective of dissuading and tempering violations of rights due to their presence on the ground; and collecting data that can help accountability processes for observed violations, support judicial processes, and challenge institutions to make changes that guarantee the exercise of rights for the entire population.

During 2022, the trust placed in the social sector has been high, leading to continuing political and social advocacy processes not present in previous years. However, some legal change procedures have been carried out without considering civil society and produced exclusively through

⁶⁴⁹ <https://www.elsaltodiario.com/represion/protesta-otan-domingo-observadores-monitorearan-actuacion-fuerzas-seguridad>

negotiations between political parties. One of these legal changes has been the recent reform of the penal code or the reform of the Gag Law (which is still in the approval process today).

At present, the third sector and all the work that it develops is not undervalued, indeed, the vision of social organisations is in good condition.

Recommendations

To the government of Spain:

The regulatory environment for civic freedoms

- 🔍 Reform the Gag law through an open, inclusive and transparent consultation process with civil society, to ensure it is in line with international standards, including the Venice Commission opinion.
- 🔍 Repeal the amendment to the Criminal code which modifies public order and could be used to crackdown on peaceful assembly

Safe Space

- 🔍 Refrain from targeting, harassment and criminalise of youth organisations, climate activists and housing organisations, including Tsunami Democratic movement. Drop all charges against them and scrap fines issued.
- 🔍 Refrain from surveillance, which is being used as a pretext to unlawfully prosecute and create a chilling effect amongst political dissidence groups.
- 🔍 Urgently conduct independent, transparent and thorough investigations into cases of surveillance
- 🔍 Refrain from attacking and criminalising journalists and urgently investigate cases of attacks against journalists to hold perpetrators to account.
- 🔍 Carry out independent, transparent and thorough investigations into excessive force used by authorities during protests to hold perpetrators to account.
- 🔍 Ensure that police officers are identifiable through the Police Operational Number and that it is legible and visible 360°
- 🔍 Refrain from targeting housing organisations and scrap fines issued against them.
- 🔍 Refrain from targeting excluded groups, including migrant LGBTQI and women, during protests

Funding for civil society

- 🔍 Commit to allocating 0.7 per cent to public cooperation policy to ensure funding for civil society organisations
- 🔍 Refrain from creating bureaucratic measures for access to state funding

Civil dialogue and the right to participation:

- 🔍 Ensure regular, transparent, inclusive consultation with civil society by establishing bodies for dialogue
- 🔍 Ensure that adequate time is allocated to consultation processes.

About the contributor

NOVACT, The International Institute for Non-violent action, provides support, training and counseling to nonviolent or peaceful civil resistance movements which work for conflict transformation and human security.



Òmnium Cultural is a Barcelona-based NGO working in the fields of culture, social cohesion and civil rights, with 185,000 members.





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