

Joint Civil Society Contribution to the 2023 Annual Rule of Law Report on Civic Space

1. Introduction

The 2022 report on the rule of law has shown that restrictions to civic space are a growing concern in EU member States and that problems that were identified in the first report are still ongoing and becoming structural.

The Annual European Charter of fundamental rights report for 2022 has been dedicated to civic space and the European Commission is working on recommendations to Member States dedicated to civic engagement within the Defense of Democracy Package.

The Charter report has identified three main areas of concern: protecting, supporting, empowering.

Also the Country Specific Recommendations cover the following areas:

- Review legislation for the registration and operation of Associations and Foundations and involve CSOs
- Comply with European standards on access to information
- Improve legislative process with effective Mechanisms for participation of civil society
- Comply with European standards on funding for CSOs (tax exemptions on donations, foreign funding, red tape, etc)
- Review defamation legislation

2. Horizontal trends on civic space for 2023

The following horizontal trends emerge in the different civil society reports for 2023:

Women, youth, discriminated against groups such as LGBTIQ+, refugees and asylum seekers, religious and ethnic minorities are still disproportionately impacted by restrictions to civic space or challenges in access to democratic participation and funding.

2.1 Restrictive Legislation and rules for civil society organisations

a. Restrictions to freedom of association

- Legislation Preventing organisations to operate within education bodies
- Proposal aimed at limiting foreign funding of NGOs and labelling foreign funded NGOs-
Poland & Bulgaria

- Difficulties have been reported by CSOs politically not aligned with the ruling party to access funds from the NIW - National Freedom Institute (one of the biggest public donors for civil society in the country). - **Poland**
- Youth organisations and in general CSOs have reported partiality on the side of the National Agency of Erasmus+ and European Solidarity Corps to access their funds - **Hungary & Poland**
- Lack of clear cut process to register NGOs within the National Registry Agency (responsible for registration both of NGO and for profit organisations). Numerous registrations receive either requests for additional documents or direct refusals for registration, many with at best questionable motives - **Bulgaria**
- requiring associations receiving public funding to sign a contract of commitment to State values with strict sanctions up to dissolution- **France**
- strict requirements for CSOs working on migration preventing organisation to operate or register- **Greece**
- uncertainties on the compatibility of the tax-exempt status and advocacy activities of NGOs-**Germany**
- Narrowing/closure of space for organisations involved in legitimate advocacy activities that are categorised as political.-Ireland, Germany
- Unintended consequences of anti money laundering and counter terrorism legislation and bank de risking with organisations having their bank accounts closed - **Bulgaria, Cyprus**
- Creating administrative burdens for civil society which further hampers their work (law participation) **Hungary**

b. Restriction to freedom of assembly

- Several laws have been adopted since 2019 in several countries which restrict freedom of assembly and these have been further reinforced
- Restrictions to freedom of assembly sometimes take the form of intimidation and harassment, criminalisation of protesters or the use of excessive force during demonstrations. These have a particular chilling effect on minorities
- Activists continue to face charges after the organisation and participation in protests three years back.

c. Restriction to Freedom of expression

Limited public participation:

- Participation in decision making is a key element of democracy, however we have seen that in many countries the participation is tokenistic and limited to public consultations with lack of adequate follow up. There is a lack of a structured approach to the involvement of civil society organisations which should include different steps in the process.

- Open access to documents and information remains an issue.
- There is still a lower participation of organisations representing minorities or excluded groups such as persons with disabilities, ethnic and religious minorities, people with a migrant background and people of colour
- Where structured participation exists, there are unfortunately attempts to limit this. For instance a problematic draft legislation is in the pipeline in **Ireland** limiting public participation on environmental issues which might be followed up by other EU Member States

Spread of disinformation:

- The invasion of Ukraine by Russia has been accompanied by an *increase* of disinformation

Attacks on journalists:

- Attacks on journalists are on the rise in several member states (**Germany, France, Italy, Spain**). This includes verbal (online/ in person) and physical harassment and intimidation. Women journalists in particular are particularly targeted because of their gender.

d. Other issues

Harassment of activists

- There is an increased harassment and prosecution of activists on human, social and environmental rights. In many EU countries there is a lack of adequate protection mechanisms.
- The use of Strategic Lawsuits Against Participation is also on the rise across the EU
- In certain countries civil society organisations working on LGBTIQ+ rights are routinely targeted with smear campaigns and disinformation.
- In **Romania**, there have been several cases of student representatives receiving threats or being blackmailed by school boards or even municipal authorities for just signalling concerns. Furthermore, these abuses are usually hard to prove and therefore usually go unnoticed.

Criminalisation of solidarity

- Several Member States have adopted restrictive legal frameworks for the CSOs working on migrant rights. Actions that can be considered crimes include rescuing people at sea, providing basic humanitarian aid, shelter, legal assistance, denouncing breaches to international human rights law, etc. While there has been support to organisation working to support Ukrainian Refugees who also benefited from the temporary protection mechanisms, the same organisations (or others) could face adverse actions when supporting refugees from Africa or Asia

Access to Justice

- There's currently a bill before the **Romanian** Senate that would make it much harder for NGOs in general, and youth groups in particular, to get access to justice.

Furthermore, this legislative reform will limit people's right of association in civil society organisations.

Lack of compliance with international obligations on asylum and migration

- There has been a backlash on the Rights of Refugees and asylum seekers in Europe, as in several member States public authorities failed to comply with human rights standards as the migration pressure increased.
- cases of discrimination on ethnic origin or nationality were also reported as regards persons fleeing from Ukraine.
- While for the first time the EU used the Temporary Protection Directive for Refugees, and this is to be welcomed, asylum seekers from third countries also fleeing war and persecution faced increased challenges to enter the EU and claim and obtain refugee status. We saw criminalisation of organisations working to help refugees from MENA for example. This was seen in **Poland** (on the border), also in **Bulgaria** (those coming via Turkey).

Restrictions in access to funding.

- Youth organisations have reported restrictions in accessing meaningful funding in multiple EU Member States. This is exacerbated in cases where the organisations are not supportive of the ruling party.
- Furthermore, youth organisations among other CSOs have reported a significant focus on project-based funding over operating funding, effectively restricting the possibilities for long-term sustainability. There is a need for improvement for national level funding in terms of both accessibility and flexibility of the funds but also transparency of procedures and project results.
- Attempts from certain governments to favour less critical or pro-government organisations

3. Recommendations to Member States

Austria:

- Develop a more systematic and regulated approach towards participation like a civil dialogue framework or civil dialogue legislation;
- Introduce an independent body to investigate allegations of police violence;
- Refrain from harassing climate activists through legal and other means and respect the right to peaceful assembly

Bulgaria

- Given the anti-democratic nature of the Foreign Agents Registration Bill, it needs to be condemned by high-ranking officials and institutions both in Bulgaria and on an international level.
- Guarantee uninterrupted work of the Council for the Development of the Civic Society and provide it with administrative resources and a budget ensuring the Council would carry its lawful tasks in a timely manner.

Croatia

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

Cyprus

- Revise the Amendment 118 (I)/2020 of the 2017 Law on Associations and Foundations and Other Related Issues, in order to safeguard that the Ministry of Interior of Cyprus does not have the executive power to remove NGOs from the Register of Associations and prohibit un-registered NGOs from continuing their actions.

Czech Republic

- Apply strategy of public administration cooperation with NGOs (2021-2030), build capacity and competences for managing participatory processes in public policy, and establish a long-term evaluating mechanism of participation in decision-making across central authorities. Accompany this process with awareness raising to promote a consistent culture of participation.

France

- The application of the law “on the respect of the republican principles” and the so called “Contrat d’engagement républicain” have been successfully challenged in courts. The law should now be amended and the contract withdrawn in line with the full respect of civic freedoms.

Germany

- Urgently consult with civil society on a fundamental reform of the fiscal framework for nonprofit organisations and provide timely follow -up and feedback during the consultation process, and ensure that reforms are in line with European and international standards.

Greece:

- Repeal the Joint Ministerial Decision 10616/2020 for CSOs working on migrant and refugee rights; and Refrain from criminalising human rights defenders solely for helping refugees and migrants in need.

Hungary

- Repeal Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life.
- Implement the ECJ judgment in case C-821/19 in its entirety and repeal the “Stop Soros” law, criminalising assistance to asylum-seekers in submitting an asylum claim.
- Repeal the Anti-LGBTI propaganda law which is discriminatory and limits the expression of LGBTQI+ persons and CSOs.

Latvia

- implement a targeted civic society development policy, with permanent state budget funding to strengthen civil society capacity.

Poland

- Immediately drop all charges against women human rights defenders who are currently being prosecuted on various charges, including for their role in pro-abortion protests.
- Recognise the importance of media freedom, pluralism and independence for the sustainability of democracy in Poland.
- Stop partiality in allocation of public funds, including from the Erasmus+ Programme and the National Freedom Institute (NIW) at national level.

Romania

- Scrap the amendment to the law on associations and foundations (Government Ordinance no 26/2000), which would impose severe restrictions on the ability of NGOs to challenge any administrative acts in courts.
- ensure greater predictability in policymaking and a clear, transparent and predictable legal framework for policymaking that would allow citizens and NGOs to engage in consultation

Slovenia

- Ensure the institutional independence of the public media, including RTV Slovenia,
- Improve public and civil society inclusion in decision-making process in order to ensure better regulation and Include CSOs, similarly as social partners, in discussion about minimum wage, social and other important reforms

Spain

- Reform the Gag law through an open, inclusive and transparent consultation process with civil society, to ensure it is in line with international standards, including the Venice Commission opinion. To pay attention to the more elusive articles: Art. 36.6, which penalises disobedience or refusal to identify oneself, and art. 37.4, lack of respect for an agent of authority. Likewise, the prohibition of rubber bullets must be stressed, so that such dangerous and inherently imprecise weapons cannot be used in public spaces. Finally, this law continues to give legal protection to the rejection of people at the border, without respecting human rights and international regulations.

4. Recommendations to improve the rule of law process

Based on the findings above, we would like to address the following recommendations:

a) *Structure and methodology of the report:*

- Add **civic space as a separate pillar of the rule of law reports**, with an additional chapter systematically analysing the state of civic space in EU Member States and its connections to the rule of law context or strengthen civic space within the chapter on checks and balances.
- **Develop a consistent methodology for assessing civic space** which should be clear, transparent, co-created with civil society and building on benchmarking mechanisms already used by the Commission (e.g. in the accession countries or in the Eastern

Partnership) and the work of the European Union Agency for Fundamental Rights. You will find in the annex a proposal for civic space indicators

- **As it is an horizontal issue of concern, all country reports should include a recommendation on civic space**, which would also allow for a more comprehensive understanding on how specific and more vulnerable civil society sectors (such as youth, LGBTQI, migrant CSOs) are impacted by its shrinkage.
- Give very specific recommendations to countries on civic space not only addressing a specific problematic measure, but also concrete actions and time frames that need to be taken to redress the situation. Where relevant, these actions could refer to existing opinions of international institutions (for example, Venice Commission, UN Special rapporteurs..) or relevant court rulings (including from the ECtHR). This will also help to contextualise the recommendation.
- Make connections between civic space restrictions and rule of law deficiencies in other areas: judicial, media, corruption
- Ensure that there is follow up for these recommendations

b) Involvement of civil society

Civil society should be further involved in the preparation of the report both at EU and national level. In order to maintain the engagement of our members, we would like to stress that it is critical that over time the impact of the report and its recommendations can be measured at national level. There is a risk of creating a certain fatigue in the process.

- There should be an assessment of the rule of law cycle before launching the new one and a consultation on the methodology
- Member States should be encouraged to have a dialogue with civil society organisations in the preparation of the report as regards civic space, and notably through the national contact points on the rule of law.
- There should also be a role for the European Commission representation in the different countries, notably in assisting local NGOs in emphasising the importance and the benefits of the process.
- Civil society organisations should be consulted on the preparation of the recommendations on the model of the list of questions for the UN treaty bodies
- Particular attention should be paid in reaching out to most affected sectors and constituencies of civil society, including youth, discriminated and excluded groups, minorities, etc.
- Country visits. We appreciate that the country visits schedule is now published. We would also recommend that a contact point for national civil society is accessible in preparation of these visits. It is also important to ensure that these visits include in all countries a discussion with civil society organisations on civic space and that if a choice has to be made there are clear criteria who should be included in the country visits. The Commission representation in each country could work with local NGOs to identify

participants or, as in the Irish case, where joint submissions exist, allow the group to self-select.

- Annual Forum: civil society organisations together with the judicial, NHRIs and media should have the opportunity to engage once a year with the European Institutions and Member States on the process through an annual event.beyond the available initiative of the EESC FRRL Group.

c) Timeline and Visibility of the process

- We appreciate that the consultation is always organised at the same period every year, however the Commission needs also to be cognisant of the capacity issues within NGOs, particularly around the time the consultation process is open, i.e. over the winter break and very early new year.
- The publication of the report early July is not ideal because of the Parliamentary recess and holidays of many of the actors involved. It diminishes the chances of being picked up in the media. It would make sense to issue the report in early June or just after the summer, adapting as a consequence all the schedule.
- We welcome the fact that in cooperation with the European Agency on Fundamental Rights together with the European Commission representations national dialogues are organised. We also suggest involving national civil society organisations in the organisation of these events. We suggest including these dialogues on the Commission website.
- We also suggest to organise hearings at National Parliaments and in cooperation with them, which would provide further visibility and media coverage, and ensure also further transparency and accountability of national governments on the process
- Finally we suggest to reshape web pages on the rule of law so that the content of the report and its recommendations can be more easily scrolled by country, possibly with an interactive map, together with the country report, as well as contributions from civil society organisations, as it is the case for instance for UPR and Treaty body assessments at UN level. A fact sheet should also be available per country.

d) Country Recommendations Follow up

- The rule of law report should include information on the follow up by Member States of the recommendations for the previous year and if there are actions still pending
- Systematic non compliance with recommendations should be addressed through other instruments the EC has at its disposal such as funding conditionalities

Acknowledgements

This document was prepared together with the members of the working group on civic space and fundamental rights of Civil Society Europe.

Annex – Enabling Civic Space Indicators

This is a draft list of indicators that demonstrate an enabling (or not) civic space. According to the CIVICUS Monitor, civic space is open and enabling “when a state holds by its duty to protect its citizens and respects and facilitates their fundamental rights to associate, assemble peacefully and freely express views and opinions.”

1. Freedom of Association

Indicators tied to the establishment, existence and inclusion of civil society organisations (CSOs):

- Existence of a legal framework that allows the establishment of not-for-profit associations for any purpose and through different forms (including online);
- Both individuals and legal persons can exercise their right to associate, without discrimination;
- Registration is not mandatory, burdensome or expensive and includes the right to appeal;
- Network forming or coalition building within and outside the CSO's country of residence is allowed;
- Equal treatment of employees from the CSO sector;
- Regular publication of statistics about the number of employees in the non-profit sector;
- Enabling volunteering policies and laws;
- The educational system promotes civic engagement and non-formal education;
- The State recognizes, through policies and strategies, the importance of the development of and cooperation with CSOs;
- Existence of established and working mechanisms for cooperation with CSOs at all levels with sufficient resources;
- CSOs are regularly consulted and involved in aforementioned processes. Indicators tied to the prevention of external interference in CSOs' existence and work:

Indicators tied to the prevention of external interference in CSOs' existence and work:

- Existence of guarantees that prevent state interference in CSOs' existence and work: for instance, 1) existence of associations that are critical of the government, 2) no requirements on CSOs to work only with government agencies or bodies, 3) no unjustified or disproportionate inspections or audits, 4) no intimidation or harassment;
- Protection from interference by third parties;
- Proportionate and legally sound sanctions when the law is breached.

Indicators tied to CSOs' finances:

- CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities with no obligations to register or channel foreign grants through state- controlled banks or institutions;
- Regulations requiring specific financial reporting or specific measures regarding counter-terrorism requirements must be proportionate to CSOs' size and/or scope of their work and not create discrimination compared to businesses;
- Rules allowing CSOs to have an economic activity, provided that the income produced is used for CSOs' purposes and is related to CSOs' missions;
- Clear rules and guidance preventing the distribution of net revenues to private parties who may be in a position to control a CSO for personal gain, such as the CSO's founders, members, officers, directors, agents or employees;
- The law provides tax-free treatment without an administrative burden for all grants and donations supporting CSOs' not-for-profit activities;
- CSOs working in the main areas of public interest, including human rights and watchdog organisations, effectively enjoy tax-deductible donations;
- Incentives are developed to favour individuals and companies' donations to CSOs.

Indicators tied to CSOs' access to public funding:

- Public funding is available for CSOs' institutional development, project support and co-financing;
- CSOs access funding through open and transparent calls;
- Funding is predictable, not cut drastically from one year to another, and the amount in the government's budget for CSOs is easy to identify;
- Government consults CSOs about funding priorities and programs for CSOs;
- Clear system of accountability, monitoring and evaluation of public funding is in place;
- Different forms of non-financial public support are also available.

Limitations of the Freedom of Association:

According to Article 11 of the European Convention on Human Rights (ECHR), limitations of the freedom of association are allowed if: 1) they are prescribed by law; 2) pursue a legitimate aim; and 3) are necessary in a democratic society. ECHR considers the following aims as legitimate: 1) in the interests of national security or public safety; 2) for the prevention of disorder or crime; 3) for the protection of health or morals; and 4) for the protection of the rights and freedoms of others.

2. Freedom of Assembly

- Existence of a legal framework recognising the freedom of assembly of CSOs' representatives both individually and through their organisations, without discrimination (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and others);

- This right is not subject to prior authorisation, and prior notification procedures are not burdensome;
- Restrictions must be duly justified, with a right to appeal;
- Spontaneous, simultaneous and counter assemblies are allowed and recognised by law;
- Protection (including of participants and organisers) during assemblies is ensured;
- No unjustified use of force by law enforcement bodies; existence of regulations on law enforcement bodies' use of force and surveillance tools, and implementation of accountability mechanisms;
- Media's access to any assembly is recognised and protected.

Limitations of the Freedom of Assembly:

The aforementioned limitations of the freedom of association also apply to the freedom of assembly, according to the ECHR's Article 11.

3. Freedom of Expression

- Freedom of expression includes creative and artistic expression;
- The law enshrines and guarantees the right for persons, both as individuals and through their CSOs, to freedom of expression;
- Restrictions, such as hate speech, are clearly defined in laws and are in line with international law and standards;
- No penal sanctions for critical speech;
- No limitations of the right to receive and impart information;
- No instances for blocking or hacking communication tools;
- Complaints for intimidation or harassment are dealt with and investigated;
- Legal framework guaranteeing access to and accessibility of information and communication channels and content at limited prices;
- Initiatives for free access to the internet, without discrimination;
- Prohibition by law of unjustified monitoring of communication channels, including the internet and information and communications technology (ICT), or authorities' collection of users' information;
- Legal framework provides protection against and ensures accountability for violations of the right to freedom of expression.

Indicators tied to CSOs' participation in decision-making:

- There are standards, including clear criteria and equal opportunities, for CSOs' active and meaningful involvement in decision-making processes, and also in the implementation, monitoring and evaluation of policies;
- Trained and resourced public servants are involved in dialogue and consultations;
- CSOs' participation occurs at all levels and in all sectors, and CSOs have the necessary access to information;
- Legal framework provides protection against strategic lawsuits against public participation (SLAPPs);

- Balance between representation of CSOs and other interest groups, including financial and commercial interest groups, is ensured;
- A clear distinction is made between participation in decision-making, political activities and lobbying

Limitations of the Freedom of Expression:

According to Article 10 of the European Convention on Human Rights (ECHR), limitations of the freedom of expression are allowed if: 1) they are prescribed by law; 2) pursue a legitimate aim; and 3) are necessary in a democratic society.

ECHR considers the following aims as legitimate: 1) in the interests of national security, territorial integrity or public safety; 2) for the prevention of disorder or crime; 3) for the protection of health or morals; 4) for the protection of the reputation or rights of others; 5) for preventing the disclosure of information received in confidence; and 6) for maintaining the authority and impartiality of the judiciary.