

ECF response to the European Commission stakeholders' consultation on the rule of law in the European Union

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Executive Summary

The European Civic Forum (ECF) is a trans-European network gathering more than one hundred NGOs and associations in 27 European countries that work every day to improve people's lives by addressing issues concerning the common good (citizenship, democracy, human rights, civil liberties and social and environmental justice). ECF works with CSOs national platforms on citizenship-related issues dealt with at the EU level. Since 2018, we have been collecting resources from civil society at the national and European level on the state of civic space in the European Union on the platform Civic Space Watch (<http://civicspacewatch.eu>). The ECF is a research partner of the CIVICUS Monitor and an active member of Civic Society Europe.

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

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- Common Ground (Greece)
- European Center for Not-for-Profit Law (ECNL) (Netherlands)
- Gong (Croatia)
- Ligue des droits de l'Homme (LDH) (France)
- Nyt Europa (Denmark)
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- Òmnium Cultural (Spain)

Our contribution is organised into three sections. Section (1) looks at the European Commission's approach to the rule of law, democracy and fundamental rights, and provides recommendations for a much-needed comprehensive approach to these issues. Section (2) proposes an analytical framework to unpack shrinking civic space in the EC Rule of Law report. Finally, section (3) showcases some of the trends that emerged throughout the year, bringing attention to specific country-developments.

1. Deterioration of the rule of law, democracy and civic space: there is a need for a comprehensive approach

The deterioration of the rule of law develops in parallel with growing social disparities

In the European Union, the rule of law (Etat de Droit, Rechtsstaat) refers to constitutional supremacy and the protection of fundamental rights from public authorities and private interests. This set of norms, values, institutions that are deemed to protect from abuses are interlinked and, thus, affected by the way human rights, democracy and social justice are implemented. Experience shows that when societies are inclusive, when inequalities are low, when democracy works for the people, there is less risk of political authorities disregarding the rule of law.

The rule of law backsliding that the European Union member states are experiencing reflects tensions that are present in our societies resulting from the growth of inequalities and vulnerabilities, the sense that democracy and effective access to fundamental rights are not working for all. It is the product of a long process of degradation of social cohesion that has produced deep socio-economic, cultural and geographical divides inside our societies. Many people feel that democratic processes and the current institutional channels do not ensure their needs are heard and addressed in the European Union today. Many have lost confidence in the ways democracy is functioning.

When democracy does not deliver social and economic cohesion, there is a growing risk that nationalism, xenophobia and identity politics based on exclusion become substitutes for an inclusive shared future. These trends are not dominant in European societies, but they are worrisome as a significant part of society is now looking in that direction.

While the implementation of the rule of law is a national competence, the drivers and responsibilities for the rule of law and democratic deterioration are both national and European

While the states have sole responsibility for implementing the rule of law nationally, societal tensions in member states are not the sole responsibility of the decision-making of national authorities. They are exacerbated by the effects – in each country – of the economic and financial policies that are the responsibility of the European Union institutions.

The social impacts of the financial and economic policies implemented (along the European Union's successive rulebooks) contributed to creating a fertile ground for regressive political offers that question the rule of law framework. In some cases, regressive leaders won electoral majorities that allowed them to take control of the judiciary and the media, while weakening the checks and balances despite the civil society's resistance. The European Union institutions need to put human rights and people's needs, and especially the ones of the many that are left aside at the centre of their policies, including economic and fiscal ones, and to hold dialogue with civil society not only on specific policy issues but also on the general approach for the common project if they want to reverse the deterioration trends described below (section 4).

Open civic space as a key pillar of the rule of law and democracy

A vibrant civil society and an open civic space are vital for a healthy democracy, strong social justice, and the proper functioning of the rule of law. An open, plural and dynamic civic space with strong civic organisations allows citizens to engage in public affairs beyond elections. It is also conducive

for governments to be transparent and accountable. As such, the quality of civic space is an indicator of the state of the rule of law and democracy, and an integral component of the rule of law and democracy framework. Civic organisations and movements are often among the first actors targeted when the rule of law and democracy deteriorate because they are among the checks and balances available to our societies to uphold rights.

The European Commission writes it recognises civic organisations as major actors for alerting on breaches of the rule of law in its first rule of law report. It also highlights the role of civil society for democracy, fundamental rights and for a fair and inclusive recovery from the manifold consequences of the COVID-19 pandemic in its recent communications, including the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, the European democracy action plan, and Europe's moment: Repair and Prepare for the Next Generation¹. However, none of these discuss civic space and the tools and measures necessary to protect it with the weight and attention the issue deserves.

It is time for a comprehensive approach aimed at strengthening democracy, the rule of law and civic space

The European Commission's role is crucial in rebuilding trust and confidence in democracy and the rule of law as tools for addressing the wide range of people's needs, increasing cohesion in our societies, and ensuring effective access to rights for all. This requires both addressing the European root causes of societal tensions through its economic and financial policies as well as developing a proactive strategy to impede further democratic and rule of law backsliding in specific Member States. To date, the European Commission's approach to the deterioration of the rule of law and backsliding democracy is reactive and lacks a comprehensive vision.

First, the European Commission fragments its monitoring and approaches concerning democracy, the rule of law, fundamental rights and social justice. Doing so downplays their interconnections and the root causes of the challenges. It is impossible to understand the deterioration of the rule of law without looking at these components as a whole and developing a comprehensive approach.

Second, while we welcome that **the European Commission** first Rule of Law report recognises that the safeguards of the rule of law depend on the entire ecosystem of institutional and societal checks and balances², we regret that it **approaches the rule of law narrowly, looking only at four aspects characterising a strong rule of law framework**. In comparison, for example, the OHCHR recommended broadening the scope to include at least six pillars in the analysis: 1) the right to equality before the law, 2) the right to a fair trial, 3) the right to liberty and security of person, 4) the right to freedom of expression and opinion, 5) the right to peaceful assembly and association, 6) the right to participate in public affairs³.

¹ ECF (2020), First rule of law report recognizes civic actors as crucial safeguards, now it is time to take concrete steps for regular, structured and transparent civic dialogue, <https://civic-forum.eu/statement/first-eu-rule-of-law-report-recognises-civic-actors-as-crucial-safeguards>.

² ECF (2020), First rule of law report recognizes civic actors as crucial safeguards, now it is time to take concrete steps for regular, structured and transparent civic dialogue, <https://civic-forum.eu/statement/first-eu-rule-of-law-report-recognises-civic-actors-as-crucial-safeguards>.

³ UN Human Right Regional Office (OHCHR) Brussels, The case for a human rights approach to the rule of law in the European Union, <https://europe.ohchr.org/EN/Stories/Documents/Publication.pdf>.

Third, the 2020 rule of law European and national reports mention the role that civil society plays in the rule of law ecosystem, but they fail in several ways to concretise how this recognition operated. **Major issues affecting civic actors' actions** in 2020 like, for example, the restrictions of the right to peaceful assembly, **have not been taken into account, and some of the information included in the report has not taken into account civil society inputs** (for example, in the case of Croatia and France)⁴.

Fourth, even though **the European Commission** compiles horizontal developments in its report, **it approaches the trends of deterioration across Europe mainly as individual cases linked with specific country's factors.**

Fifth, while **the European Commission** looks at the situation for the rule of law in different Member States, **it does not provide concrete country assessments nor precise recommendations on how to improve the rule of law framework at the national level.**

The European Commission should adopt a comprehensive approach for the rule of law, fundamental rights and democracy as they are intrinsically intertwined. Any restriction on a category of rights contributes to restricting rights in their universality. In this sense, **we welcome the European Parliament's proposal for a monitoring mechanism that examines the state of democracy, the rule of law and fundamental rights⁵ together**, and not separately as is currently the case. We join the European Parliament's demand on the European Commission **to involve civil society structurally in all phases of the monitoring and evaluation as well as on the inclusion of country-specific recommendations⁶.**

A comprehensive approach should also include a specific strategy for civil society describing the tools and instruments at the disposal of the EU institutions, particularly the Commission, 'to address the restrictions to civic space as identified in the monitoring.

2. Recommendations to strengthen the rule of law review

The European Civic Forum calls on the European Commission to:

- Expand the scope of the current Rule of Law review to include the state of fundamental rights and democracy.
- Add an additional chapter to the Rule of Law report, analysing the state of civil society space in each Member State to a greater extent. The European Commission should adopt a broad and structured approach to civil society space (see section 3 for a proposal). Such analysis should also assess the impact of the misuse of European legislation provisions.

⁴ ECF (2020), First rule of law report recognizes civic actors as crucial safeguards, now it is time to take concrete steps for regular, structured and transparent civic dialogue, <https://civic-forum.eu/statement/first-eu-rule-of-law-report-recognises-civic-actors-as-crucial-safeguards>.

⁵ European Parliament (2020), on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INL)), https://www.europarl.europa.eu/doceo/document/A-9-2020-0170_EN.html.

⁶ Ibidem.

- Involve civil society organisations closely in all elements of the review cycle, including in the assessment of information collected from the Member States to ensure the input is complete or merits a request from the Commission for further clarification from national authorities.
- Include country-specific recommendations with timeline and targets for implementation. The Commission should also rely on civil society to put forward recommendations regarding the most appropriate measures to address deficiencies in Member States identified by the Commission.
- Ensure that national authorities organise an open and meaningful dialogue with civic organisations at the national level on the Commission report and that recommendations lead to follow up measures.
- Establish an alert mechanism to allow civil society actors to promptly signal serious issues and/or threats regarding civic space fundamental freedoms to the European Commission. Such alert mechanism should lead to a rapid (re)assessment of the situation allowing for timely and concrete reaction at the EU level, the impact of which should be regularly reviewed.
- Make sure that when deficiencies in civil society freedoms and civic space are identified, they are addressed with the whole array of tools available at the EU level.
- Enable civic space at the European level by creating a solid European framework for open, transparent and regular civil dialogue and participation of associations (art. 11 TEU) to identify challenges and opportunities for a diverse and pluralist civil society and inclusive societies.
- Ensure that adequate public support and accessible funding is granted to a broad diversity of civil society and rights groups. Support to the civil society sector in all fields of actions (from delivery of social services to watchdog activities) should also be part of recovery measures during and in the aftermath of the COVID-19 pandemic.
- The Commission should also use its assessment of the situation in a given Member State to inform decisions about where to focus (additional) financial support in dialogue with civil society.

3. Unpacking shrinking civic space: a proposal for an analytical framework

Shrinking civic space is a complex phenomenon. Pressure on NGOs and social movements can take the form of burdensome and limiting legislation; reduction, restrictions and constraints on financial resources; new barriers to influence policy-making and accessing information; restriction to the freedom to protest, as well as a general pressure and decline in access to rights for all. On top of the 'hard' obstacles, practices and statements, and the lack of implementation of policies, affect the environment in which civil society operates.

The European Civic Forum bases its analysis of challenges for civil society in Europe on five elements

that we believe are crucial for an enabling environment⁷:

- 1. The political landscape and safe space (including state duty to protect and right to freedom from fear):** the historical legacy on 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. Under this category also fall statements by public officials and the reactivity of public authorities to respond and investigate incidents of breaches to civic freedoms.
- 2. The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline:** a supportive legal and regulatory framework for civic freedoms, in particular freedom of association, freedom of peaceful assembly and freedom of expression, and its effective implementation ensure the full-stretching, correct functioning and protection of civil society space. Governing bodies have the duty to refrain from, investigate and discipline actions, laws and statements that threaten civic freedoms.
- 3. 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.
- 4. The right to participation and dialogue between the sector and governing bodies:** governing bodies must pursue policies and narratives that empower citizens and CSOs to be meaningfully engaged in public debate and policymaking.
- 5. Civil society's responses to challenges to democracy, the rule of law and fundamental rights:** civil society is not a passive victim of government attacks. Civic actors are actively involved in fostering democracy and the rule of law and holding governments accountable.

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

These five elements are crucial for an open and vibrant civic space and could be used by the European Commission as an analytical framework to unpack the complex phenomenon of shrinking civic space.

Below, for each of the five elements, we provide a sample of questions that ECF uses to examine

⁷ ECF (2018), Towards an enabling environment for civil society in Europe <https://civic-forum.eu/publication/view/towards-an-enabling-environment-for-civil-society-in-europe>.

the situation analysed in its Civic Space Watch monitoring. We are keen to provide insights from the expertise of analysis of civil society space ECF and its partners built over the years.

The political landscape and safe space (including state duty to protect and right to freedom from fear):

- What is the landscape in which civil society has been operating in the last year? What are some key events that have characterised it?
- What is the level of public trust for civic actors?
- Was civil society, or a specific civic actor, targeted by smear campaigns?
- Was there any instance of physical attacks against civic actors?
- If yes, did the authorities investigate the incident and persecuted the perpetrator?

The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline:

- What laws regulate freedom of association, expression, assembly?
- Are they implemented correctly?
- Were laws passed affecting or restricting freedom of association, expression, assembly in the last year?
- Was any civic organisation sanctioned while supporting their constituencies during COVID-19? Were any civic actors sanctioned (or threatened to be sanctioned) for the opinion expressed?
- Was freedom of assembly respected? Did the emergency legislation face COVID-19 take into account the right to peaceful assembly and protest? Were accountability and proportionality ensured?
- Did the police gain additional powers to ensure the respect of the measures implemented? If this was the case, were any particular groups affected? Were accountability and proportionality ensured?
- Were protesters unduly/disproportionately fined, imprisoned or physically attacked?
- Was any positive initiative started by public authorities to ensure the respect of fundamental rights?
- Did any court case affect fundamental freedoms of expression, association and peaceful assembly?
- Has the right to privacy been ensured?

The framework for civic organisations' financial viability and sustainability:

- What is the economic and financial viability of the sector?
- Are there barriers for civic actors to access funding?
- Did the pandemic have an economic and financial impact on the sector?
- Did the government include the sector in the recovery measures for the economy?
- Did the government implement specific measures to support the civic sector?
- Was any law affecting access to funding discussed or passed?

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

- Is there a civil dialogue framework in place in the country? If yes, is it implemented in practice?

- Was the civil dialogue framework respected during the pandemic?
- Was civil dialogue with public institutions at the local and national level affected during the pandemic? How?
- Was any positive measure implemented to ensure the participation of civil society and citizens in the policymaking to respond to the pandemic?
- Was any change to civil dialogue legislation carried out in the last year?
- Was civil society able to access information?

Civil society's responses to challenges to democracy, the rule of law and fundamental rights:

- Has civil society developed initiatives to foster democracy, the rule of law and fundamental rights?

4. Trends affecting civic space

We analysed the state of each pillar across Europe in 2020 in the Activizenship #5 – Civic Space Watch report Stories from the lockdown: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf. Our findings illustrate that while the intensity of the deterioration of the rule of law varies from country to country, almost no EU country has fully safeguarded checks and balances in the past year. Some of the challenges to civic space were generated by the democratic test posed by the COVID-19 pandemic, which reproduced and magnified some of the trends that had already emerged. Others happen in parallel to the health crisis. All of them cumulated with the ones documented in previous years and created an extremely testing environment in which civil society operated in 2020.

Despite the pressures, civil society actors, as well as self-organised citizens, have significantly mobilised to ensure at the widest possible scale effective access to basic rights that the crisis has put at risk. Many have found creative ways to be useful to their communities, to offer social and cultural tools against isolation, to volunteer to provide support to the weak and vulnerable who often happen to be the poorest, to act as watchdogs vis-a-vis the consequences of the democratic and social crises, and to propose societal alternatives. Everywhere, organised civic actors, as well as citizens and people spontaneously, have been and are in the front line to witness the precarious situations people suffer from, trying to respond to people's needs, to alert to the limitations and adverse consequences of implemented public policies, to react against abuses of power, to put solidarity for all at the centre of the response to the crisis.

Hereby we summarise the trends described in the report referencing the national developments collected by our members on the ground. For more insight, we recommend reading the report. For additional information on specific countries, beyond those part of this response, you can consult the Civic Space Watch (<http://civicspacewatch.eu/>).

1. COVID-19 as a crash test for the effective functioning of democracy and rule of law

2020 has been characterised by the COVID-19 health emergency that produced consequences on our societies, economies and democracies that are unprecedented in Europe in times of peace. The need to provide a quick and strong response in a short time has increased the use of exceptional

powers by the Governments at the expenses of democratic checks and balances.

The question of how to guarantee the democratic life in a situation of emergency has been a challenge in the context of the COVID-19 crisis. In order to take shift decisions, a general tendency to concentrate powers at the Government level while limiting the role of institutions in charge of checks and balances has been reported across Europe. In countries where the functioning of democracy and the rule of law was already strained, authorities have taken advantage of the situation to further concentrate their powers and to pass controversial legislation unrelated to the COVID-19 emergency (see for example in the contributions from Hungary, Poland, Slovenia and Czech Republic). However, even in countries where governments have been praised for their balanced approach, the situation of exception has exposed serious risks for European democracies (see for example Ireland and Germany), adding to the trend of deterioration documented in previous years.

In this context, where institutional mechanisms of separation of powers and accountability are shrinking, civic actors' role as checks and balances become more crucial. However, these have been critically weakened with the narrowing of civic space and downsizing of their capacities to act due to the impact of the economic shock on their resources.

2. The deterioration of civic freedoms

In 2020, some of the challenges to the exercise of civic freedoms were generated by the democratic test posed by the COVID-19 pandemic, which reproduced and magnified some of the trends already emerged in previous years. Others happen in parallel to the health crisis. All of them accumulate with the ones documented in previous years and create an extremely testing environment in which civil society operated in 2020.

2.1 Restricting freedom of association

Following the footsteps of the Hungarian law on the transparency of organisations supported from abroad dubbed "Lex NGO" that was ruled a breach of the right to association by the European Court of Justice, in 2020 four countries have proposed or introduced legislation officially aimed at improving transparency, but the facto discriminately overburdening and stigmatising (parts of) the sector. For example, **Greece** implemented a new register for organisations working with migrants and the **Netherlands** is discussing a new Transparency Act. Other forms of restriction of freedom of association include: new legislation increasing interference of public authorities (for instance, the law on "Strengthening republican values" in **France**), and arbitrary disbanding of civic organisations (such as the dissolution of civic organisations in **France**, de-registration in Cyprus⁸).

2.2 Closing the public space, restricting the freedom of peaceful assembly and freedom of association

During the first wave of the pandemic, in most EU countries freedom of assembly was restricted as a byproduct of restrictions on movement and gatherings, without specifically mentioning the right to peaceful assembly, and leaving certain ambiguity as to what activities were permitted and which were restricted due to the "broad and vague" wording. Often, the vagueness in addressing the right

⁸ <http://civicspacewatch.eu/cyprus-kisa-denounces-the-new-act-of-repression-by-the-government/>.

to peaceful assembly resulted in excessive discretion left to competent authorities to decide whether to allow assemblies (see for example in **Ireland**).

In a general tendency across Europe, the requirement to notify authorities of planned assemblies has started to de jure or de facto function as an authorisation system, even in case of small gatherings of a handful of participants. As a result, even where a total ban was not in place, often local authorities restricted the right to freedom of assembly on the basis of public health concerns. In several instances, peaceful protesters have been dispersed, fined or arrested on the grounds of not having notified or received authorisation from competent authorities. Additionally, public authorities have often shifted the responsibility to guarantee compliance with social distances during public demonstrations on the organisers rather than see it as a shared responsibility (see for example in **Germany**).

As the numbers of hospitalisations and infections started to be under control and governments slowly lifted COVID-19 related restrictions, some states that maintained limitations on large gathering of people made exceptions for demonstrations that were safeguarded during following waves of lockdowns (for example, in **Italy**⁹). In some countries, this was the result of NGO's appeal in courts to challenge the Government decision to maintain restrictions on public demonstrations (see, **France**). However, freedom of assembly remained restricted in some countries even as other areas of public life were opening (for example in **Hungary**, **Slovenia** and **Greece**).

2.3 Securitising the public space, policing dissent

2.3.1 Deploying the coercive apparatus to police the pandemic

In most countries, the enforcement of the restrictions was carried out by the police patrolling the streets. In some countries, governments also deployed the military to enforce the restrictions on freedom of movement. Some states introduced harsher sanctions and granted (or attempted to grant) police forces new powers to enforce them (i.e., see for example, **Ireland** and **Poland**). In some countries, the police were granted additional powers to manage or sanction content deemed fake by the authorities (see for example, the changes to the criminal code in **Hungary**) or in access to private data for the purpose of tracking the spread of the virus raising issues of surveillance.

In many countries, police forces have been questioned for abuse of their powers in imposing fines as well as for the use of force against the public (see, for example, **France**, **Spain** and **Greece**). Fines and policing abuses across Europe disproportionately impacted racialised groups, including Black people, Roma and people on the move and migrants, as well as homeless. In this sense, the pandemic amplified a tendency of police abuse against these groups that in many countries already existed.

2.3.2 Heavy-handed policing of freedom of assembly and protests

In some cases, the coercive apparatus in place to police the COVID-19 rules were applied against people exercising their right to peaceful assembly, with peaceful protesters facing administrative and criminal sanctions for breaking the COVID-19 restrictions raising concerns on the intent of authorities to curtail dissent (i.e., examples documented in **Hungary**, **Poland**, **Slovenia**, **France** and **Greece**). A

⁹ <http://civicspacewatch.eu/italy-restrictions-on-the-right-to-peaceful-assembly-are-disproportionate/>

number of arbitrary arrests of peaceful protesters not linked with the COVID-19 restrictions, in some instance with violence, was also reported, including during the Black Lives Matter demonstrations (see for example in **Germany**). Additionally, use of disproportionate force against protesters was also documented in few countries (like **Spain**, **France**, **Poland** and **Greece**).

2.3.3 Policing freedom of expression and association

Since the outbreak of the global pandemic, across Europe, several governments have restricted access to information, locked out the media and displayed a general intolerance against criticism. This was also showcased by the records of smear campaigns against civil society countries (like **Czech Republic**, **Hungary** and **Slovenia**). In some countries, authorities have made moves to control and sanction citizens, activists and journalists that are critical of their actions. The gravity of the actions changes greatly in terms of repercussions on the activists, but all contribute to creating a chilling effect on citizens and activists holding public authorities accountable. In a few countries, records have shown police interference with journalists and citizens covering their actions (for example in **France**). These interferences include arrests and physical assaults. Reports in **France** and **Greece** also showcase the use of coercive power against associations working with migrants.

2.4 Legislative changes restrict freedom of assembly beyond COVID-19

In recent years, a number of countries have toughened their approach to public demonstrations by restricting the space accessible to protests and increasing sanctions. In 2020, a new restrictive law on public demonstrations was introduced in **Greece**. Currently, laws potentially restricting freedom of assembly are under legislative process in **France** and **Denmark**¹⁰.

2.5 Data gathering and surveillance

As “tracking the virus” has become the mantra in the tackling of the health crisis, concerns about the expansion of surveillance technologies and the right to privacy have been voiced by civil society and human rights bodies across Europe. These developments could have serious consequences on civic space. For example, when data are collected in the context of public demonstration. Privacy is an important prerequisite for the exercise of fundamental rights, including the right to peaceful assembly and expression. Being identified in the context of public demonstrations can have a deterrent effect on public participation, especially for communities that are most at risk of marginalisation. These concerns are magnified by the expanding use of artificial intelligence to monitor the respect of COVID-19 rules, as well as to provide faux security following recent terrorist attacks, in many cities in Europe in a context of legal vacuum and lack of public oversight (like in **France**). Examples of using surveillance technologies and social media to track protesters and sanction them have also been documented and reinforce the worry that data collected can be used beyond health purposes.

3. The dialogue between civic organisations and governing bodies is challenged during the crisis

Civic and social organisations are in a privileged position to understand the impact of policies and lack thereof on the wider population and specific groups. Thus, they can be important allies for

¹⁰ <http://civicspacewatch.eu/denmark-new-security-package-risks-restricting-the-right-to-peaceful-assembly-and-discriminating-against-minorities/>

authorities that want to tackle societal vulnerabilities and environmental concerns by providing data and proposals. However, the exceptional circumstances triggered by the COVID-19 health emergency created huge obstacles for the proper functioning of civil dialogue. Institutions needed to act quickly and effectively to slow the spread of the virus and reduce the heavy impact that the restrictions had on the economy and the population. The increased workload, coupled with social distancing and telework, greatly affected the capacities of institutions to respond to the increased number of requests for dialogue and consultation.

Generally, across Europe, the emergency procedures reduced the opportunities for consultation and influence by shifting the power from the legislative branch to the executive one. Even in countries with a relatively open dialogue between civil society and governments, the quality and the impact of the exchanges depended on the Ministry. Additionally, consultation processes at national levels did not always lead to a concrete impact on policies and sometimes civic organisations were left with a feeling that the civil dialogue was a mere ticking-the-box exercise.

In some countries, civil society reported that the time available for consultation was shortened or the processes were disregarded (like in **Slovenia**) in disregard of institutional frameworks of civil dialogue on some policies adopted. Lack of meaningful dialogue with the sector is deemed to be an important factor for lack of reactivity of the government to many societal emergencies. In some countries, authorities not only disregarded civil society but also made moves that will affect the quality of public participation in the future (like in **Slovenia** and **Croatia**).

Among the issues that made civil dialogue and civil society's advocacy more challenging in times of crisis was access to information, especially concerning fast-track, continuously changing legislation. In some countries, governments suspended transparency legislation or parts of it (like in **Hungary** and **Poland**).

4. Economic difficulties of the sector soar during the crisis

The COVID-19 crisis had a huge economic and financial impact on many parts of the civic sector, against the background of an already challenging funding landscape. This issue has a short-term impact, with many organisations at risk of being forced to stop or downscale their operations. It also has long-term consequences: the landscape of civic organisations is undergoing a fast and profound change as many will stop existing or completely change their activities, in the absence of meaningful support from public institutions.

Public support for the sector often arrived quite late, with many governments prioritising funding for businesses first. Only a minority of the European countries created specific funding for the sector fit for its specificities (like **Austria¹¹** and **Ireland**). Many other countries included NGOs in some of the measures supporting employers and businesses. However, in most cases, only a part of civic organisations was actually eligible for this support, and this funding was unfit for the specific needs of the sector.

In some countries, the economic difficulties caused by the lockdown implemented in most EU countries have been exacerbated by the decision of public authorities to shift the priorities of national and EU funding for NGOs to tackle the health emergency. In some cases, these moves

¹¹ <https://www.civicus.org/index.php/media-resources/media-releases/4622-austria-s-civic-space-rating-upgraded>

raised suspicion that they were aimed at disadvantaging specific sub-sector of NGOs that are critical of the authorities (like in **Croatia** and **Slovenia**).

5. Civil society unlocks its potential

Civil society organisations and movements play an essential role in supporting communities and in promoting and protecting the rule of law, democratic principles and fundamental rights. From one country to another, civic actors have different status and modus operandi. The tasks and functions they perform also vary. But everywhere they are in the front line to witness the precarious situations people suffer from, trying to respond to people's needs for effective access to rights, to alert on the limitations and adverse consequences of public policies. From the onset, the crisis has shown how diverse and fundamental civic actors' roles are. 2020 has been characterised by an awakening of active citizenship to ensure at the widest possible scale effective access to basic rights that the crisis has put at risk. Many have found creative ways to be useful to their communities, to offer social and cultural tools against isolation, to volunteer for providing support to the weak and vulnerable which often happen to be the poorest, to act as watchdogs vis a vis the consequences of the democratic and social crises, and to propose societal alternatives. Everywhere, organised civic actors, as well as citizens and people spontaneously, have been and are in the front line to witness the precarious situations people suffer from, trying to respond to people's needs, to alert on the limitations and adverse consequences of implemented public policies, to react against abuses of power, to put solidarity for all at the centre of the response to the crisis. Civic space under the lockdown has been narrowed but, even under detrimental conditions, has shown a high level of dynamism.

National Contributions

CZECH REPUBLIC

Despite the initial shock and the economic struggle sparked by the COVID-19 pandemic, civil society has shown remarkable resilience by substituting - to a large degree - the state in taking immediate action and providing protection and public benefits to the most vulnerable groups in society.

Czech civil society lies – and its representatives perceive themselves as – somewhere in between facing real issues and having good conditions for their work. Most significantly, it is the unpredictable political, legal and financial environment that makes the life of civil society organisations (CSOs) in the Czech Republic more complicated.

During COVID-19, CSOs express concerns about accountability, transparency and corruption regarding decision making during the pandemic. The restrictions impacted negatively civic freedoms and CSOs' ability to operate. In particular it limited the ability to influence the policy-making and offered new opportunities for the Government to smear advocacy NGOs' for raising issues of lack of accountability and corruption in the public.

Czechia was one of the case studies included in the Civic Space Watch report 2020: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=71. The following contributions is drawn from the case study.

The process for preparing and enacting laws

COVID-19 CSOs express concerns about accountability, transparency and corruption regarding decision making during the pandemic

There were two concrete issues related to the Czech legislative response that civil society, and political opposition criticised. First, the State of emergency and related restrictions were adopted by the Ministry of Health under the Law No. 258/2000 on Protection of Public Health¹² rather than by the Government under the Crisis Act powers. This was challenged in Court¹³ because it raised issues of separation of powers and accountability of the Government to the Parliament. The Government finally decided to only amend the Law on Protection of Public Health instead of introducing a special emergency law related to COVID-19 pandemic, as encouraged by the pro-transparency groups in the Czech civil society¹⁴.

12 International Labour Organisation, Czechia (261), http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=72639&p_country=CZE&p_count=261, 12 May 2005.

13 Ceska justice, Městský soud v Praze: Omezovat práva měla vláda svými nařízeními, nikoliv ministerstvo, <https://www.ceska-justice.cz/2020/04/mestsky-soud-praze-omezovat-prava-mela-vlada-svymi-narizenimi-nikoliv-ministerstvo/>, 23 April 2020.

14 Rekonstrukce Statu, NEZHASÍNAT! Opozice navrhla řešení, jak na rychlé nákupy ochranných pomůcek bez korupčních rizik, <https://www.rekonstrukcestatu.cz/archiv-novinek/nezhasinat-opozice-navrhla-reseni-jak-na-rychle-nakupy-ochrannych-pomucek-bez-korupcnich-rizik>, 17 July 2020.

Second, access to information on public procurement was effectively put on hold under the emergency regime. The Ministry of Health and Ministry of Interior responsible for purchases of most of the personal protective equipment (PPE) claimed they would announce any information after the state of emergency. However, this involved suspicion of corruption, clientelism and ill-governance. It was questioned by the political opposition, independent media, CSOs as well as the law enforcement bodies¹⁵. The public tenders of PPE, including from China and other proxies, were of particular concern due to the low quality and excessive price.

Additionally, during the first lockdown, the Czech Government took advantage of the limited public oversight to proceed with the largest public tender in Czech history to construct additional blocks of the nuclear power plant Dukovany. This issue had previously been heavily debated in the public¹⁶ and the move was criticised by the political opposition, independent media and civil society groups.

Regulatory environment for and implementation of civic freedoms of association, assembly, expression

COVID-19 restrictions impact CSO's activities

Since the beginning of the pandemic, the Czech government imposed limitations on most civic rights and fundamental freedoms¹⁷. This included a strict limit on freedom of movement, travelling or commuting abroad.

As far as the freedom of association, expression and assembly were concerned, the governmental measures rather substantially restricted them. This was the case when applying the concept of social distancing, wearing of masks or limitations on public gatherings and physical contacts to a maximum of 2 people (except for relatives) at the time of the highest spike in the number of cases. This, logically, had severe limitations for the citizens as well as the work of civil society, including when providing help and services and working with beneficiaries or engaging in educational activities, conducting advocacy and having their voice heard.

Framework for civic organisations' financial viability and sustainability

The financial stability of CSOs is deteriorating

The traditionally problematic area of financial sustainability has further deteriorated as a consequence of the pandemic¹⁸. The Czech Government – with few exceptions, e.g. in the social sector – did not introduce special financial tools or aid programmes to help the civil society sector, which would go beyond the concessions offered to businesses, e.g. partial financial compensations, postponement

15 Milion Chvilek Pro Demokracii, https://drive.google.com/file/d/11C_zyt1XII2DJcCJUZDgHrSKOizJL0nT/view, 17 June 2020.

16 Rekonstrukce Statu, Průhlednější Dukovany díky registru smluv. Chybí ale dohled NKÚ, <https://www.rekonstrukcestatu.cz/archiv-novinek/pruhlednejsi-dukovany-diky-registru-smluv-chybi-ale-dohled-nku>, 3 August 2020.

17 Rekonstrukce Statu, NEZHÁSÍNAT! #7 Vláda musí i v krizové době respektovat pravidla právního státu, <https://www.rekonstrukcestatu.cz/archiv-novinek/nezhasinat-7-vlada-musi-i-v-krizove-dobe-respektovat-pravidla-pravnihostatu>, 15.05.2020.

18 Committee on Legislation and Financing Government Councils for Non-Governmental Non-Profit Organizations, https://www.vlada.cz/assets/ppov/rnno/legislativa-a-financovani/2008/zapis_VLF-11_6_2020.pdf, 11 June 2020.

of tax declarations, or other forms of tax relief etc. A part of CSOs could not even qualify for the standard state's aid of such kind.

This, coupled with the limitation of regular activities and a reduction of public donations, is having huge repercussions on the financial sustainability.

In March, the Communist party (KSČM) tabled a draft law seeking to restrict the access to public funding to organisations "or the implementation of beneficiary projects that contribute to the fulfilment of state policy objectives arising from the main areas of state subsidy policy approved by the government¹⁹," in the fields of culture, education, health and social services. It would also increase bureaucratic complications for all that might apply to public grants²⁰.

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

Hurdles to participation in decision making and transparent dialogue are amplified by COVID-19

Civic participation of CSOs in the Czech decision-making processes on the national, regional and local levels are normally facilitated by the respective bodies of the state. The practice, however, shows that there are no clear rules and guidance on the nomination process of CSOs to advisory and consultation councils on any level. The composition of these bodies (if formally existing at all) has sometimes been problematic. At the national level, it is the Government's advisory body Council of NonState Non-profit Organisations (RVNNO) that operates under the leadership of the Czech Prime Minister and brings together 33 representatives of Czech CSOs (16) and the representatives of the ministries and other state's stakeholders. This is the formal communication channel between the state and the civil society, but its working groups are also devoted to monitoring and assessing the EU and Czech legislation, following the financial matters. They also facilitate the dialogue between individual ministries and representative of various parts of the Czech civil society. In 2019, this format of cooperation was reformed, which meant that civil society representatives lost the majority²¹. The meetings of this body formally did not take place during the first lockdown and its activities were moved online.

Also, the Czech state is not following the principles of the Open Governance Partnership (OGP) by having a strong and transparent dialogue with the civil society or allowing its involvement in the decision-making at a systematic level. Even if there are some examples of good practice, e.g. related to the Ministry of Foreign affairs or Health, this is not a general trend, and the establishment of a long-term, stable and productive cooperation has proved to be troublesome.

Since the beginning of the pandemic, access to decision-makers has been rather limited. The advocacy work has been made more complicated by the additional limitations to access to information as well as the closing of the whole decision-making process at some levels. These challenges have particularly affected some advocacy oriented CSOs that already had conflicts with the representatives

19 A2larm, KSČM vytáhla proti neziskovkám. Snaží se je odstavit od systému státní podpory, <https://a2larm.cz/2020/03/kscm-vytahla-proti-neziskovkam-snazi-se-je-odstavit-od-systemu-statni-podpory/>, (31 Mar. 2020).

20 Reported during working group on 23 April 2020.

21 EU-Russia Civil Society Forum, Report on the State of Civil Society in the EU and Russia, https://eu-russia-csf.org/wp-content/uploads/2019/04/190327_RU-EU_Report2018_allpages.pdf, 2019.

of the ruling elite in the past.

The political landscape and safe space

Conditions for advocacy-driven NGOs are worsening including through targeting, smear campaigns and loss of funding

There were individual cases of authorities pressuring civil society, independent media and individual activists²² critical of their actions. This was, for example, the case when the Czech Prime Minister claimed that, since the beginning of the pandemic, he missed the help and support from civil society, which was resolutely refuted by the third sector and consequently led to an apology from Andrej Babiš²³.

The conditions of advocacy-driven NGOs have worsened over the last couple of years. These organisations are often labelled as “political NGOs” or “ecoterrorists” when they engage in the public debate, to some degree sidelined from the decision-making process or refused funding from the public authorities²⁴. This has been the case for environmental NGOs as well as watchdogs and others. For example, even before COVID-19, anticorruption organisations and activists, including Transparency International Czech Republic and its head David Ondráčka, had de facto been targeted by the smear campaign of the Prime Minister. These tensions are linked to the CSO’s consistent criticism for conflict of interests of the Prime Minister²⁵ and the Minister of Agriculture both at the Czech and European levels. During the last couple of months, tensions with anticorruption organisations were exacerbated when the European Parliament passed a resolution²⁶ on the conflict of interests of the Czech Prime Minister’s engagement in the future MultiAnnual Financial Framework of the EU for 2021-27. Even if these issues never reached a systemic level, the COVID-19 pandemic made this situation even more complicated.

22 Vojtech Blazek, *Jermanová skutečně poslala policii na záchranařku. A pak psala, ať ji nechají být*, <https://www.seznamzpravy.cz/clanek/jermanova-skutecne-poslala-policii-na-zachranarku-a-pak-psala-at-ji-nechaji-byt-108822>, 9 June 2020.

23 Barbora Janakova, *Neziskovky v krizi nepomáhají, napsal Babiš*.

Od prvního dne zachraňujeme nejslabší, bouří se organizace, <https://denikn.cz/333552/neziskovky-v-krizi-nepomahaji-napsal-babis-od-prvniho-dne-zachranujeme-nejslabsi-bouri-se-organizace/>, 4 April 2020.

24 Arnica, *ODS, TOP 09 a ANO trestají své kritiky ztrátou grantů. Podporu ztratily Arnika a Auto*Mat*, <https://arnika.org/ods-top-09-a-ano-trestaji-sve-kritiky-ztratou-grantu-podporu-ztratily-arnika-a-auto-mat>, 22 May 2018.

25 Transparency International, Firmy ze svěřenských fondů dostaly v návrhu zákona zásadní výjimku, <https://www.transparency.cz/firmy-ze-sverenskych-fondu-dostaly-v-navrhu-zakona-zasadni-vyjimku/>, 10 January 2020.

26 European Parliament Press

Centre, Parlament žádá vyřešení možného střetu zájmů českého premiéra kvůli evropským dotacím, <https://www.europarl.europa.eu/news/cs/press-room/20200615IPR81227/parlament-zada-vysetreni-mozneho-stretu-zajmu-ceskeho-premiera>, 19 June 2020.

CROATIA

Croatia has not adopted a National Strategy for Civil Society Development since 2016 although more than 50.000 civil society organizations (CSOs) make a significant contribution in social cohesion and play an important role between citizens and public policies, services and affairs.

Failing to appoint the new members of the Council for Civil Society Development, the Government excluded civil society organizations from all the consultation processes, working groups or appointment of CSOs representatives in different public bodies. This meant that CSOs were unable to participate in the design of the programmatic documents for the European Structural Funds for the period 2021-2027, although the process was announced almost a year in advance.

The seldom references to CSOs inside the National Development Strategy of the Republic of Croatia until 2030 do not reassure on the Government's commitment to providing an enabling environment for civil society development and investing in its corrective role to the public policies and political processes. It rather seems to be limiting its role to non-institutional providers of social services. Therefore, there is no evidence in the forthcoming period Croatia will see topics such as transparency, non-discrimination, human rights, civic education, green growth, anti-corruption etc. as program priorities.

The Information Commissioner urged the Government office for NGOs and the Council for Civil Society Development to maintain the legally prescribed standards of transparency, openness and participation after Gong filed a complaint requesting a review of the Council and the Government Office for Cooperation with NGOs of the Republic of Croatia since the newly adopted Rules of Procedures of the Council excluded the public from the sessions and further weakened the positions of CSOs while strengthening the role of the Office and other public authorities.

This input was provided by the European Civic Forum' member Gong.

The process for preparing and enacting laws

Government does not engage civil society in the making of COVID-19 laws

Concerning the dialogue with authorities and the respect of the institutional framework for civil dialogue, civil society reported to the European Civic Forum that the Government did not have a dialogue with civil society with respect to the adoption of measures related to the coronavirus epidemic. There were also no Government consultations with the Council for Civil Society Development [Ed. an advisory body to the government expressing opinions on the impact of legislation on civil society] regarding the protection of human rights of the most vulnerable groups during the coronavirus epidemic²⁷.

²⁷ Activizenzhip #5 – Civic Space Watch report 2020 – Stories from the lockdown, https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf, p. 35, Dec. 2020.

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

Changes of rules in civil dialogue body negatively affects cooperation between the sector and the Government

The Council for Civil Society Development saw a change in the Rules of Procedure strengthening the representatives of public authorities in the body and allowing decisions to be made without holding sessions, hearings and discussions in violation of the legally prescribed standards of transparency and openness. In a letter to the Government Office for Cooperation with NGOs, the coalition of civic organisations Initiative for a strong civil society condemned "the demise of the autonomy of the decision-making process of CSOs, the collapse of cooperation and the ruin of the Council for Civil Society Development" ²⁸.

The framework for civic organisations' financial viability and sustainability

Government's moves impair watchdog and good governance organisations

A decision of the Government in April redirected all public funding, including those for CSOs, to providing services and medical help as part of the response to COVID- 19 and the earthquake that shook the country in March 2020.²⁹ This choice has been interpreted as an attempt to reshape civil society, as it will restrict access to funding for advocacy-based organizations³⁰. Additionally, a study by the watchdog association GONG from June 2020 found that in 2020 most public tenders for "good governance" and "social inclusion" of the European Social Funds announced at the beginning of the year were not opened³¹. GONG writes that the large discrepancy between announcements and publication of public calls leaves civic organisations unable to plan and financially exhausted. It is to be noted that organisations affected by the manoeuvres are those dealing with human rights, right of vulnerable groups, corruption and transparency³². This issue is not new in Croatia, and it was reported the Civic Space Watch 2019 report too³³.

28 Suzana Jašić, GOVERNMENT ATTACKS ON CIVIL SOCIETY IN CROATIA - Supported by EU funds, https://www.gong.hr/media/uploads/government_attacks_on_civil_society_in_croatia_eng.pdf, GONG, pp. 8-9, (June 2020).

29 Narodne novine, Odluka o ograničavanju korištenja sredstava predviđenih Državnim proračunom Republike Hrvatske i finansijskim planovima izvanproračunskih korisnika Državnog proračuna za 2020. Godinu, https://narodne-novine.nn.hr/clanci/sluzbeni/2020_04_41_855.html, (2 Apr. 2020).

30 Balkan Civil Society Development Network, COVID-19: The Effects to and the Impact of Civil Society in the Balkan Region, Part II, <http://www.balkancsd.net/novo/wp-content/uploads/2020/05/78-6-Balkan-Civil-Society-in-the-COVID-19-Crisis-Part-II.pdf>, 14 May 2020.

31 GONG, In the times of pandemic we must not forget democracy, <https://www.gong.hr/en/electoral-system/parliamentary/in-the-times-of-pandemic-we-must-not-forget-democr/>, p. 15, (19 Mar. 2020).

32 Ibidem.

33 Giada Negri, One year of monitoring civic space: Challenges for acting for rights are increasing but civil society is striking back, Activizenship #4, European Civic Forum, <http://civic-forum.eu/publication/view/activizenship-4>, pp 9-36, (Dec. 2019).

DENMARK

Denmark has a long tradition for involvement of civil society organizations through dialogue. These dialogues take place both formally and informally in legislative and political decision-making. This practice is upheld by all politicians regardless of which party they represent, within areas relating to education, employment, and gender equality.

Despite this, there are two key areas of concern that CSOs have raised:

First, the draft 'Security for all Danes' bill¹, which proposes to give increased powers to the police to act against "insecurity-creating behaviour". The bill is particularly concerning because: 1) The law will restrict the right to free assembly and diminish civic space, resulting in violations of the right to peaceful freedom of assembly; 2) The law will disproportionately target ethnic minorities and follows a number of other measures targeting "non-Western" neighbourhoods, such as the 2018 Ghetto Package that was condemned by UN experts for its discriminatory nature; 3) The law violates Section 79 of the Danish Constitution and Article 20 of the UN Universal Declaration of Human Rights, which gives precisely the right to peaceful assembly – regardless of number. It also risks breaching the EU Race Equality Directive and the EU Charter of Fundamental Rights.² Second, civil society has had zero involvement in the national plan for the EU recovery funds.

Alongside this, CSOs also raise concerns over a growing trend towards limiting consultation processes, by cutting short the timeframe wherein organizations can submit potential criticisms. This limits the ability of civil society organisations, especially those with fewer resources at their disposal, to voice any concerns and offer guidance to government institutions. CSOs in Denmark recommend a reversal of this trend through longer periods within which interested parties may come with inputs during the legislative process.

This contribution was written thanks to the input provided by Nyt Europa.

FRANCE

While fundamental freedoms are protected by the law and generally respected, civil liberties have been put under increasing pressure since 2015 in the context of the state of emergency introduced in after the terrorist attacks³⁴.

Two draft laws (*loi de sécurité globale, loi sur le respect des valeurs républicaines*) presented at the end 2020 as well as the recent governmental decisions of dissolving associations and investigating university curricula are considered by civic actors as reinforcing a systemic threat to freedom of association, freedom of assembly, freedom of speech, freedom of beliefs and academic freedom in France.

Many measures taken by public authorities at local and national levels during the COVID-19 pandemic forced civic actors to repeatedly challenge breaches to the French legal framework in the Constitutional Court, the Council of State and other relevant institutions. These infringements include 1) vague wording of COVID-19 regulations and disproportionate sanctions for non-compliance; 2) heavy-handed policing to enforce the rules, including targeting critical voices and associations providing relief to migrants; 3) banning of freedom of assembly during the phase-down of the lockdown; 4) and expansion of undue surveillance - the success of many of these appeals demonstrate that the situation is extremely worrisome.

To date, the Government is not engaging in discussions with the civic actors that are raising warnings in all fora, including online protests and public demonstrations.

The following elements presented below by the ECF rely on inputs of French civic actors, in particular those provided by our member, the Ligue des droits de l'Homme (LDH): <https://www.ldh-france.org>

The process for preparing and enacting laws

The Government restricts parliamentary debate on liberticidal laws and does not listen to civic actors concerns regarding direct effects on their capacity to act

Important laws affecting rights and freedoms (described below) are passed by the Government through fast-track procedures, thus restricting Parliamentary debate. Many provisions of the draft laws have a direct impact on the functioning of civic organisations, some detrimental to their capacity to act. It is even more concerning that the Government is not carrying serious consultations ahead of the Parliamentary process. By not listening and integrating justified concerns with civic freedoms, French authorities' behaviour recalls an authoritarian conduct in public affairs.

The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline

Discretion and excessive force used during the enforcement of the lockdown

In the context of the health crisis, the French authorities have adopted containment measures aimed

34 European Civic Forum, Activizenship #4, <http://civic-forum.eu/publication/view/activizenship-4#page=55>, 2019.

at curbing the Covid-19 pandemic. On 23 March, the Parliament passed a law declaring a “state of health emergency” and empowering the Government to act by ordinances for putting in place restrictions. Several government’s texts have established the rules applicable in areas of public life. In particular, restrictions on freedom of movement were enacted. Arbitrariness and disproportionate use of force resulted from a lack of clarity of this legal framework³⁵.

Videos posted on social media show heavy-handed policing and unlawful use of force during the daily checks of the restrictions on freedom of movement³⁶³⁷, more frequent in low-income neighbourhoods with larger proportions of people of colour and other minorities³⁸. Abusive policing has also targeted people displaying protest banners on their balconies³⁹.

Asked to assess legal provisions, the Constitutional Council ruled the clarity and proportionality of the provisions was not sufficient and should be better defined⁴⁰.

Civil society successfully challenges the ban of public demonstrations, but local prefects keep restricting the right to peaceful assembly

Freedom of peaceful assembly constitutes an essential political freedom in a democracy. However, under the prism of health security, it has been subject to numerous infringements that are often unnecessary and proportionate to the end sought. The Government’s decrees of May 11 and 31, 2020 (respectively Art. 7 and Art. 3) provided that “any demonstration, gathering or activity in a capacity other than professional on the streets or in a public place, bringing together more than ten people simultaneously, is prohibited throughout the territory of the Republic”.

On 13 June 2020, the Council of State ruled that the blanket ban on demonstrations over ten people was not justified by the current health situation when the safety measures could be respected or when the event was unlikely to bring together more than 5,000 people. The judge also added that, in accordance with the law, any demonstration must be declared in advance to the town hall or prefecture and that it may be banned by the police authorities or the prefect if they consider that it is likely to disturb public order, including for health reasons, or when “local circumstances so require”⁴¹.

35 LDH, USAGE DE LA FORCE, PLACEMENT EN GARDE À VUE, FOUILLES, ET NOUVEAU DÉLIT LIÉ AU NON RESPECT DU CONFINEMENT, <https://www.ldh-france.org/usage-de-la-force-placement-en-garde-a-vue-fouilles-et-nouveau-delit-lie-au-non-respect-du-confinement/>, 10 Apr. 2020.

36 LDH, MESURES DE CONFINEMENT : LES CONTRÔLES DE POLICE NE DOIVENT ÊTRE NI ABUSIFS NI VIOLENTS NI DISCRIMINATOIRES, <https://www.ldh-france.org/mesures-de-confinement-les-controles-de-police-ne-doivent-etre-ni-abusifs-ni-violents-ni-discriminatoires/>, 27 Mar. 2020.

37 LDH, POUR UN RESPECT DE L’ETAT DE DROIT EN MATIÈRE DE VERBALISATIONS/AMENDES, <https://www.ldh-france.org/pour-un-respect-de-letat-de-droit-en-matiere-de-verbalisations-amendes/>, 10 Apr. 2020.

38 Amnesty International, Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe, <https://www.amnesty.org/download/Documents/EUR0125112020ENGLISH.PDF>, pp 20-22, (June 2020).

39 LDH, UN PROCUREUR RIDICULE MAIS DANGEREUX, https://www.ldh-france.org/un-procureur-ridicule-mais-dangereux/?fbclid=IwAR1pgt_9cSgLMPG-OxNsxEV-AjRSDRkum301AAIIRPZTi8H9tWYvE3_anjl, 27 Apr. 2020.

40 Conseil d’État, Décision n° 2020-846/847/848 QPC du 26 juin 2020, https://www.conseil-constitutionnel.fr/decision/2020/2020846_847_848QPC.htm, 26 June 2020.

41 Conseil d’État, Le juge des référés du Conseil d’État suspend l’interdiction générale et absolue de manifester sur la voie publique, <https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-suspend-l-interdiction-generale-et-absolue-de-manifester-sur-la-voie-publique>, 13 June 2020.

On 21 June, a new decree allowed prefects to authorise public gatherings if the organisers were able to ensure compliance with the safety measures⁴². In July, the Council of State intervened again suspending the requirement for authorisation as a disproportionate infringement of the right to demonstrate⁴³.

However, even after the sentence, many prefects issued bans or restrictions against demonstrations claiming there was a risk of disturbance of public order or on the basis of the state of a health emergency⁴⁴. For example:

- Paris, 28 November 2020, demonstration against the draft law on global security: the local prefect prohibited the demonstration, regularly declared in accordance to the law, from marching in a defined path. The trade unions organising the demonstration and dozens of associations referred the matter through an urgent procedure at the Paris Administrative Court, asking to suspend the prefectoral ban's enforcement. The Court granted them the recourse and suspended the prefect's order.
- Dijon, 30 January 2021, demonstration against the draft law on global security: the prefect prohibited the holding of any demonstration in the centre of Dijon on Saturday 30 January and Sunday 31 January following the declaration of the demonstration. LDH and the trade union successfully challenged it through urgent procedure.

The Global Security Bill risks eroding freedom of assembly and expression in France

On 11 September, the Minister of Interior presented a national scheme for maintaining law and order. Civil society was not consulted. Civic actors stress that the new scheme confirms worrisome policing practices that developed in 2018 and 2019⁴⁵, like the use of the flash ball and stinger grenades despite the concerns expressed by civil society and international organisations⁴⁶. Additionally, the scheme does not provide effective protection to journalists and human rights observers present in public demonstrations to report on facts that occurs during the demos including breaches of the rule of law by law enforcement forces⁴⁷.

42 Decree n° 2020-759 of 21 June 2020, available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=4AEB4FD973788CE05BFDF723CA4EEE8C.tplgfr30s_2?cidTexte=JORFTEXT000042020786&idArticle=&categorieLien=id

43 Conseil d'État, Le juge des référés du Conseil d'État suspend l'obligation d'obtenir une autorisation avant d'organiser une manifestation, <https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-suspend-l-obligation-d-obtenir-une-autorisation-avant-d-organiser-une-manifestation>, (6 July 2020).

44 Reported by Amnesty International France during interview on 20 July 2020.

45 Doctrine du maintien de l'ordre : «Un nouveau schéma, des vieilles pratiques», dénoncent des ONG et syndicats, https://www.francetvinfo.fr/economie/transports/gilets-jaunes/tribune-doctrine-du-maintien-de-lordre-un-nouveau-schema-des-vieilles-pratiques-denoncent-des-ong-et-syndicats_4126175.html, FranceInfo, (4 Oct. 2020).

46 Council of Europe, Maintaining public order and freedom of assembly in the context of the "yellow vest" movement: recommendations by the Council of Europe Commissioner for Human Rights, <https://www.coe.int/en/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for->, (26 Feb. 2019); OHCHR, France: UN experts denounce severe rights restrictions on "gilets jaunes" protesters, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24166&LangID=E>, (14 Feb. 2019).

47 LDH, CONTESTATION DU NOUVEAU SCHÉMA NATIONAL DU MAINTIEN DE L'ORDRE PAR LES OBSERVATOIRES DES PRATIQUES POLICIÈRES/LIBERTÉS PUBLIQUES, <https://www.ldh-france.org/contestation-du-nouveau-schema-national-du-maintien-de-lordre-par-les-observatoires-des-pratiques-policieres/> (13 Oct. 2020); Amnesty International France, NOUVEAU SCHÉMA DU MAINTIEN DE L'ORDRE : UNE OCCASION MANQUÉE, <https://www.amnesty.fr/liberte-d-expression/actualites/schema-du-maintien-de-lordre-occasion-manquee>, (22 Sept. 2020).

In the framework of this scheme, in November, a new “global security” law that, if not amended, will erode the right to information, respect for privacy, and freedom of peaceful assembly was tabled in the Parliament and pushed through on accelerated procedure. From July 2021, the draft bill allows the police and gendarme patrols to carry cameras and make use of drones to transmit the images of demonstrators and bystanders live to the command centre, images that can be analysed through facial recognition in real-time. Civil society raises concerns over its proportionality and worries that it will contribute to reinforce the “preventive” policing approach implemented in recent years⁴⁸⁴⁹. Article 24 of the draft law also punishes the public and journalists from disseminating images of the face or any other identifying feature of law enforcement officers. It has been made clear that the provision intends to limit the use of images that are crucial for informing on police misconduct and ensuring justice to victims⁵⁰. After the massive protests against this provision, the Government announced that this article 24 will be revised. A coalition of nearly a hundred organisations representing journalists and professionals of the press, lawyers, magistrates, defenders of public freedoms and the rule of law, and victims of police violence calls for the complete withdrawal of Articles 21, 22 and 24 of the draft bill in the name of respect for fundamental freedoms⁵¹.

Draft bill strengthening republican values is conducive of restricting freedom of association

On 21 October 2020, the President presented a draft legislation “to Strengthen Republican Values”, also known as the Anti-Separatism law, claiming to be a response to the “threats of fundamentalism”. The law is following a fast-track procedure. According to a large coalition of academics, lawyers and associations this is an unprecedented attack against freedom of association⁵². The Council of State expressed publicly concerns in December⁵³.

In particular, article 6 of the amended draft text introduces the obligation by any recipient of public funding to commit to a “Contract of Republican Engagement”. Among the requirements of this Contract (yet to be written and published), the law mentions the obligation to “promote public order”. The signatories of the open letter have warned that there such a vague definition open a large avenue for undue control and sanction on the sector. This Contract could for instance discourage associations to be involved in peaceful protests or civil disobedience actions, a common way to protest or express discontent⁵⁴.

⁴⁸ Observatoire des libertés et du numérique, CONTRE LA LOI «SÉCURITÉ GLOBALE», DÉFENDONS LA LIBERTÉ DE MANIFESTER, <https://www.ldh-france.org/contre-la-loi-securite-globale-defendons-la-liberte-de-manifester/>, (12 Nov. 2020).

⁴⁹ For more information on the preventive approach to policing assemblies in France, see: Arié Alimi, SHIFTING TOWARDS A PREVENTIVE APPROACH TO MANTAINING PUBLIC ORDER - Restricting the right to demonstrate from exception to routine, Activizenship #4, European Civic Forum, <http://civic-forum.eu/publication/view/activizenship-4>, pp. 56- 60, (Dec. 2019).

⁵⁰ Amnesty International France, POURQUOI LA PROPOSITION DE LOI « SÉCURITÉ GLOBALE » EST DANGEREUSE POUR NOS LIBERTÉS, <https://www.amnesty.fr/actualites/pourquoi-la-proposition-de-loi-securite-globaleest-dangereuse-pour-nos-libertes>, (12 Nov. 2020).

⁵¹ See: <https://stoploisisecuriteglobale.fr/>.

⁵² Collective statement, Loi séparatisme : une grave atteinte aux libertés associatives, https://www.libération.fr/debats/2021/01/21/loi-separatisme-une-grave-atteinte-aux-libertes-associatives_1818075/, 21 Jan. 2021.

⁵³ Conseil d’État, Avis sur un projet de loi confortant le respect, par tous, des principes de la République, <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique>, 9 Dec. 2020.

⁵⁴ CIVICUS Monitor, WORSENING CRACKDOWN ON CIVIC SPACE BY MACRON’S GOVERNMENT TO PRESERVE ‘REPUBLICAN

Another provision considered particularly dangerous for freedom of association would require association's Boards to inform authorities about its members' expressions online that could be a breach to the republican values. Failing to do so could lead to sanctions to the association.

Another crucial issue explained by the national platform "Le Mouvement Associatif" is that the "republican engagement contract" will give discretionary power over the judgement of compliance with "republican values" to authorities at local and national level.⁵⁵.

The decision to dissolve the Collective against Islamophobia in France (CCIF) raises great concerns over freedom of association

The French legal framework for associations is one of the strongest in the world and has proved fit for associations to develop their multi-fold activities for more than a century (except during WW2). Associations can be dissolved, as it has happened in the past decades, based on clear legal grounds, mostly linked to the conduct of violent actions. Dissolving an association is the "severest of punishments, and a curtailment of the right of freedom of association; it should only be undertaken after careful consideration..."⁵⁶. Any decision to dissolve an association should be based on clear evidential legal grounds and not partisan considerations. Having in mind this rule of law framework, the dissolution's decisions that have been taken by the French Government in the recent months are very worrying. French civic actors are questioning the lack of factual evidence presented by authorities⁵⁷. This happens in the context of growing stigmatising statements and actions by certain political forces against Muslim people. Civil society organisations and trade unions are collectively stressing that they "can only reinforce deleterious cleavages" in society and "feed the machines of hatred"⁵⁸.

Expansion of the use of drones in the context of the health crisis raises worries regarding state surveillance

Since the beginning of the lockdown and just about everywhere in France, the police and gendarmerie have been using drones on a massive and unprecedented scale to monitor the population and enforce the lockdown: distribution of instructions by loudspeakers as well as video surveillance to identify offenders, guide ground patrols and film people escaping from the police in order to sanction them afterwards. In addition to increasing police surveillance capacities in an unprecedented scale, this deployment of UAVs takes place in the absence of specific legal framework regarding the use of filmed images, and therefore endangers the respect of privacy with personal data. No text provides for a time limit for the deletion of these images or limits access to them only to agents of the prefecture for an identified police mission⁵⁹.

VALUES', <https://monitor.civicus.org/updates/2021/03/04/worsening-crackdown-on-civic-space-by-macrons-government-to-preserve-republican-values/>, 4 Mar. 2021.

55 Mouvement Associatif, EXAMEN DU PROJET DE LOI PRINCIPES DE LA RÉPUBLIQUE : MOBILISATION DES ASSOCIATIONS, <https://lemouvementassociatif.org/examen-du-pjl-principes-de-la-republique-mobilisation-des-associations/>, 18 Jan. 2021.

56 <https://ecnl.org/news/french-government-proposes-dissolve-ngo-ccif>

57 <http://civicspacewatch.eu/france-minister-of-interior-threatening-to-close-down-anti-racist-civil-society-organisation/>

58 <http://civicspacewatch.eu/france-civil-society-and-trade-unions-against-obscurantism/>

59 LDH, NOUS ATTAQUONS LES DRONES DE LA POLICE PARISIENNE, <https://www.ldh-france.org/nous-attaquons-les-drones-de-la-police-parisienne/>, 4 May 2020.

New authorisations for police databases raises concern over the Government's will to increase control on political dissent

On 4 December 2020, three decrees of the Ministry of the Interior were issued to strengthen the territorial intelligence and administrative investigation databases:

- Decree for a « Fichier de prévention des atteintes à la sécurité publique (PASP) » (public security breach prevention database)
- Decree on Information Management and the Prevention of Public Safety Violations (GIPASP)
- Decree on Administrative Investigations related to Public Security (EASP)

These wide-ranging databases, including information that are not recording facts but attributed opinions are justified by enabling law enforcement agencies to monitor any potential threat to public order. The files aim go beyond a concrete "threat to public order". It will be possible to keep a record of any person who will be considered as a potential threat to the security of the state, the territory or the institutions of the Republic. These vague notions open space for discretion. PASP, GIPASP and EASP will contain information on "political opinions" and "philosophical and religious convictions", and no longer only on political, religious and trade union activities. The decree also provides for the recording of "religious practice and behaviour" as well as "activities carried on social networks".

The decree also aims to improve the monitoring of the activity of legal entities and de facto groups, which can be registered as individuals. Looking at all the laws and decrees together seems to point to the Government's desire to take significant control over the activities of associations and document a part of citizens' privacy. The French Ligue des droits de l'Homme and the Observatoire International des Prisons (OIP) have lodged an action for annulment against the decrees with the Council of State.

Arbitrary arrests and disproportionate force during public demonstrations

The right to peaceful assembly in France has been severely restricted since 2015 through legal decisions and field practices. It includes legislative measures, violent police behaviours and "preventive" judiciary actions. In 2019, the law dubbed « anti-rioters » has provided the authorities with the power to search, with a Prosecutor request, bags and cars in and around demonstrations. It also outlawed the covering of faces during public demonstrations.

Disproportionate as repeatedly unjustified police violence, direct firing of tear gas grenades and flash ball, have caused serious injuries (loss of eye, fractured skull and jaw) to hundreds of protesters.

Authorities are allowed to detain protesters on the basis of suspicion of "participation in a group formed in preparation for violence against people or destruction or damage to property", a measure that has been reportedly used against peaceful protesters and journalists covering protests, often preventively on the path to the demonstration on the basis of carrying protective equipment.

In 2020, this was also the case, for example:

- Paris, 12 September 2020, Yellow Vest demonstration: between 11 and 13 September, the prefect banned demonstrations in several areas of Paris claiming a risk to public order, and restricted the areas accessible to protesters. Human rights observers reported worrying tactics by the police against protesters, including the use of kettling

and non-lethal weapons in close spaces⁶⁰ and hundreds of arrests⁶¹, including "Street Medics" for carrying protective equipment like helmets and glasses despite identifying themselves by visible and readable signs on their vests⁶².

- Paris, 12 December, demonstration against the law on Global Security: the march was authorised by the Paris prefect. Report by civil society and the media show a number of illegitimate beatings and arrests by the police⁶³.

Criminalisation of solidarity to migrants

In relation to civic space, the issue of repression of activities assisting migrants has to be assessed. Over the years, many legal proceedings for facilitating illegal immigration have been opened against individuals or associations helping migrants and unaccompanied minors at risk, as for instance in the Roya Valley located on the French side of the border with Italy. This offence is commonly referred to as "solidarity offence". Additionally, civic actors have documented numerous police abuses against migrants and activists supporting them in Calais and Grande-Synthe. In this area, as the COVID-19 broke out, local authorities restricted associations and volunteers' actions supporting migrants for their access to social, civic, legal rights, even preventing them from observing the forced eviction of people in camps during the lockdown, including through fines and arrests⁶⁴. In September, the possibility to distribute food to refugees in Calais was restricted to a single state-approved association⁶⁵.

60 Observatoire Parisien des Libertés Publiques, NOTE D'OBSERVATION Manifestations Gilets Jaunes du 12.09.2020, Paris, https://www.ldh-france.org/wp-content/uploads/2019/04>Note-dobservation-12_-09_-2020.pdf, (18 Sept. 2020).

61 Aline Leclerc, Affluence modeste et tensions pour la journée de mobilisation des « gilets jaunes », https://www.lemonde.fr/societe/article/2020/09/12/manifestations-de-gilets-jaunes-des-mesures-preventives-et-68-interpellations-a-paris_6051929_3224.html, Le Monde, (12 Sept. 2020).

62 Zazaz, La presse et les street médics toujours dans le collimateur, <https://blogs.mediapart.fr/edition/dans-quel-etat-j-erre/article/180920/la-presse-et-les-street-medics-toujours-dans-le-collimateur>, Mediapart, (18 Sept. 2020).

63 Mediapart, Comment les forces de l'ordre ont saboté la manifestation du 12 décembre 2020, <https://www.mediapart.fr/journal/france/030121/comment-les-forces-de-l-ordre-ont-sabote-la-manifestation-du-12-decembre-2020>, 3 Jan. 2021.

64 Amnesty International, Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe, <https://www.amnesty.org/download/Documents/EUR0125112020ENGLISH.PDF>, p. 13, (June 2020).

65 LDH, UN ARRÊTÉ PRÉFECTORAL INDIGNE CONTRE LES ACTIONS DE SOLIDARITÉ À CALAIS, <https://www.ldh-france.org/un-arrete-prefectoral-indigne-contre-les-actions-de-solidarite-a-calais/>, (14 Sept. 2020).

GERMANY

The legal, fiscal, and administrative frameworks for civil society in Germany are reasonably good. In 2020, the Government took some positive steps to improve civil society's environment, including the establishment of the German Foundation for Civic Engagement and Volunteering.

However, in recent years, a trend emerged towards limiting civil society's space dealing with "political" issues. Public benefit associations that regularly express themselves politically are at risk of losing their non-profit status, thus, their tax incentives. A reform of the tax law that came into force on 29 December 2020 expands the list of "purposes" that an association can embody without fear of losing its non-profit status. Nevertheless, it fails to include issues of "political activism".

While the COVID-19 measures were largely met with citizens' approval, they reduced civil society opportunities to participate in the policy-making, creating a feeling of neglect. The lack of meaningful dialogue with the sector is deemed an important factor for the government's lack of reactivity to many societal emergencies.

A case study on Germany is part of the Civic Space Watch report 2020: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=89.

The following contribution is based on the input of Bundesnetzwerk Bürgerschaftliches Engagement (BBE, National Network for Civil Society) which created a website to monitor the effects of Coronavirus in democracy and engagement politics that bundles contributions to the situation in democracy and engagement policy and provides an overview of the online resources of the federal states: <https://www.b-b-e.de/corona>. It also draws from the above-mentioned report.

The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline

The Reform of German charity law is a step forward but fails to address with "political activism"

The particular way of understanding the charitable nature of political activism as well as its restrictive interpretation by the German Federal Fiscal Court (Bundesfinanzhof, BFH) in 2019 was hugely debated: the German Fiscal Code (Abgabenordnung) should become more adequate to the requirements and the role of civil society and modern democratic values (see box below).

The Federal Ministry of Finance (Bundesministerium der Finanzen BMF) that is responsible for the Reform of German charity law, has responded to the Corona crisis with a decree on charitable status: Associations and foundations do not risk their charitable status if they "provide assistance to those affected by the Corona crisis" even if this is not their purpose. That means that, for example, a music foundation can make purchases for people in quarantine. Providing help for those affected is possible as long as it supports other non-profit purposes.. Those who help the elderly or support the health care system will find suitable purposes in the law. According to civil society, "with the decree, the Federal Ministry of Finance acknowledges that the limits of the right to charity are too narrow"⁶⁶.

66 Diefenbach-Trommer, Stefan (18.6.2020): Handlungsrahmen für eine vielfältige und starke Zivilgesellschaft: Ansatzpunkte und Leitplanken für eine Reform des Gemeinnützigkeitsrechts: <https://www.b-b-e.de/bbe-newsletter/>

The reform that came into force on 29 December 2020 became a part of the annual review of tax regulations (Jahressteuergesetz 2020).⁶⁷ The law extended the list of public-benefit purposes, which now include climate protection and the protection of vulnerable groups. It also includes several amendments and improvements to civil society's financial framework, such as an increase of the tax exemption limit for volunteers receiving financial compensation. But the law did not respond to the issue of political activism and its impact on the charitable status of an association.⁶⁸

The Federal Ministry for Family, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend) works on the Law to promote Democracy (Demokratiefördergesetz) that would enable sustainable and long-term support for established civil society structures. This is extremely important since national programmes such as »Living Democracy!« with the aim to establish coordinative and horizontal cooperative networks, funding by the federal level, is limited to the maximum of a three-year project cycle.

A positive practice: Civic Engagement Strategy of Berlin 2020 - 2025

On 22 December 2020, the Berlin Senate passed a Civic Engagement Strategy 2020-2025. The draft was made in collaboration with actors from civil society as well as from science, business, administration and politics and was a result of a participatory process. The Civic Engagement Strategy creates standards for the relationship between civil society and public authorities in the Land Berlin, funding and cooperation principles and priorities of policies strengthening civic engagement for five years.⁶⁹

Right to peaceful assembly during COVID-19

On 25 March, the federal parliament declared an epidemic situation of national scope. "Emergency laws" did not come into effect, these being applicable only in the case of an external attack or internal emergencies, such as civil unrest and a natural disaster.⁷⁰ All measures to contain the epidemic were taken based on general administrative powers accorded to the States and the federal Infection Protection Act (IfSG).⁷¹ The IfSG regulates which diseases/pandemic are notifiable and, thus, belong to the diseases that the State can take extraordinary measures to combat. In the event of infections, the authorities are authorised to take all necessary protective measures to the extent and for as long as necessary to prevent the spread of infectious diseases. In accordance with the constitution, health-related regulations were directed and enforced by the State and local authorities and, as a result, differed substantially.⁷²

As in several other matters, each State enacted its regulation regarding the ban of demonstration and the freedom as assembly and the regulations varied in terms of allowed sizes and preparations.⁷³ Nevertheless, during the first lockdown, the jure or de facto, the right to peaceful assembly was restricted across the national territory during the social lockdown. In the first phase, many

newsletter-nr-12-vom-1862020/diefenbach-trommer-reform-des-gemeinnuetzigeitsrechts/

67 Bundesministerium der Finanzen (2020), Jahressteuergesetz 2020

68 Deutsches Stiftungszentrum (2021), Factsheet 'Reform des Gemeinnützigeitsrechts'

69 <https://www.berlin.de/rbmskzl/aktuelles/pressemitteilungen/2020/pressemitteilung.1033673.php>

70 <https://netzpolitik.org/2020/warum-ausgangssperre-und-notstandsgesetze-nichts-miteinander-zu-tun-haben-corona-grundrechtseingriffe/>

71 <https://www.gesetze-im-internet.de/ifsg/>

72 Overview of all regulations in all federal states (in German language): <https://kripoz.de/2020/03/25/straf-und-ordnungswidrigkeitenrechtliche-massnahmen-des-bundes-und-der-laender-im-zusammenhang-mit-der-corona-pandemie/>

73 <https://freiheitsrechte.org/corona-und-grundrechte>

administrative courts confirmed the bans on assemblies, including total bans. However, in mid-April, the Federal Constitutional Court (BVerfG) stated in two landmark rulings (1 BvR 828/20 on 15 April and 1 BvQ 37/20 17 April) that competent authorities cannot rely on blanket restrictions to the right to peaceful assembly and must consider the specific case before deciding to prohibit a demonstration. The Court also stressed the need for authorities to cooperate with the organisers of protests to ensure that the right can be exercised without risks before deciding on the restriction and the responsibility to ensure the respect on safety measures cannot be placed on the organisers alone but should be shared with competent authorities⁷⁴. This addresses public authorities' tendency to shift the responsibility to guarantee compliance with social distances on the organisers of public demonstrations.

Targeting political actions and chilling effect on advocacy: the case of tax law in Germany

Extract from Activizenship #4 – Civic Space Watch report 2019 – Success stories of resistance: <http://civic-forum.eu/publication/view/activizenship-4>

In February 2019, the German Federal Fiscal Court ruled that “influencing political decision-making and shaping public opinion [...] does not fulfil a charitable purpose” in relation to the public benefit status of the German branch of the Association Taxation of Financial Transactions and for Citizens’ Action (Attac). The organisation saw its status revoked in 2014 when the local tax authority found its campaigns on international taxation and tax justice too political to benefit from tax deductions. The decision put at serious risk the financial sustainability and life of the association that has been unable to provide receipts for tax breaks for the last five years. According to the coalition “Rechtssicherheit für politische Willensbildung”, bringing together over 80 CSOs to advocate for a change of the charity legislation, this ruling will create a chilling effect on fights for human rights and democracy. The spokesperson of the coalition, Stefan Diefenbach-Trommer, said: “The Supreme Federal Tax Court’s judgement in the Attac case will affect thousands of associations and foundations throughout Germany, and likewise influence the involvement of the many thousands of people who belong to them. Accordingly, many organisations are in great turmoil. [...] Many association boards are now discussing whether they should discontinue some of their efforts”. Following this decision, other associations have lost their non-profit status, including the Association of Persecutees of the Nazi Regime/ Federation of Antifascists (VVN-BdA) and Campact.

This ruling opened the door also to conservative right parties to make accusations against CSOs of being “political” and deserving to lose their non-profit stats. Such accusations are often aimed at discrediting civil society’s causes as partisan in front of the public. However, it also has wider repercussion on the understanding of the role civic actors play in a healthy democracy. As pointed out by Stefan Diefenbach-Trommer, “political” does not only mean longing for political power but also selfishly influencing the political debate. Civil society has a wide range of tools to influence politics: advocacy, campaigning, press releases, demonstrations ... These actions become political when civil society points at societal problems, bringing these problems to the public attention”. Civil society’s action, regardless of the type of activity (advocacy, service provision, watchdog...), deals with the protection of common goods and values. It responds to societal problems and needs thus it might target topics that become high on the political agenda. In this regard, it is important to notice how a wide range of issues has been interpreted as “political” in different countries. But as the Council of Europe Expert on NGO Law highlighted: “The ability of NGOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and to defend human rights of fellow citizens.” Indeed, the European Court of Human Rights also stated that allowing participation in public life and policy is one of the principal features of democracy –that is, to create the possibility for members of a society to resolve social and political problems through dialogue.

74 Greenpeace und Gesellschaft für Freiheitsrechte, Corona-Pandemie und die Einschränkung der Grundrechte, Eine juristische Kurzexpertise der Gesellschaft für Freiheitsrechte (GFF), https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/juristische_bilanz_corona_und_grundrechte.pdf, (Sept. 2020).

Excessive policing of Black Lives Matter Protests

Black Lives Matter Berlin denounced the arbitrary arrest of 93 peaceful protesters during the demonstration commemorating George Floyd on 6 June. According to the group, the police action, in some instances violent, also resulted in two protesters' hospitalisation⁷⁵. The group also warned that people of colour were also insulted and harassed after the demonstration was over in some cases. On the same day, 36 young adults – many of whom of colour - were put into police custody for several hours, one hour at least standing and facing a wall, for attending an Anti-Racism Demonstration in Hamburg⁷⁶. It is important to note that, differently from other countries, police in many states in Germany was not granted exceptional powers during the health emergency because the powers of law enforcement agencies had already expanded throughout the past years.

The framework for civic organisations' financial viability and sustainability

Funding for the sector soars during the crisis

The pandemic-related lockdowns affected both the space and range of activities of civil society organisations. Nevertheless, in 2020 Germany has not adopted specific support instruments on its federal level addressed to the civil society organisations affected by the pandemic.

According to the Monitoring »Coronavirus and Civic Space in Germany« by Greenpeace⁷⁷, the regulations on Corona aid with the budget 600 billion euros were adopted in Fast-track procedure. According to the report of the responsible Labor and Social Affairs Committee,⁷⁸ no public hearings took place on this either. The comprehensive economic aid measures were undoubtedly urgent, but the fast-track proceedings led to the reality that civil society concerns were neglected.

Support and state assistance for CSOs came late when CSOs were included in general government relief programmes at federal, State, and local level, but virtually no specific CSO relief programmes exist despite a great deal of civil society's campaigning and petitions to get the Government react. Additionally, relief programmes are administered by many different government agencies at the federal and state level, applying is complicated and carries a number of clauses and restrictions that many CSOs find difficult to meet. Overall, these funds are much smaller than those granted to ailing business corporations.

In order to support non-profit organisations in times of COVID-19 pandemic the German Foundation for Civic Engagement and Volunteering (Deutsche Siftung für Engagement und Ehrenamt) has set up a micro-funding joint Impact Support Programme in times of Corona: Funding program Acting together in times of Corona (Förderprogramm Gemeinsam wirken in Zeiten von Corona). The Budget amounts to €20 million to support more than 8.000 organisations in Germany between October and December 2020. The funding focuses on digital communication, hard- and software equipment, competence- and knowledge sharing.

75 Black Lives Matter Berlin, <https://www.blacklivesmatterberlin.de/stellungnahme-zu-rassistischer-polizeigewalt/>, (9 June 2020).

76 Die Zeit, Demonstration in Hamburg: "Das war wie eine Jagd", <https://www.zeit.de/hamburg/2020-06/demonstration-hamburg-anti-rassismus-polizei-festnahmen-minderjaehrige>, (8 June 2020).

77 Greenpeace: Monitoring Coronavirus und Civic Space Deutschland https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/s02911_gp_corona-pandemie_demokratische_teilhabe_studie_06_20.pdf.

78 Beschlussempfehlung und Bericht des Ausschusses für Arbeit und Soziales (11. Ausschuss): <http://dipbt.bundestag.de/dip21/btd/19/181/1918130.pdf>

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

German Foundation for Civic Engagement and Volunteering established to reinforce weak civil dialogue

»Germany does not enjoy a compact or an overall framework for consultation and dialogue between the federal and state governments and civil society, nor there is a strong overall representation.«⁷⁹ Nevertheless, some civil society structures help to mitigate this:

- BBE - linking the third sector and political institutions: The BBE is a nationwide network connecting organisations and associations from the third sector (non-profit organisations) and civil society, from business and work life and federal and community institutions. The BBE has 281 member organisations sponsoring and supporting millions of committed citizens in Germany: 29 of them are from the state, politics and administration, 217 members are from the civil society, and 30 of them are from business and trade unions sector. The BBE participates in policy discussions about conducted by the German Bundestag Subcommittee on Civic Commitment and advises it in a consultative capacity.

The German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend) organises in cooperation with the BBE the Ministry organises an annual Civic Engagement Week (Woche des Bürgerschaftlichen Engagements) to inform the public about the many and varied services performed by over 30 million volunteers in Germany.

- The German Foundation for Civic Engagement and Volunteering (Deutsche Stiftung für Engagement und Ehrenamt – DSEE) was set up as public foundation on the initiative of three Federal Ministries began to operate in July 2020 (federal law Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt of 23 June 2020⁸⁰). It will operate with an annual budget of around €30 Million to improve and support civil society organisations and volunteering, especially in laggard and underdeveloped regions in Germany. The focus is on enhancing the digital means for civil society activities and the development of a volunteering infrastructure in response to the Covid-19 pandemic.

In the opinion of civil society networks in Germany such as the National Network for Civil Society (Bundesnetzwerk Bürgerschaftliches Engagement BBE) or the Alliance for Public Benefit (Bündnis für Gemeinnützigkeit)⁸¹, the foundation's contribution to civic space will depend largely on its success in establishing cooperation mechanisms with the existing civil society infrastructure and not to create duplicating structures.

The sector was neglected during the crisis

During the crisis, the neglect of civil society participation in the adoption of coronavirus regulations was overly apparent. Parliamentary fast-track procedures contained less (or no) possibilities for consultation and public hearings. Recommendations from academia, e.g. the German National

79 Siri Hummel/ Rupert Graf Strachwitz: CONDITIONS FOR CIVIL SOCIETY ARE GOOD But civic actors were neglected during the emergency https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf

80 Deutscher Bundestag (2020), Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt

81 Bündnis für Gemeinnützigkeit (2020), Position Paper of the Alliance for Public Benefit on the formation of the DSEE

Academy of Sciences Leopoldina, did not include the needs of civil society and habitually failed to consider perspectives from different social groups in society. The working group was contested on this ground as the average age of the members was over 60, and the group of 26 comprised only two women. No CSOs, e.g. from child protection, human, civil, or gender rights, were heard.

The political landscape and safe space

Far-right voices occupying the public space

In many regions in Germany, civil society organisations that are active in the field of human rights and humanitarian aid experience restrictions due to a social climate of resentments and hate speech.⁸² The pandemic situation contributed to worsening this development. Protests against Covid19-protective measures led in most cases by right-wing conspiracy ideologies show the influence of propaganda on opinion trends and the ability to mobilisation.

Need for proportionality and a clear time frame of the restrictions

Regarding the current situation, Ph. D.Rupert Strachwitz, from the Maecenata Institute for Philanthropy and Civil Society, speaks of »closed public spaces«. It should also be taken into account that trust and solidarity, the social capital of society, are not fed by political and economic contexts but primarily by civil society. The elimination of public spaces must only be an instrument of such an emergency in a medically-related exceptional situation. In the interests of democracy and civil society rights, it must be strictly limited to the high-risk phase of the pandemic. Given the dramatic course of the pandemic, there is currently an understanding of the need for these far-reaching measures. However, civil rights activists are already warning that such far-reaching restrictions on civil rights and basic democratic rights must be ended again according to clear and understandable criteria if we do not want to run the risk of permanently damaging the democratic community itself. The path from »shrinking spaces« to »shrinking democracy« must be prevented.

GREECE

Since its coming to power in summer 2019, the right-wing New Democracy Government has restricted civil society space, especially for groups acting for migrants' rights, in a context that was already challenging for civic groups. The coronavirus outbreak in 2020 became the third major crisis of the country in the last 12 years providing the Greek government with an additional justification to crack down violently on civil society. Concerning developments in 2020 include: 1) Restrictions to public gatherings and police violence threatening right to peaceful assembly and right to freedom from fear during COVID-19; 2) a new law on public assemblies that will restrict the right to protest beyond COVID-19; 3) A new register for organisations working with migrants allows excessive discretion of public authorities to prevent the operation of civic organisations. The implementation of the register confirms worries expressed by civil society and European experts: by granting excessive discretion to public authorities, the register restricted the operation of a number of organisations while creating huge confusion and uncertainty for all. Additionally, the Government created a hostile environment for civil society's activities, including through an aggressive narrative and sanctions (or threats of sanctions) against organisations providing crucial support to migrants. This creates a fertile ground for the attacks by far-right groups observed at the beginning of 2020 on the Islands.

Greece was one of the case studies included in the Civic Space Watch report 2020: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=105. The following contributions is drawn from the case study and updates provided by the organization Common Ground.

Regulatory environment for and implementation of civic freedoms of association, assembly, expression

Restrictions to public gatherings and police violence threaten right to peaceful assembly during COVID-19

During the first lockdown, March 23 to May 4, restrictions prevented people from gathering in groups of more than ten individuals in open spaces. Despite government warnings against large gatherings, one large peaceful demonstration was held on May Day where participants took all necessary protection measures, and the police did not interfere.⁹¹ No major incidents took place during the six-week lockdown period. Yet, with the gradual lifting of the restrictions from 4 May, and as young people started gathering in public spaces in larger numbers, the police intervened to enforce public health measures and some such interventions turned disproportionately and unjustifiably violent.⁹²

Since the election of the new government, which came into power with an agenda promising heightened security and the imposition of 'law-and-order', an increasingly common and worrisome tactic is the use of tear gas and excessive force by security services at demonstrations and protests. Police activity and violence has come as no surprise, including at student protests over the abolition of the university asylum law, which prohibited police from entering university campuses,⁹³ during a

91 https://www.thenationalherald.com/archive_general_news_greece/arthro/hundreds_of_protesters_gathered_in_greece_s_major_cities_to_mark_may_day-273820/

92 <https://balkaninsight.com/2020/05/14/in-pandemic-era-greece-fighting-for-control-of-the-square/>

93 <https://www.ekathimerini.com/246471/article/ekathimerini/news/greek-students-protest-higher-education-reforms>

march over the death of George Floyd;⁹⁴ and at an anti-fascist rally on the day that the leadership of Golden Dawn -Greece's neo-Nazi party- has been convicted of running a criminal organisation.⁹⁵ On 7 November 2020, 7th November was the starting date for the second lockdown in Greece which is still ongoing. Stricter quarantine measures were imposed. Fines for 'unnecessary movement' unjustifiably increased from 150 euros to 300 euros and a night curfew was imposed. Measures keep changing frequently creating confusion and frustration and support measures for people and business affected by the quarantine are gradually decreasing. The Government imposed a ban on public protests.⁹⁶

The enforcement of COVID-19 regulations has already been characterized by episodes of violence by the police, including during public demonstrations⁹⁷. For example, on 7 March, the police attacked peaceful citizens at a square in an Athens suburb during lockdown checks leading to a rally protesting police violence.⁹⁸

New law on public assemblies will restrict the right to protest beyond COVID-19

A new law (4370/2020) restricting the right to freedom of peaceful assembly was passed on 9 July, following a heated debate in the parliament and protests in which the police violently intervened.⁹⁹ The consultation period was short and inadequate, the principles of necessity and proportionality were not followed, and some of the law's provisions are not in accordance with international human rights law endangering the public's right to demonstrate. For instance, organisers are required to notify the authorities about a public assembly, which enables their dissolution. Restrictions have been imposed on simultaneous assemblies, and organisers can be held liable for the actions of participants.¹⁰⁰

New register for organisations working with migrants allows excessive discretion of public authorities to prevent the operation of civic organisations

A new Law (No. 4662/2020) followed by a Ministerial Decision (3063/2020) regarding the registration and certification of organisations active in the field of migration, introduced unnecessary and disproportionate barriers on NGOs and was adopted without adequate and timely public consultation. Part of the government's campaign to create a hostile environment for civil society organisations, the new legislation hinders organisations' ability to undertake their work and exercise their legal right to association. The legislation was criticised by NGOs and other stakeholders in Greece and internationally, including the Expert Council on NGO Law of the Council of Europe, for not meeting EU standards and for creating difficulties with respect to freedom of association and the protection of civil society space. Nevertheless, the state disregarded criticism.

94 <https://www.ekathimerini.com/253383/article/ekathimerini/news/demonstrators-clash-with-police-outside-us-embassy-in-george-floyd-protest>

95 <https://www.ekathimerini.com/257783/article/ekathimerini/news/greek-court-rules-golden-dawn-party-criminal-organization>

96 <http://civicspacewatch.eu/greece-greek-government-bans-protests-using-the-pretext-of-pandemic/>

97 See for example: <https://www.aljazeera.com/news/2020/11/17/police-fires-tear-gas-on-greek-uprising-anniversary>.

98 <https://www.keeptalkinggreece.com/2021/03/07/greece-police-beats-citizens-lcodkwon-checks-nea-smyrni-athens/>

99 <https://www.dw.com/en/greece-protests/a-54119094>

100 <https://www.amnesty.org/download/Documents/EUR2527062020ENGLISH.pdf>

Safe space

Government created a hostile environment for civil society's activities

By restricting asylum procedures and increasing returns,¹⁰¹ neglecting asylum-seeker and refugee integration, and limiting the freedom of NGOs working on migration, the Government created a profoundly hostile environment for civil society. It also created fertile ground for far-right groups to continue their xenophobic and racist acts, including violent attacks. In the first months of 2020, the situation escalated to the point where organisations operating on the Greek islands and the Evros land border were attacked on numerous occasions and were forced to cease their activities.¹⁰² In September, Greek police filed a criminal case against 33 members of four NGOs running Search and Rescue (SAR) operations in the Aegean sea, accusing them for a series of illegal activities.¹⁰³ This prosecution adds to a list of cases of criminalisation of solidarity that have taken place in Greece in the last years,¹⁰⁴ a worrying trend with which the government is trying to intimidate organisations helping refugees and stop them from reporting pushbacks and other violations by authorities whilst minimising flows. Meanwhile, authorities have begun issuing fines and threatening criminal charges against CSOs working in reception centres, forcing them to cease their work on the islands.¹⁰⁵

101 <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-eu-asylum-greece-eu.pdf>

102 <http://rvrn.org/2020/03/racist-violence-recording-network-serious-concern-over-attacks-against-refugees-and-humanitarian-workers/>

103 <https://www.euronews.com/2020/09/29/greek-police-accuse-33-ngo-members-of-helping-migrant-smugglers>

104 For examples of other cases see: <https://www.solidaritynow.org/en/sarah/> and <https://www.dw.com/en/greek-court-clears-spanish-and-danish-aid-workers-on-migrant-smuggling-charges/a-43693777>

105 <https://www.msf.org/msf-forced-close-covid-19-centre-lesbos-greece>

HUNGARY

Civic space and the Rule of law have been seriously deteriorating in Hungary since 2010, when the Government took advantage of its parliamentary majority to take over independent institutions and target critical voices, including civil society organization.

In 2020, Hungarian civil society suffered further blowbacks. Despite the European Court of Justice sentenced that Hungary's law on the transparency of organisations supported from abroad is in breach of EU law, including provisions of the Charter of Fundamental Rights of the EU, a public foundation started requiring the implementation of the law to allow civic organisations' access to public funding.

Using the pretext of the coronavirus pandemic, in 2020 the Government introduced legislation curbing the freedom of assembly and expression. During the spring and autumn lockdown periods, a total ban on assemblies was imposed, making any protest effectively and disproportionately illegal, and also significantly increased the criminal penalty of spreading false information about the pandemic. Besides, the deadlines for public agencies to respond to freedom of information requests were extended from 15 to 45-five days, rendering most such efforts obsolete in the fast-changing situation.

The following contributions is based on the input by Ökotárs - Hungarian Environmental Partnership Foundation and information.

Regulatory environment for and implementation of civic freedoms of association, assembly, expression

Changes in the criminal code to silence critics

Through the Authorization Act, the Hungarian government introduced stricter provisions concerning the criminalisation of scaremongering. Article 10 amended the Criminal Code and introduced stricter rules in relation to the criminal offence of scaremongering. According to the adopted text, a "person who, during the period of special legal order and in front of a large audience, states or disseminates false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts is guilty of a felony and shall be punishable by imprisonment for one to five years".

According to civil society, such measure was meant to create a chilling effect on critical voices as the broad wording of the provisions could be applicable to anyone that expressed dissent against the authorities. As of the end of July 2020, police in Hungary had initiated 134 criminal investigations on suspicion of fearmongering, resulting in one conviction. In at least two cases, citizens expressing criticism over the government's actions on social media were summoned by local authorities "under intimidating circumstances" and later released. In one of these cases, the police shared a video of the person being brought to the police car on YouTube. The video was later removed, but it was seen 75,000 times⁸³. These episodes happen in an already difficult context where the media landscape

⁸³ Hungarian Helsinki Committee. Information Note on Certain Rule of Law Developments in Hungary between May-July 2020. https://www.helsinki.hu/wp-content/uploads/HHC_Rule_of_Law_update_May-July2020.pdf. 13 August 2020.

has been occupied by pro-Government media outlets that commonly target critical journalists, civic organisations, activists, academics, programs, and institutions.

Abusing the pandemic to restrict the right to peaceful assembly

During the state of danger, all outdoor and indoor events, including assemblies and demonstrations, were banned on 17 March 2020 until 18 June⁸⁴. From 20 April for five days, people started to stage protests in front of the Prime Minister's headquarter by honking their cars in opposition to the government's management of the COVID crisis. Participants were fined by the police on the basis of breaking traffic rules and unnecessary movement during the lockdown. The protests were cancelled due to astronomical fines handed out by Budapest police up to 750'000 Florint (2'100 Euro)⁸⁵.

On November 10, the Government adopted new measures against the second wave of the pandemic. Based on the emergency law, the Government then adopted a decree detailing the specific measures introduced to prevent and fight the spread of the coronavirus, which include a blanket ban on assemblies in public spaces and heavy fines for violations up to 1.400 EUR (500.000 HUF) for participants of banned protests. The blanket ban on protest has been in place for over 100 days⁸⁶.

Framework for civic organisations' financial viability and sustainability

Restrictions to access funding: public foundation starts implementing Lex NGO

In spite of the ruling of the European Court of Justice on 18 June, the Parliament has not yet move to repeal or change the 2017 Act on the Transparency of Organizations supported from abroad dubbed "Lex NGO". Instead, beginning in September 2020, Tempus Public Foundation, the national agency managing the EU's Erasmus+ program in Hungary, started requesting its CSO applicants and selected grantees to submit declarations stating that they conform with the provisions of the "foreign-funded" legislation as a compulsory precondition of contracting. Several affected organizations publicly protested this measure, calling the attention of the European Commission as well. Likewise, the 2018 legal package dubbed 'Stop Soros' remains in effect in spite of the pending project at the ECJ.

Lack of public support to the sector starves organisations

While CSOs were at the forefront of providing support to social groups most affected by the crisis stemming from the coronavirus pandemic (by providing food aid, supporting digital education, disseminating information and legal aid, among others), the government opened no additional funding sources to civil society. On the contrary, some existing sources were cut back and – despite promising government statements – CSOs were even left out of the furlough ('kurzarbeit') schemes designed to help maintain employees through the lockdown.

⁸⁴ Milieu Consulting SRL, Coronavirus pandemic in the EU – Fundamental Rights Implications : Hungary, https://fra.europa.eu/sites/default/files/fra_uploads/hu_report_on_coronavirus_pandemic_july_2020.pdf, FRA, p. 4, (2 July 2020).

⁸⁵ Horn Gabriella, Car honking protests cancelled due to astronomical fines handed out by Budapest police, <https://english.atlatszo.hu/2020/05/25/car-honking-protests-cancelled-due-to-astronomical-fines-handed-out-by-budapest-police/>, Atlatszo, (25 May 2020).

⁸⁶ HUNGARY: New rules put a total ban on protests infringing on the right to freedom of assembly, <http://civicspacewatch.eu/hungary-new-rules-put-a-total-ban-on-protests-infringing-on-the-right-to-freedom-of-assembly/>, Civic Space Watch, 20 Nov. 2020, updated on 25 Feb. 2021.

The Hungarian government also reduced the public funding for municipalities⁸⁷, a move that indirectly impacts budgets to support CSOs. It is important to note that following the elections in the fall 2019, the opposition took over local governments in several municipalities thus the measure seems to be politically motivated by the will to target “actors potentially able to show political alternatives to the ruling party”⁸⁸. Democratic civil society in the country has been economically drained due to lack of access to the increasingly politicised public funding as well as obstacles to receiving funding for abroad as mentioned above with the introduction of the 2017 Act on the Transparency of Organizations.

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

Civil dialogue is obstructed

The traditional channels of CSO advocacy – both formal (such as consultative bodies and processes) and informal (petitions and signature collections) – ceased functioning years ago. While legislation provides for public participation, in practice these requirements are generally circumvented and decisions are instead made behind closed doors, without any involvement by the affected stakeholders. This remained the case throughout 2020 too.

The introduction of the Authorization Act allowed the government to rule by decree, which further reduced the opportunity for civil dialogue with public institutions, in a context in which democratic civic organisations are systematically discouraged from engagement through targeted smear campaigns and politicisation of the distribution of public funding.

In 2019, the new Commissioner for Fundamental Rights (the ombudsman) was appointed by the president without any consultation whatsoever despite CSOs’ request⁸⁹. In late 2020, the Equal Treatment Authority was merged into the ombudsman’s office, again without consultation and raising concerns about its effective functioning⁹⁰.

Access to information is denied

In Decree No. 179/2020 issued on 4 May, the Hungarian government has restricted the protection and rights of data subjects concerning anti-pandemic measures as stipulated by the EU’s General Data Protection Regulation (GDPR) and the Hungarian Act on Freedom of information and data protection (Info Act). Until the termination of the COVID-19 state of emergency, request for public information could not be submitted personally or orally to any organisation with public-service functions, furthermore, the organisation with a public-service function must comply with an eligible request for public information within 45 days instead of 15 days, a deadline that can be prolonged for one time only by 45 days.

⁸⁷ Political Capital. Nothing is more permanent than a temporary solution - the state of danger will come to an end in Hungary, but its impact remains. https://www.politicalcapital.hu/pcadmin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_20200528.pdf. 28 May 2020.

⁸⁸ Ibidem p.3.

⁸⁹ Hungarian Helsinki Committee. The New Ombudsperson Should be Selected Through Open Competition and Consultation with Civil Society. <https://www.helsinki.hu/en/selectionofombudsperson/>. 23 May 2019.

⁹⁰ Civilizáció. Abolishing the Equal Treatment Authority and transferring its tasks to the Ombudsperson may further weaken human rights protection in Hungary. <https://civilizacio.net/en/news-blog/abolishingtheequaltreatmentauthority>. 26 November 2020.

Implementation of the new register confirms worries expressed by civil society and European experts

Currently according to the Ministry of Migration and Asylum official website only 27 NGOs have managed to successfully join the Registry (<https://ngo.migration.gov.gr/registered.php>). According to the Minister of Migration and Asylum approximately 200 NGOs have applied to join the Registry. The majority of organisations working with migrants and refugees, including many whose role is crucial in the implementation of government programmes in refugee camps and other setting are not yet registered; in principle their operations should have seized as the deadline for their registration has passed. The Ministry is using the discretionary power that the new legislation provides, to allow several organisations to continue their operations in refugee camps and other setting, however this creates further uncertainty and confusion to organisations. At the same time other organisations were rejected and have claimed that authorities have used their discretionary power to exclude them from the registry which indicates that providing such a wide array of discretionary powers to authorities is problematic per se.

In addition, according to a report by Choose Love that was released in February 2021 'Of the 70 organisations surveyed, 20 noted that due to registration legislation they had already lost access to reception facilities or were faced with increasing difficulties with access. A further 40 anticipated problems with their ability to provide essential services, and 75 percent of the organisations foresaw problems with the ability of civil society to bear witness to the conditions facing refugees and displaced people. (source <https://helprefugees.org/wp-content/uploads/2021/02/27-02-2021-REPORT-Report-Civil-society-Greece-under-pressure.pdf>, page 3).

The registration of the NGO under the name "Hopeland" has raised further transparency concerns regarding the Registry. Until recently the NGO was unknown, had no record of providing services to refugees and no revenue. It became the second organisation to join the Registry and its registration was accepted a week after it was founded. Hopeland has since then become an implementing partner for an accommodation programme for asylum seekers funded by the Ministry. A parliamentary inquiry about the selection criteria and suitability of the NGO for the specific programme has been also submitted; the Minister's response was vague and did not address the three questions of the inquiry (the inquiry in Greek https://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=680656bb-6b53-4683-874c-ac9800ead616 ; for more information in English <https://wearesolomon.com/mag/society/millions-in-funding-at-stake-for-refugee-housing/>).

Furthermore, the Registry raises privacy and protection of personal data concerns as authorities have access to personal data of employees and volunteers without adequate justification (personnel information requested can be found on page 17-18 [here](#)). The Ministerial Decisions do not provide clarifications about GDPR issues.

Annulment application against the Joint Ministerial Decision have been filed before the Council of State by at least two NGOs and some Association of NGO employees.

IRELAND

Civil society in Ireland is very diverse, ranging from informal local groups to formally-registered national charities or quasi-public bodies, like universities and hospitals. While civic actors are active in the political life of the country, state funding has prioritised (and has sometimes been restricted to) service provision over advocacy work.

During 2020, while the Government adopted a balanced approach, some challenges to check and balances emerged. These include the use of criminal sanctions to enforce public health guidelines, lack of clarity as to the exercise of the right to peaceful assembly and challenges accessing the policy-makers. While the crisis had huge impact of the economic viability of the sector, the Government is one of the few in Europe that provided specific support for the sector, although this is limited to service provision organisations.

A case study on the country is included in the Civic Space Watch report 2020: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=121. The following contribution is based on the case study and the ECF research for the CIVICUS Monitor: <https://monitor.civicus.org/country/ireland/>.

Regulatory environment for and implementation of civic freedoms of association, assembly, expression

Expansion of police powers and use of criminal sanctions to enforce restrictions lacks proportionality

In Ireland, the government passed emergency legislation on 20 March which gave the Minister for Health power to make regulations banning events, and making it illegal to move around the country or leave home without a reasonable excuse¹⁰⁶. Until the beginning of April, these measures were enforced by consent based on a community policing approach placing emphasis on educating the public rather than on threatening to impose sanctions. However, on 7 April, the Minister of Health signed new regulations giving effect to emergency powers for the police during the Covid-19 crisis, including a 2,500 Euro fine or six months in prison for people failing to respect the restrictions. Police forces were allowed to "ask for names and addresses and where this was refused, they could arrest someone. They were given the power to tell anyone they suspected of breaching the regulations to comply or they could arrest them. And they were given the power to assist a medical officer to detain someone refusing to self-isolate¹⁰⁷". While after June the regulations ceased these powers and less restricted, they foresee criminal sanctions for organisers of gatherings of more of 50 people indoors and more than 200 outdoors. The civil society questions the proportionality of using criminal sanctions to enforce restrictions. There were numerous issues in relation to over-policing during the pandemic, including reports of stop and searches that went beyond lawful powers, ungrounded requests for IDs and the presence of armed gardaí (Irish police) at checkpoints.

¹⁰⁶ Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, available at: <https://www.oireachtas.ie/en/bills/bill/2020/3/>, (20 Mar 2020).

¹⁰⁷ Doireann Ansbro, What Are the Dangers with the New Garda Powers?, <https://dublininquirer.com/2020/05/20/doireann-what-are-the-dangers-with-the-new-garda-powers/>, Dublin InQuirer, (20 May 2020).

Lack of clarity in COVID-19 regulations negatively affects the right to peaceful assembly

The Regulations restricting freedom of movement contained a list of reasonable excuses for leaving one's home, which did not include engaging in protest. However, this list was non-exhaustive, and gardai were afforded a degree of discretion to decide who may or may not have the right to leave their homes. In some instances, protests were allowed to take place, while other groups of protesters, who were observing social distancing, were instructed to move on. As a result, the police used inconsistent in approach in the policing of assemblies.

On the basis of the regulations passed in June, the police investigated the organisers of Black Lives Matter Dublin for a protest that brought 5000 people in the streets at the beginning of June. As a result, the organisers cancelled the follow-up demonstration planned a few days later¹⁰⁸.

Monitoring of social media of civic activists raises worries

On 17 August, it emerged through a Freedom of Information request submitted by a journalist that the Department of Justice has been carrying out extensive social media monitoring of commentary on issues concerning the Department during the crisis, such as on the impact of COVID-19 on those living in the direct provision system. This monitoring includes the logging of civil society representatives' names and their social media accounts. The Department has stated that it "started a new policy of monitoring social media during Covid-19 to improve its communications strategy".¹⁰⁹

Framework for civic organisations' financial viability and sustainability

The government supports the sector through a specific fund

As elsewhere in Europe, the Irish charity sector was hugely impacted by the COVID-19 crisis. It has been facing challenges to respond to the increasing demands for action vis-à-vis the restrictions introduced, and a drop in fundraised income amounting to 445 million Euro. While the Government is among the few in Europe to provide a special fund for charities, the situation for many organisations remains precarious and the funding is only accessible for organisations providing services to the population during the pandemic.

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

COVID-19 impacts civil society's advocacy

The COVID-19 crisis has underlined the vital importance of the advocacy role played by CSOs in ensuring the needs of the most vulnerable are highlighted and addressed. The importance of working in partnership with the State while also holding them to account has been manifest in the work of organisations throughout the pandemic. During the COVID-19 crisis, numerous CSOs were invited to make submissions to the Special Oireachtas Committee thematic sessions on the

¹⁰⁸ Conor Lally, Why is there a criminal investigation into the Black Lives Matter Dublin protest?, <https://www.irishtimes.com/news/crime-and-law/why-is-there-a-criminal-investigation-into-the-black-lives-matter-dublin-protest-1.4270112>, The Irish Times, (3 June 2020).

¹⁰⁹ <https://www.independent.ie/irish-news/department-of-justice-officials-monitor-posts-criticising-direct-provision-on-social-media-39452868.html>

COVID-19 response (the Special Oireachtas Committee was established to consider the State's response to the pandemic and is comprised of members of the Irish parliament (TDs)). Numerous CSOs have expressed frustration with regard to a lack of opportunity to consult with decision-makers and to input into policy decisions that impact their area of work. While some organisations report that their expertise and experience were not availed of by the authorities and experiencing a significantly shrunken space in which to advocate and to engage with authorities, others report positive experiences with the authorities during the crisis.

Challenges emerge to access information during the pandemic

The Department of Health initially held daily public health briefings by the National Public Health Emergency Team (NPHE) to inform the public of the latest infection and fatality figures. These briefings now occur twice weekly. There have also been awareness-raising campaigns on public health advice on national TV and radio stations. However, the decision-making process underpinning the public health guidance, as well as the guidance itself, has become increasingly opaque. Difficulties in distinguishing between public health advice and enforceable statutory law have been experienced by the public throughout the crisis.

A worrying pattern has emerged from a rule of law perspective. The texts of the Regulations introduced under the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 have been consistently unavailable at the point of commencement on the Irish Statute Book and Department of Health websites. For a legal instrument to meet the standard of lawfulness, it must be accessible to those who are subject to that law. It is unacceptable that the public should learn about the content of laws of such far-reaching effect from media reports and after their purported commencement.

NETHERLANDS

The legal framework for civil society in the country is strong. However, in recent years the security approach has sometimes hampered the sector, especially anti-discrimination organisations and groups. A new draft Transparency Act presented in November 2020 raises worries among the sector.

The following input was received by the European Center for Not-for-Profit Law (ECNL) that wrote a legal analysis of the potential negative impact of the law, accessible here:
<https://ecnl.org/news/overview-key-issues-new-dutch-transparency-act>.

The aim of the act is described as preventing undesired foreign influence via donations from outside of the EU. It is a follow up of the draft law proposed to public consultation in 2018, when it required all civil society organisations (CSOs) to publish details on donations and donors that amount to or exceed 15,000 EUR a year.

In this recent draft, the generic obligation for all CSOs was replaced with narrowing the focus of interest to CSOs that are considered a (potential) threat to 'public order' or 'general interest'. Whilst this may appear a nuanced alternative, there are still some alarming features of this draft that are concerning. These concerns include:

The act is not in line with the rule of law principle as the Mayor is given far-reaching powers with a significant margin of interpretation and without any checks and balances along the way or possible remedies for CSOs.

This will also lead to legal uncertainty due to lack of clear criteria on what may constitute an indication of risk or disruption of 'public order' and thereby poses risk for potential discriminatory application, creates reluctance and discourages support to CSOs and can possibly lead to self-censorship of CSOs, as groups may feel that they might be under additional scrutiny for what they do and say. Even though the current version aims to limit the group of potentially affected CSOs, if adopted as presented now, the act will potentially affect a disproportionate large group of CSOs given the lack of criteria on how the Mayor can determine whether a group is a threat or not, meaning that all CSOs receiving foreign funding will potentially be subject to additional administrative requirements, supervision and potential restrictions of their activities.

POLAND

"If we lose the rule of law, if we lose judicial independence, we lose everything" Marta Lempart, leader of the Polish Women' Strike movement, LIBER and FEMM Committee hearing, 24 Feb 2021

Civic space and rule of law have declined in Poland since the ruling Law and Justice Party (PiS) came into power in 2015. In 2020, Polish civil society suffered further blowbacks at the Government took advantage of the pandemic to bypass institutional checks and balances and sideline civil society. Problems related to the holding of the Presidential elections have been a major concern for democratic voices in the first half of the year. COVID-19 laws also included "intruders" - provisions restricting fundamental rights, expanded the powers of law enforcement bodies and toughened sanctions for breaking COVID-19 measures. The year was also characterised by the crackdown on peaceful protesters, in particular those advocating for sexual and reproductive rights and campaigning ahead of Presidential elections.

The following contribution is based on input receive throughout the year from ECF Polish members, in particular the Institute of Public Affairs.

The process for preparing and enacting laws

Public oversight and checks and balances are reduced in the decision-making during COVID-19

On 2 March 2020, the Lower House of the Parliament (Sejm) adopted the "Act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situation caused by them" (act on Special Solutions).¹¹⁰ In the following weeks, based on provisions in the Act on Special Solutions, and in response to increase in the number of cases detected, the government first announced a so-called 'state of epidemic threat'¹¹¹, which later on was turned into 'the state of epidemic'.¹¹²

With the enactment of these legal provisions, several rights and freedoms were suspended or at least limited, including the right to assembly (see below for more details), freedom of movement, freedom of expression and, to some extent, even freedom to practise religion. The adoption of the same Act also allowed the government not to introduce any of the emergency states (for example, the state of natural disaster) provided for in the Constitution. According to many experts, such bypassing of constitutional solutions allowed for further restrictions to human rights than what is provided by the Constitution in the event of the state of emergency. Under this law, the government started enacting lockdown-type control measures between 10 and 12 March.

In order to counteract the socio-economic repercussions, the government came up with various forms of support. These solutions were included in a new set of legislation, which was referred to as

¹¹⁰ Law of 2 March 2020 on special arrangements for preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374).

¹¹¹ See: Ordinance of the Minister of Health of 13 March 2020 on declaring an epidemic threat state on the territory of the Republic of Poland (Journal of Laws of 2020, item 433).

¹¹² See: Ordinance of the Minister of Health of 20 March 2020 on declaring the state of the epidemic on the territory of the Republic of Poland (Journal of Laws of 2020, item 491).

the “anti-crisis shield”. In addition to providing economic support, these laws also relaxed the rigors of control of public money spending and abolished part of the responsibility of public servants in this area (in relation to purchasing goods and services necessary to combat the epidemic).

As a result of the special legislative provisions introduced, exercising public control over the key decision related to COVID-19 crisis response has also been greatly impeded. Any attempts to control the decisions made by public institutions have been made very difficult by another measure - introduced in the first “anti-crisis shield” (Art. 15zzs) - suspending deadlines in administrative proceedings. As a result, citizens lost their constitutional right of access to public information (as the 14-day deadline for public authority responding to the request ceased to apply). This unleashed problems for anyone undertaking civic scrutiny, including control of political parties’ financial activities. Although this specific regulation was lifted already in the middle of May, in practice the legislative turmoil caused persistent ambiguity as to the actual regulation governing the right to public information.¹¹³

Disputes regarding organising presidential elections amidst the pandemic

The government’s reaction to the COVID-19 pandemic was the subject of intensive public discussions, which were made more divisive by the most important political event of the year: the presidential election, originally scheduled for 10 May. Opposition parties demanded a postponement of the vote until after the end of the crisis, but since none of the constitutional states of emergency was declared, the vote could not be legally put off. The government pledged to hold the election on time, notwithstanding the great difficulty for all candidates to run the campaign on equal terms. Declaring an interest in reducing the risk of coronavirus infections, only a month before the election the ruling party proposed a new law introducing universal postal voting. The same law envisioned the transfer of responsibility for the organisation of the vote from the National Election Commission (NEC) to the government, namely the Minister of State Assets and the Polish Post Office, a state-owned company. The law adopted by the Sejm on 6 April was rejected by the Senate, however.¹¹⁴ It was voted on again by the Sejm, but only in early May¹¹⁵ and signed by the President on 8 May, entering into force the following day, thus only a day before the initially scheduled election date.¹¹⁶ However, without waiting for an appropriate disposition in the law, the Minister of State Assets ordered printing and packing of election materials for over 29 million voters, costing ca. PLN 70 million, already several weeks earlier, on the basis of the Prime Minister’s (PM) 16 April decision to commission the preparation and organisation of the presidential election by postal voting. This expenditure proved to be unnecessary, not grounded in law and was annulled on 15 September by the County Administrative Court, which found PM’s decision had grossly infringed the law and was

113 According to the Act of 14 May 2020 amending certain acts in the field of protective measures in relation to the spread of SARS-CoV-2 virus (Journal of Laws of 2020, item 875; moreover, according to art 68 of this law all time limits in proceedings that have not started or were suspended under the previous extraordinary law, were to start pending 7 days after act of 14 May entered into force).

114 Act of 6 April 2020 on special rules of conducting the general elections for the President of the Republic of Poland ordered in 2020 (Journal of Laws of 2020, item 827).

115 According to the legislative procedure in Poland, all ordinary laws are approved by both chambers of the Parliament. After the bill is adopted by the Sejm (lower chamber), the Senate (upper chamber) has 30 days to decide. Then, the Sejm may reject the amendments of the Senate as well as its motion to reject the act by an absolute majority of votes in the presence of at least half of the statutory number of deputies. After the Sejm had voted, the law is considered adopted by the Parliament and is sent for signature by the President.

116 On this legislation, see: ODIHR/OSCE, Opinion on the draft act on special rules for conducting the general election of the president of the Republic of Poland ordered in 2020 (Senate paper No. 99), Nr ELE-POL/373/2020, Warsaw, 27 April 2020.

issued without legal grounds.¹¹⁷ The court confirmed what was observed by the large majority of legal experts already in May, that PM's decision violated the Constitution (inter alia Article 7, which establishes the principle of legalism), the Electoral Code, the Law on the Council of Ministers and the Code of Administrative Procedure. Moreover, the same decision ordered that the elections be organised in a way that did not guarantee voters equal, direct and secret ballot, as with reference to the election of the President of the Republic of Poland required by the Constitution (Article 127.1). Notwithstanding these circumstances, on 7 May the NEC announced that the vote on 10 May cannot take place as provisions of the Electoral Code cannot be applied.¹¹⁸ Consequently, the vote did not take place. This fact was only preceded by a verbal agreement between the leaders of the two ruling coalition parties.

After many further debates within the ruling coalition, and between the parliamentary majority and opposition, informal agreement has been reached and new date for the election was set for late June. In order to implement this vote, a new law on special rules for the organization of general elections for the President of the Republic of Poland was adopted on 2 June, which proposed to hold the vote in a hybrid manner.¹¹⁹ Both of above acts were adopted in timeframes contrary to international good practice and the jurisprudence of the Polish Constitutional Tribunal, which state that no changes to the electoral law shall be made later than six months before the election.¹²⁰ The ODIHR election observation report, published on 23 September, concludes that the 2 June Act "was adopted under an expedited procedure, less than a month prior to the election day and without sufficient public discussion, thereby undermining the stability and clarity of the electoral law".¹²¹

Civil dialogue further deteriorates during COVID-19

There was a further deterioration in cooperation with the public administration, especially at the central level. This was associated with a renewed lowering of legislative standards. The government consistently avoided consultations with the public and organizations representing citizens. If consultations were held, they were shortened or cancelled at the last moment, and when they were held, summary reports were not published and comments were usually not taken into account. Government bills were often sent to the parliament as MPs' bills in order to circumvent the legal obligation to involve civil society representatives in the lawmaking process at the government level. Consultative bodies established by the government either do not function (such as the National Committee for Social Economy Development) or are treated instrumentally by those in power (such as the Council for Public Benefit Work or the Council for Dialogue with the Young Generation). Other bodies are also being abolished, such as the Council of Non-Governmental Organizations, which the Minister of Culture has abolished as an advisory body to him. Operating in pandemic conditions has only made the situation worse.

117 Judgment of the Voivodship Administrative Court in Warsaw, VII SA/Wa 992/20, 15.09.2020.

118 See the Communication from the National Election Commission of 7 May 2020.

119 Act of 2 June 2020 on special rules for the organization of general elections of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting (Journal of Laws of 2020, item 979);; see also ODIHR/OSCE, Opinion on the Draft Act On Special Rules for the Organisation of the General Election of the President of the Republic of Poland Ordered in 2020 with the Possibility of Postal Voting (Senate Paper No. 118), No. ELE-POL/374/2020, Warsaw, 29 May 2020.,

120 Judgment of the Constitutional Court of 20 July 2011, K 9/11, OTK-A 2011/6/61.,

121 OSCE/ODIHR (2020), Republic of Poland Presidential Election 28 June and 12 July 2020. ODIHR Special Election Assessment Mission Final Report, p. 8. Inter alia it refers to Venice Commission's Code of Good Practice in Electoral Matters that considers the principle of electoral law stability as "crucial for credibility of the electoral process, which is itself vital to consolidating democracy."

Another negative example on how public consultation in decision making is conducted is the overnight cancellation/suspension (without explanation) of consultations on the Partnership Agreement prepared before the EU MFF 2021-27 in Poland. It only worsened the consequences of the lack of a plan for a meaningful inclusion of CSOs in the process of planning the disbursement of funds from the new EU multiannual budget in the country.

Regulatory environment for and implementation of civic freedoms of association, assembly, expression

Change of the law enforcement authorities' competencies and increasing the severity of penalties

In the first package of laws forming the so-called anti-crisis shield introduced at the end of March, Article 65a was added to the code of offences, allowing police officers to arrest, detain or fine in the case of intentional disobedience to the instructions of a Police or Border Guard officer. The wording of the provision is so general that the police or border guards could give any orders to citizens, and failure to do so is punishable. The Ombuds Office and civil society raised concern that this measure is vaguely defined and will stay in force and enforced after the pandemic in the context of protests¹²².

Moreover, penalties for several offences in the Penal Code were toughened, including for exposing other people to dangerous diseases (including the HIV virus explicit mentioned) and for stalking. The amendment also assumes that violations of the obligation to hospitalise, quarantine or isolate will be decided on the basis of the findings of the police and other state services or authorised entities. In connection with such a violation, the state district sanitary inspector may impose an administrative fine of up to 30,000 PLN-almost 7,000 EUR on persons who "in a state of epidemic danger or state of epidemic do not comply with orders, prohibitions or restrictions established on the basis of Article 46 or Article 46b of the Act".

To this end, the first package of the so-called anti-crisis shield introduced changes to the 2008 Act on Preventing and Combating Infections and Infectious Diseases in People. As a result, fines can be imposed either by the state district sanitary inspector and state border sanitary inspector, or by the voivode or the minister of health. The decision on sanctions is delivered immediately and is subject to immediate execution. And there is no need for the relevant services to take evidence. This means that the citizen's right to be tried in court is effectively withdrawn. Especially in the situation of increasing limitations in the functioning of the justice system, citizens could not effectively appeal against the decision on penalties. On this basis, people participating in one-man demonstrations against various actions of the government or criticising the current president - during the presidential campaign, which lasted continuously since February were also punished and, usually, they received the maximum amount of the punishment applicable in these cases (10,000 PLN, 2,500 euro).

122 Helsinki Foundation for Human Rights, Coronavirus pandemic in the EU – Fundamental Rights Implications: Poland, https://fra.europa.eu/sites/default/files/fra_uploads/pl_report_on_coronavirus_pandemic_may_2020.pdf, FRA, p. 4, (4 May 2020).

Restricting Freedom of Assembly and disproportionate use of police violence against peaceful protestors

On 20 March, the Minister of Health introduced a ban on organising mass events and public assemblies attended by more than 50 persons¹²³. In mid-April, two bills were discussed in Parliament, which would have de facto resulted into an almost-total abortion ban and the suppression of relationship and sexuality education¹²⁴. The movement Polish Women's Strike and several other groups trying to use their right to assembly amidst pandemic with due observance of the sanitary requirements prescribed by law, found creative ways to protest online and in the streets by queuing at the store or riding cars. Despite the activists carefully maintaining safety measures, police issued fines up to 6,600 euros to almost 100 protesters due to alleged breaching of traffic laws or social distancing rules¹²⁵.

In May, as the government gradually started lifting the restrictions, public assemblies were allowed up to 150 participants with participants keeping at least 2 meters distance and covering their mouths and noses¹²⁶. At the beginning of the month, two artists participating in a socially distant protest carrying a 14-meter banner concerning the controversial presidential elections received 2,000 euro fine by the State Sanitary Inspector for failing to comply with the 2-meter distance. Following public outcry, the penalties were dropped¹²⁷.

As the second wave of COVID-19 hit the country, restrictions to the number of protesters have been introduced (25 in Warsaw from 17 October, five from 26 October). The ruling of the Constitutional Tribunal controlled by the ruling party since 2016 resulting in an almost complete ban on abortion on 22 October¹²⁸ sparked nationwide protests over 100 ongoing days and in 600 cities, which have been met by excessive police, including the use of tear gas, pepper spray, kettling tactics and physical violence, as well as violence from far-right groups. 3,000 people have been charged, investigated, prosecuted. This includes leader of the Women's Strike (Strajk Kobiet), Marta Lempart, who is currently facing charges that could result in 8 years in prison¹²⁹. In some cases, unjustifiable detention methods have been used, resulting in little or no access to legal representation, and being subject to strip searches or physical violence during detention. This attack on peaceful protestors

123 Helsinki Foundation for Human Rights, Coronavirus COVID-19 outbreak in the EU - Fundamental Rights Implications: Poland, https://fra.europa.eu/sites/default/files/fra_uploads/poland-report-covid-19-april-2020_en.pdf, FRA, p. 8, (24 March 2020).

124 Irene Donadio, Polish ruling party exploits the current health crisis to undermine women and young people's safety, https://www.ippfen.org/news/polish-ruling-party-exploits-current-health-crisis-undermine-women-and-young-peoples-safety?fbclid=IwAR31kkGR9Vdor-zfuO0J_U2qJLKC0VCetGN1EDABI4Q7IhgqXFxpUOHAKs, IPPF, (14 April 2020).

125 Claudia Ciobanu, Poles find creative ways to protest despite the pandemic, <https://balkaninsight.com/2020/04/21/poles-find-creative-ways-to-protest-despite-the-pandemic/?fbclid=IwAR1EQWsiOJR6hMCkHyvVV5z6EO8d65LMIVqRLoORJg4GW38zFeOhmbCx7AY>, Reporting Democracy, (21 Apr. 2020).

126 2 Helsinki Foundation for Human Rights, Coronavirus COVID-19 outbreak in the EU - Fundamental Rights Implications: Poland, https://fra.europa.eu/sites/default/files/fra_uploads/pl_report_on_coronavirus_pandemic_july_2020.pdf, FRA, pp 2-3, (2 July 2020)

127 Dorian Batycka, 'Blatant censorship': Polish government issues artists with fines—then withdraws them, <https://www.theartnewspaper.com/news/polish-government-issues-artists-with-fines-then-withdraws-them>, The art newspaper, (28 May 2020)

128 See all information regarding this case published on the Constitutional Tribunal website: <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczenia-przerywania-ciazy>.

129 Civic Space Watch, POLAND: Leader of Poland's abortion protests charged with "insulting police" and "causing epidemic threat" <http://civicspacewatch.eu/poland-leader-of-polands-abortion-protests-charged-with-insulting-police-and-causing-epidemic-threat/>, 12 February 2021.

and the fundamental right to freedom of assembly is serious deterioration of rule of law in the country.

Proposal for transparency legislation risks restricting Freedom of Association

On 7 August, the justice and environment ministers proposed a law that would oblige NGOs to declare sources of foreign funding, which would be published in a public register. Additionally, entities receiving at least 10% of their funding from abroad have to state that on their website while those that receive more than 30% of their funding from abroad will be subject to additional obligations. Lack of compliance can be fined up to 50,000 zloty (11,340 euro) and the repeated violations could lead to the organisation losing its NGO status¹³⁰. No further work has been undertaken on the draft law so far, and the chairman of the Benefit Committee and at the same time Deputy Prime Minister of the government, representing the Law and Justice (PiS) party, dissociated himself from the proposal in an official communiqué.

Framework for civic organisations' financial viability and sustainability

Some CSOs excluded from financial support and are objects of attack by government-supportive media

CSOs engaged in activities aimed to promote civic activism in public sphere, independent culture, independent journalism and civic media; in defence of women and kids rights (including measures to counteract gender-based violence and domestic violence), ethnic, national, sexual minorities rights as well as animal rights and in environmental protection; in watchdog and advocacy activities and support to refugees and immigrants are not only devoid of public support but continue to be an object of attack by the media which support the government. Also due to the pandemic, they are losing other sources of funding they have managed to develop: donations from business (which suffers itself and directs its aid to causes related directly with COVID-19), their constituencies (which are losing jobs and income), economic activity (which had to be suspended), local authorities which are under other emergency pressures. The Government took in "barely any recommendations from the CSOs' side" in the Anti-crisis shield and, as result, many CSOs are not able to access the support.

Safe space

Targeting of LGBTI activists

After incumbent president, supported by the ruling party, won his second term a new period for the country began, attacks on the LGBTI community, already targeted by the incumbent president during his campaign¹³¹¹³², expanded. At the beginning of August, the media reported an episode of police violence against a small protest staged against the detention of an LGBTI activist. The activist

130 Juliette Bretan, Polish ministers propose law making NGOs declare foreign funding and creating public register, <https://notesfrompoland.com/2020/08/09/poland-seeks-to-make-ngos-declare-foreign-funding/>, Notes from Poland, (9 Ago.2020).

131 Cieński, J. (2020), Poland's Duda turns to LGBTQ attacks as election campaign falters, POLITICO, June 14, 2020, <https://www.politico.eu/article/poland-presidential-election-2020-andrzej-duda-turns-to-lgbtq-attacks-as-election-campaign-falters/>

132 Walker, S. (2020), Polish president scales down homophobic rhetoric as election nears, The Guardian, Fri 19 Jun 2020, <https://www.theguardian.com/world/2020/jun/19/polish-president-scales-down-homophobic-rhetoric-poland-election-nears-andrzej-duda>

had been sentenced for wrapping an LGBTI flag around statues and damaging a vehicle of the pro-life movement that for months was moved from place to place around Warsaw with fake pictures showing fetuses after the abortion¹³³. Forty-eight protesters were arrested¹³⁴. Right-wing media and politicians from the party in power launched a campaign against LGBTI organisations and individual activists.

133 Marta Nowak, Hanna Szukalska, Bartolosz Kocejko, "The policeman pinned her head to the pavement". Demonstrations in defence of an LGBTQ activist in Poland meet with the police crackdown, <https://oko.press/the-policeman-pinned-her-head-to-the-pavement-demonstrations-in-defence-of-an-lgbtq-activist-in-poland-meet-with-the-policecrackdown/>, OKO.press, (8 Aug. 2020).

134 Elliot Douglas, Poland: Police arrest 48 pro-LGBT protesters, <https://www.dw.com/en/poland-police-arrest-48-pro-lgbt-protesters/a-54494623>, DW, (8 Aug. 2020).

SLOVENIA

A rapid deterioration of civic space and rule of law has characterised 2020, after the formation of a new right-wing Government coincided with the declaration of the pandemic in the country. Since mid-March, the Government has repeatedly attempted and often succeeded in changing democratic rules and limiting dialogue with the sector. Examples of attack include: 1) Restrictions to the right to protest and unlawful sanctions of peaceful protesters; 2) Changes to the criteria for environmental organisations' public benefit status to exclude them from environmental impact assessment procedures; 3) Repeated attacks to civic organisations' financial and economic viability, including by attempting to abolish the NGO fund; 4) Smear campaigns against critical organisations and voices. The Ministry of Environment is currently working on new changes to the Environmental protection and spatial planning acts which would exclude environmental NGOs from key relevant procedures. These moves found the opposition of civil society and citizens protesting for over 20 weeks in the streets.

A case study on the country is included in the Civic Space Watch report 2020: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=139.

The following contributions is based on the input of Centre for Information Service, Co-operation and Development of NGOs (CNVOS).

The process for preparing and enacting laws

Consultation framework is disregarded by the government

The counter of breaches of consultation deadlines¹³⁵ shows that in the mandate of this Government the minimum 30-days consultation deadline was breached in 66 % of cases, even more, for 43 out of 430 regulations passed in this mandate, there was no public consultations and for further 44 the consultation deadline was not published.

In this regard, especially problematic are all laws with anti-covid measures, so far 8 of them. All of them passed in emergency procedure, having no public consultations, some of them only sporadically communicated mostly with business organizations, such as Chamber of Commerce.

As to the access to information, up until 2020 in Slovenia access to draft legislation, draft Government decisions and final Government decision as completely opened as the Secretariat published everything on Government's web side in due time. In the last year, many decisions were not published at all (they were provided upon request), which severely reduced public access to information.

COVID-19 legislation includes "intruders" restricting fundamental rights

Based on the Communicable Diseases Act, the Government has in the last year passed many decrees restricting several different fundamental freedoms, at the beginning even without any justification and end date. Almost all of them include "intruders", namely, articles that regulated issues not related to the pandemic. Examples include:

- Changes to the Referendum and Popular Initiative Act, regulating referenda, giving the majority

¹³⁵ CNVOS, <https://www.cnvos.si/stevec-krsitev/>

- in Parliament the possibility to exclude referenda on certain matters;
- Changes to the criteria for environmental NGOs working in public interest in order to prevent them to participate in Environmental Impact Assessment procedures (see box “Targeting environmental organisations”);
- Attempt to change the Law on NGOs and abolish the NGO fund (see below).

In January 2021, the Ministry of Environment once again proposed changes to the Environmental protection and spatial planning acts which would exclude environmental NGOs from key relevant procedures¹³⁶. The Ministry is currently working on the draft to be sent to the Government.

Targeting environmental organisations: changes in the criteria for environmental NGOs working in public interest

By Tina Divjak, Head of advocacy at the Centre for Information Service, Cooperation and Development of NGOs (CNVOS), from Activizenship #5 report: https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf#page=139.

Anti-corona measures affecting construction legislation

In Slovenia, according to Environmental Protection Act, non-governmental organisations that obtain the status of acting in the public interest in the field of environmental protection can be parties in the procedures and can go to court and challenge the decisions in environmental matters. So far, several major investments, which would severely affect the environment, have been successfully challenged by environmental organisations in the courts or within the administrative procedure for obtaining an environmental permit.

Some of the conditions for obtaining the status of acting in the public interest in Environmental protection law included:

- For associations: at least 3 members,
- For institutes: at least 1 expert co-worker,
- For foundations: at least 400 EUR of founding assets.

Changed conditions for NGOs included in the anti-corona law package (April 2020, prolonged in June 2020 until the end of 2021) and considered provisions aimed at deregulation of construction legislation and speeding up of infrastructure investments during the economic recovery:

- For associations: at least 50 active members, which NGOs shall prove with regularly paid membership fees and participation at general assemblies,
- For institute: at least 3 fully employed staff with university education in the field,
- For foundations: at least 10.000 EUR of founding assets.

The most controversial is the condition to meet these requirements retrospectively in the last two years. Data collected for 56 out of 77 NGOs currently meeting this criteria shows that only 9 of them (16%) fulfils the new conditions. In May 2020, a coalition of NGOs submitted a constitutional review initiative. In July 2020, the Constitutional Court temporary suspended the implementation of these articles, meaning that until the final court’s decision, the procedures should be carried out in accordance with the basic legislation.

Nature Conservation law

The same conditions were proposed also for the Nature Conservation Law in May 2020, which would be the first of the basic laws that would restrict NGO access to court and administrative procedures. At the end, the conditions were a bit changed, some exclusions were added and most importantly the law is not retrospective, NGOs that already have a status need to fulfil new conditions in 6 months after the law becomes valid.

¹³⁶ European Civic Forum, SLOVENIA: New push to restrict environmental and nature conservation NGOs, <http://civicspacewatch.eu/slovenia-new-push-to-restrict-environmental-and-nature-conservation-ngos/>, 21 Jan. 2021.

The enabling framework for civil society

COVID-19 rules abused to restrict freedom of assembly

With different decrees gatherings were restricted throughout the year. The severity of the restrictions depends on the current pandemic situation. While such restrictions can be found also elsewhere in Europe, three things should be noted in the case of Slovenia:

- 1) Law enforcement forces, under the pressure of the Minister of interior, exploited the restrictions to punish protesters and discourage others from joining the protests. When all gatherings were completely forbidden, people decided to express their dissatisfaction with the Government individually, for example by putting feet cut out of paper on the ground of Republic square in front of the Parliament or by walking with an umbrella with some anti-Government sign or sentence. Even though all these exercises were done individually, protesters were fined. They disputed their sentences in Court.
- 2) Many peaceful protesters (e.g. those sitting in front of the entrance of the Ministry of Environment or those sitting on the Republic square reading the constitution) were removed by the police, sometimes violently¹³⁷¹³⁸.
- 3) Even when gathering up to 10 people were allowed (e.g. from the end of February), gatherings are not allowed for public celebrations, public demonstrations and weddings. In other words, even though up to 10 people can gather, they cannot gather for protesting¹³⁹.

Concerns about the situation are continuously expressed by civil society, academia, political parties, etc., and more and more often also by the international organisations and institutions.

The framework for civic organisations' financial viability and sustainability

Repetitive attempts to curtail NGOs' access to funding

Slovenian NGOs are included in the support and recovery measures under the same conditions as companies, thus a set of different support measures is available for them. Additionally, some measures are available for NGOs – social service provisions, sport organizations, fire brigades. Due to these measures, the amount of public funding for NGOs in 2020 was a bit higher than in 2019 (source: ERAR).

Nevertheless, 2020 was a turbulent year for public funding of CSOs.

One of the first moves under the new Government was a decision by its Communication Office to abolish 2020 project contracts with CSOs dealing with migrants, media literacy, human trafficking, etc.¹⁴⁰. After a long fight, the Office succeeded with its intention as it found a legal basis in the contracts saying that all projects need to be implemented on time. Due to the national lockdown this

137 <https://www.amnesty.si/odziv-na-ravnanje-oblasti-protesti>; <https://www.amnesty.si/navedbe-o-prekoracitvi-policijskih-pooblastil-je-treba-preiskati.html>

138 CIVICUS Monitor, PEACEFUL ASSEMBLY AND MEDIA FREEDOM STRAINED UNDER JANŠA'S GOVERNMENT, <https://monitor.civicus.org/updates/2020/10/29/peaceful-assembly-and-media-freedom-strained-under-jansas-government/>, 29 Oct. 2020.

139 Pravna mreža Za Varstvo Demokracije, SLOVENIA: CSO challenges the constitutionality of a decree banning protests in Court, <http://civicspacewatch.eu/an-initiative-has-been-submitted-to-the-constitutional-court-of-the-republic-of-slovenia-to-review-the-constitutionality-of-a-decree-banning-protests/>, 3 Mar. 2021.

140 <https://www.cnvos.si/novice/2496/nujno-obvestilo-za-izbrane-izvajalce-na-razpisu-ukom-2020/>

was not possible, many projects were therefore in delay and hence, the abolishment. This was the only public body that did not recognise the pandemic as force major, and was finally able to abolish the contracts due to the delays in the implementation of activities. Although the tender amount is rather low (cca. 100.000 EUR), the aggressive narrative and action of the Government Office can set a dangerous trend.

Similarly, the Ministry of culture abolished the already published calls for proposals for cultural projects for 2020 and cut the budget by 8 million Euro. Cultural organisations are also one of the most hit categories by the restrictive COVID-19 measures as they could only implement their activities during the summer of 2020 in a limited way. And while there are general criteria made for the private entities to be eligible for the reimbursement of utilities costs, exception of this criteria was made for sports organisations, but not for culture organisations¹⁴¹.

Finally, one of the “intruders” in the draft anti-covid law no. 7 was the abolishment of the NGO fund. The fund was introduced in 2018 to provide a systemic source of funding for professionalisation and development of non-governmental organisations. In 2019, for the first time, the grants from the NGO fund were allocated to the projects of dozens of NGOs from different fields, selected based on public tender procedure, administered by the Ministry of Administration. However, in December 2020, the Government in Slovenia proposed abolishing the NGO fund that would have resulted in the cut of development grants and sustainability of jobs for humanitarian, volunteer, sports, cultural, human rights and other non-governmental organisations¹⁴².

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

Civil dialogue is restricted

At the beginning of the pandemic, the Government established several working groups that were intended to work on support and recovery measures. One of them was called “a working group for the opposition parties and NGOs” and it was mostly consisted of hand-picked humanitarian NGOs. The group met only once.

The dialogues worsened, for example, also between Ministry of culture and NGOs as the minister abolished a dialogue group with NGOs that for years has been a primary forum for the discussions on all issues between the ministry and cultural organisations.

Although 2020 was also a crucial year for the programming of the European Cohesion policy, the Government changed the approach and completely neglected the partnership principle. The Executive abolished the broader working group for programming, formed also by representatives of NGOs, trade unions, municipalities, etc. As a result, stakeholders are not part of the programming anymore. Furthermore, the new Government also changed the composition of the Monitoring committee of the European Cohesion Policy. It reduced the number of members and, what is more concerning, the NGO representative appointed by the NGOs was excluded from the monitoring committee; instead the Government directly appointed another NGO to be part of the Monitoring Committee.

¹⁴¹ CIVICUS Monitor, PEACEFUL ASSEMBLY AND MEDIA FREEDOM STRAINED UNDER JANŠA'S GOVERNMENT, <https://monitor.civicus.org/updates/2020/10/29/peaceful-assembly-and-media-freedom-strained-under-jansas-government/>, 29 Oct. 2020.

¹⁴² Brankica Petković, SLOVENIA: CSOs successfully oppose the abolishment of NGO fund, <http://civicspacewatch.eu/slovenia-csos-successfully-oppose-the-abolishment-of-ngo-fund/>, Civic Space watch, 5 Jan. 2021.

Safe space

Smear campaign against critical organisations

Civil society has been continuously smeared by the Prime Minister, other ministers, members of Parliament and other members of the leading political party, especially on social media. For such campaigns, SDS usually distorts data on public funding, listing specific organisations supported with public funding. Such (wrong) data was used also by the prime minister in the Parliament during his speech on the occasion of the vote of non-confidence and shared not only by the Facebook and Twitter profiles of SDS, but also by the official Governmental social media profiles. Furthermore, a very suggestive question on lack of usefulness of NGOs was included in a questionnaire that SDS sent out to all households in Slovenia.

NGOs evicted amid the pandemic

Amid experiencing its second wave of the pandemic, 18 NGOs operating from No. 6 Metelkova Street in Ljubljana, have received a notification for eviction and have been threatened by the Minister of Culture to be enforce the eviction through the courts, at their expense, if they fail to vacate the building. The NGOs have been operating from this premise since the mid-1990s. No alternative offers for accommodation was provided. NGOs believe that the eviction is a further attempt by the government to harass critical NGOs¹⁴³.

¹⁴³ CIVICUS Monitor, JANŠA'S GOVERNMENT THREATENS TO EVICT 18 CSOS AND CONTINUES TO ATTACK THE MEDIA, <https://monitor.civicus.org/updates/2020/11/16/jansas-government-threatens-evict-18-csos-and-continues-attack-media/>, 16 Nov. 2020.

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Since 2015, the legislative framework has been hardened in its sanctioning and penal instruments based on arguments linked to security and maintenance of public order through a package of measures, popularly called "Gag Laws". The package poses severe threats to the rule of law and exercise of fundamental rights, as they contain vague wording allowing discretion to law enforcement and foresee disproportionate sanctions. Several reports show how these laws have been used against civic organization, human rights defenders, social movements and critical voices¹⁴⁴. The management of the COVID-19 crisis shows the same approach. The Gag Laws have been used for the enforcement of COVID-related regulations on the population, and in some cases, to sanction mutual support networks and the neighbourhood associations providing support to the population during the pandemic. The legal framework of the state of emergency left huge uncertainty on what the population could do and, as a consequence, great discretion in the enforcement of measures. The right to peaceful assembly suffered as a consequence and associations providing relief to vulnerable groups during the lockdown have faced sanctions. The following contributions is based on the input of the International Institute for Nonviolent Action (Novact) and Òmnium Cultural.

The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline

The use of the Gag Laws to enforce COVID-19 rules leads to abuse

The legislative framework introduced in 2015, through the amendments to the Penal Code and the Citizen Security Law (known as "Ley Mordaza", "Gag Law") that criminalises the right to protest, is currently being used to enforce the limitations of the state of alarm and COVID-19 related restrictions. Since the implementation of the first state of alarm, there has been ambiguity regarding the new laws for citizens, and in many cases the government was unable to provide satisfactory guidance and answers.

Citizens know that freedom of movement has been temporarily restricted but were not provided with sufficient information to know whether specific activities were permitted or not. Therefore, citizens remained in a situation of legal insecurity resulting from ambiguous regulations and extended police powers, coupled with a history of impunity for human rights violations and a discriminatory framework.

Since the very beginning, the health crisis has been framed in a security-focused way, with the application of penalties and repression as the main solution. In contrast with other countries, Spain did not develop ad hoc legislation to enforce the restrictive measures during this state of alarm, since legislative framework introduced in 2015 through the amendments to the Penal Code and the Citizen Security Law ("Gag Law"), were already restrictive enough. For example, police agents used the article 36.6 of the Ley Mordaza to sanction people who breached restrictions under the State of Alarm, with fees ranging between 601 and 30,000€ for "disobedience or resistance to the authority or its agents in the exercise of their functions".

¹⁴⁴ Read the 2019 case study on Spain: <http://civic-forum.eu/publication/view/activizship-4>.

As a result of the unclear instructions to the population, the ambiguous and restrictive law, and the lack of clear, unequivocal protocols for the law-enforcement authorities, in the first 75 days of the first state of alarm, the Ministry of the Interior imposed nearly 1.1 million fines, 42% more than in the first three and a half years of the entry into force of the Gag Law.¹⁴⁵

Gag Laws are used to sanction associations and social movements providing support to vulnerable groups during the lockdown

Associations and social movements have been essential during the most critical moments of the health crisis, filling the gaps by deficiencies of public aid networks. Thanks to the self-managed networks, families who were left with nothing after the lockdown were able to access food, children have been provided with school materials to follow their classes, and help and attention has been promoted for the elderly by doing their shopping and not leaving them alone.

However, there have been several cases of mutual support networks and the neighbourhood associations receiving fines during the first state of alarm:

- On 2 April 2020, the Gag Law was applied to a mutual support network that delivers food to migrants collectives that provide food and assist with economic emergencies affecting migrants in Barcelona.¹⁴⁶
- On 17 March 2020, the Local Police of Valencia fined a restaurant and a neighbourhood mutual support network 4,200 euros for handing out food to vulnerable families during the confinement period.¹⁴⁷
- On 23 March 2020, La Nueva Elipa Neighbourhood Association received three fines from the Municipal Police relating to three volunteers of its Solidarity Food Pantry.¹⁴⁸

The movement for right to housing has been disproportionately and excessively sanctioned. The Union of Tenants denounced that different housing unions in Barcelona receive fines amounting to a total of 18,000 euros. Through the Gag Law, the neighbours protesting were denounced for disobedience.¹⁴⁹

The state of emergency produces uncertainty for the exercise of the right to peaceful assembly

With the declaration of the state of alarm, the right of assembly and demonstration recognised in Article 21 of the Constitution was not suspended. The state of emergency does not allow for the suspension of any fundamental rights, but it allows to adopt some limitations or restrictions to its

145 El País, Un estado de alarma que devuelve el protagonismo a la 'ley mordaza', <https://elpais.com/espana/2020-10-26/un-estado-de-alarma-que-devuelve-el-protagonismo-a-la-ley-mordaza.html>, 26 October 2020.

146 El Salto, Aplican la Ley Mordaza a una red de apoyo mutuo que reparte comida a migrantes en Barcelona, <https://www.elsaltodiario.com/coronavirus/multan-60.000-euros-red-apoyo-mutuo-antirracista-reparte-comida-migrantes-barcelona>, 01 April 2020.

147 El Mundo, Multan a un restaurante de Valencia por repartir comida a familias necesitadas en el estado de alarma, <https://www.elmundo.es/comunidad-valenciana/2020/08/25/5f456d0bfc6c83e92f8b464e.html>, 25 August 2020.

148 Madrid Diario, La Policía sanciona a tres voluntarios de una despensa solidaria por fumar en la vía pública, <https://www.madridiario.es/policia-sanciona-tres-voluntarios-despensa-solidaria-fumar-via-publica>, 23 May 2020.

149 El Periodico, Multados con 600 euros 30 vecinos por intentar parar un desahucio, <https://www.elperiodico.com/es/barcelona/20201110/multados-con-600-euros-30-vecinos-por-parar-un-desahucio-8198268>, 10 November 2020.

exercise. It was therefore possible to organise a demonstration within the legislative framework previously in force. However, a high level of discretion and arbitrariness has been detected in the actual exercise of the right to assembly (for example, see box on demonstration on 1 May 2020). An example of this legal uncertainty and the arbitrary nature of bans on demonstrations took place in Madrid on 29 January 2021, when the Government Delegation in Madrid banned a demonstration on the grounds that it contravened the Community's health regulations. The demonstration was a call "In defence of the Public Health System, Public Services and in defence of Madrid" and for the resignation of the regional president, Isabel Díaz Ayuso". A week earlier, a demonstration of negationist collectives was allowed by the same government delegation.

Discretion of public authorities in the exercise of the right to protest: the case of demonstrations on 1 May 2020

In occasion of the celebration of 1 May, several trade unions requested to be able to hold rallies or demonstrations following the sanitary requirements, such as by car, by ensuring the use of masks, limiting the number of demonstrators, etc. The decisions by local public authorities show great discretion on whether to allow or not the demonstration. In some areas, the demonstration was declared prohibited, leading to a court ruling, while in others, it was not, with the possibility of celebrating the May Day commemoration, as it was the case in the Basque Country, with several protest caravans.

- In Galicia, the Court considered that the ban was legitimate for health reasons and the risk of contagion; in Catalonia, the Court did not rule whether the prohibition was legitimate, it only established that the communication should have been done by the central Government delegation, and not the Autonomous Government of Catalonia; in Aragon, the Court found that the ban was illegitimate because the right to assembly and demonstration was not suspended, and because the planned assembly was compatible with health measures (such as obliging the use of closed vehicles, the use of masks, etc.).
- Faced with the ban in Galicia, the trade union took the matter to the Constitutional Court. The Constitutional Court confirmed the concrete prohibition of such a gathering because of the risk of contagion (Order of 30 April 2020, Appeal for protection 2023-2020). This does not mean a general ban on rallies and demonstrations, but it does mean that the position of the Constitutional Court is especially restrictive.
- The High Court of Justice of Aragon ruled that "(...) it shall be possible to limit citizens' movements to a greater or lesser extent, but never to prevent the right to demonstrate freely. As we said, if the state of emergency contemplates the possibility of suspending the free movement of the citizen, while leaving the right of assembly untouched, it is clear that an exceptional state of much lesser intensity such as this one cannot justify any restriction of this right" (Sentence 151/2020, 30 April). Although not under the same circumstances as in Spain, the German Federal Constitutional Court has ruled in a similar way. Specifically, in the decision of 15 April 2020 on the banning of demonstrations in the city of Giessen, it recalled that restrictions on mobility cannot lead to a general ban on assemblies.

Disproportionate use of police force by the police during demonstrations

The enforcement of COVID-19 rules has sometimes been characterised by the use of disproportionate use of force, including in context of public demonstrations. You can access examples on the Civic Space Watch (<http://civicspacewatch.eu/spain/>). For example:

- **Vallecas (Madrid), 24 September 2020, Demonstration for public health:** During the protest in favour of public health, an agent of the Police Intervention Units (UIP) of the National Police Force hit the head of a demonstrator with his baton; another agent pushed a person to the ground, face down, placing his knee on his neck; and a third agent hit the head of a detainee with his helmet. The images of the rally also show that the officers were not properly identified with the Police Operational Number (NOP)¹⁵⁰.
- **Linares (Jaen), 13 February 2021, Demonstration against police violence:** As a result of live rounds of rubber bullets, two people were hospitalised to have the bullets removed. Defender a quien defiende, Iridia and APDHA have issued a complaint to the Provincial Prosecutor's Office of Jaén demanding an investigation into the actions of the agents of the National Police, in relation to the disproportionate use of force observed both in the practice of several arrests and during the carrying out of some police charges¹⁵¹.
- **Barcelona (Catalunya), 16 February 2021:** Demonstrations against the rapper Pablo Hasel's imprisonment: A young woman who participated in the demonstration in Barcelona to demand the release of rapper Pablo Hasel has lost an eye¹⁵² because of injuries sustained during the demonstration, from a rubber bullet fired by the Catalan police. Human rights organizations are calling for the creation of a commission in the Catalan Parliament to address the debate on the use of these weapons, for internal channels to identify and sanction agents who misuse these weapons, and to denounce the lack of transparency in this regard.

Surveillance on Catalan independence movement

On 13 July 2020, The Guardian published an article in which it revealed, in a joint investigation with the Spanish newspaper El País, that the mobile phone of Catalonia's Parliament chair, Roger Torrent, was targeted using spyware which, according to the company that created it, is only sold to governments to track criminals and terrorists. This spyware allows the user to control the victim's mobile phone and intercept all their communications.

In this case, and after the first revelation, news queries found out that at least two other members of the Catalan pro-independentist movement had their phones targeted illegally, (Ms Anna Gabriel, former politician exiled in Switzerland, and Jordi Domingo, a Catalan independence activist). The alleged attacks occurred, according to WhatsApp (the app used to introduce the spyware), in April-May 2019.

150 Defender a Quien Defiende, Defender a quien Defiende solicita al Ministerio de Interior que investigue los casos de violencia policial sucedidos en Madrid el último mes, <https://defenderaquiendefiende.org/defender-a-quiendefiende-solicita-al-ministerio-de-interior-que-investigue-los-casos-de-violencia-policial-suocedidos-en-madrid-el-ultimo-mes/>, 23 October 2020.

151 La Vanguardia, Interponen denuncia ante Fiscalía por uso desproporcionado fuerza en Linares, <https://www.lavanguardia.com/vida/20210215/6248570/interponen-denuncia-fiscalia-desproporcionado-fuerza-linares.html>, 15 February 2021.

152 El País, Una joven herida durante los disturbios por la detención de Pablo Hasél en Barcelona pierde un ojo, <https://elpais.com/espana/catalunya/2021-02-17/pierde-el-ojo-una-joven-herida-durante-los-disturbios-en-barcelona-por-la-detencion-de-hasel.html>, 17 February 2021.

Even though the Israeli software used for this, Pegasus, is only sold to Governments, the Spanish National Intelligence Center stated that it acts "in full accordance with the legal system, and with absolute respect for the applicable laws" and that its work is "overseen by Spain's supreme court," but it refused to respond specific questions on the use of the spyware. According to an investigation published by the newspaper Público, the Spanish Interior Ministry had allegedly bought the software in 2014, and it had been used in the past in operations related to the Catalan independentist movement.

The Spanish government denied all the petitions that demanded in the Spanish Parliament to start an internal investigation on a dangerous case of espionage against a political opposition movement. A plaint was presented by some of the victims to get more information on the case, which seeks to clarify the Spanish authorities' involvement in this illegal surveillance, but no additional information has been revealed so far.

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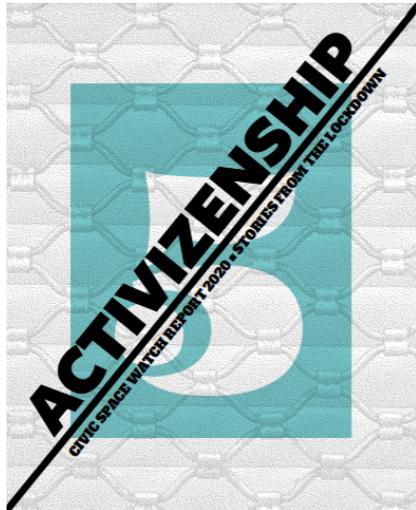
Harassment of representatives of the Catalan movement

On 28 October 2020, Spanish police detained 21 people and raided 31 offices, in an operation called "Volhov operation". This operation targeted specific leaders of the Catalan civil society - businessmen in the Culture sector, activists... - and some officials, all of them part of the pro-independence movement. The detentions were highly covered by Spanish media, which reflected in their information the various accusations of the judge. The operation accused them, in a totum revolutum, of up 10 totally different and unconnected crimes, from money laundering to negotiating with the Kremlin the transfer of 10.000 Russian soldiers to defend the Catalan independence - a statement that was even mocked by the Russian embassy in Madrid. Most of the accusations were unfounded, but the operation revealed that the detainees had been followed and recorded for months. All the detainees were released after 2 days, as the Prosecution did not ask for their detention because of lack of evidence and are still awaiting trial.

This was seen by many as a State operation of harassment against the pro-independence movement, and it is the same dynamic followed in other previous operation. For example, the one on 23 September 2019 in which 9 Catalan independentist activists were detained, accusing them of "terrorism" three weeks before the sentence to the Catalan leaders had to be revealed. All of them have now been released, after spending months in jail, as there were no proof to support the accusation.

These operations can be seen as moves that try to undermine the reputation of a political dissident movement, by criminalising it, but they can also have a dangerous deterrent effect on other citizens who may be afraid, seeing the precedents, of exercising their democratic rights.

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