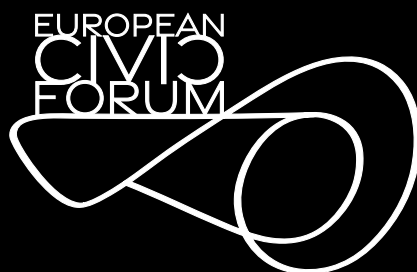




# **CIVIC SPACE REPORT**

**2024**









## About this report

This report was published by the European Civic Forum in May 2024, with chapters written by its secretariat, by member organisations, or by partner organisations and individuals. Much of the content originally appeared as part of ECF's submission to the European Commission's Rule of Law consultation. Each chapter reflects the views and analysis of its respective author. For more information about the European Civic Forum, please visit [www.civic-forum.eu](http://www.civic-forum.eu)

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A large crowd of people is gathered at night, many holding up their phones to take photos or videos. The scene is illuminated by bright lights, creating a vibrant atmosphere. A yellow banner is overlaid on the lower portion of the image, containing the text 'EXECUTIVE SUMMARY' in bold, black, uppercase letters.

# **EXECUTIVE SUMMARY**

## **A New Push for European Democracy: Did the EU meet expectations?**

The upcoming European elections will be an important moment in defining the political landscape for the next five years. In light of this, it's essential to evaluate the European Commission's commitment to a "new push for European democracy."<sup>1</sup> Have the EU's proposed policies achieved this goal?

Civic space is a key indicator of the health of democracy. Civil society and social movements take on their watchdog roles when democracy deteriorates. This report includes an analysis of developments in civic space in the EU and accession countries in the Western Balkans in 2023, including the impact of EU policies and programmes on the ground. It also contains 15 country chapters, one regional and a thematic chapter.

## **Unprecedented number of initiatives for democracy and rule of law**

Over the past five years, the European Union has launched a series of initiatives that they claimed will address democratic backsliding across Europe and tackle the European democratic deficit. These initiatives include the European Rule of Law Report, funding conditionality measures, the European Democracy Action Plan, the Defence of Democracy Package, and the Conference on the Future of Europe. Despite these initiatives- which in some cases have brought significant steps forward, such as on the fight against Strategic Litigation against Public Participation (SLAPPs), protection of journalists and funding for human rights actions - the overall situation regarding the respect for the rule of law and democracy has deteriorated in many European countries, and democracy is far from being strengthened.

## **Civic space deterioration continued between 2019 and 2023**

Civil society, including associations, NGOs, social movements, and human rights defenders, plays a crucial role in upholding the rights contained in the European Charter of Fundamental Rights, as well as democracy and the rule of law. According to the CIVICUS Monitor, which rates the conditions of

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<sup>1</sup> [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en) these are the political priorities set in 2019



## **Civic Space Report 2024**

civic space globally, there has been a deterioration of civic space. Since 2019, the number of EU member states rated “open” has decreased from 14 to 12 while the number of member states rated “obstructed” rose from 1 to 3. In the Western Balkans states outside the EU, civic space has also been challenged, with Serbia and Bosnia and Herzegovina rated as “obstructed”.

This report finds that in 2023, civil society, civic actors and human rights defenders continued to mobilise for effective access to fundamental rights, putting people and the planet first, and in response to the erosion of democratic processes, breaches of the rule of law, and direct attacks on civic freedoms. Civic actors and civic organisations continued to demonstrate resilience and embrace collaboration across sectors and networks.

The work and response of civil society and human rights defenders were shaped by several political and socio-economic developments, including elections, inflation, the cost-of-living crisis, migration, the climate crisis, violent conflicts and the displacement of populations. In several member states, civil society organisations (CSOs) continued to face challenges as a result of existing legislation which restricts the right to association. Under the guise of ‘transparency’, several member states proposed legislation to tackle foreign interference, which is likely to stigmatise civil society. As in previous years, the trend of restricting the right to protest, either through legislation or practice, continued. Climate and environmental rights protests and protests in solidarity with Palestine were particularly restricted.

Women, LGBTQI+ people, refugees and asylum seekers and ethnic and religious minorities continued to face disproportionate attacks both online and in person. Furthermore, legal harassment and SLAPPs continued to hamper and drain the resources of civil society and human rights defenders. When it comes to civic participation, while several member states experimented with citizens assemblies, particularly related to the topic of climate change, authorities also cracked down on climate movements through surveillance, legal harassment and criminalisation. Meanwhile, the structured involvement and dialogue with civil society in policy and decision-making remained weak. Civil society continued to experience a wide range of funding challenges in 2023, which keep civil society in a starvation cycle.

## **EU laws and policies increasingly influence civic space**

Civic space is influenced not only by national developments but also by EU laws and policies. As the scope of EU law-making becomes broader, it increasingly affects the activities of civil society at both national and EU levels. Without clear strategies and guidelines to define, empower, and protect the democratic role of CSOs, their unique characteristics and roles can be neglected. Often, EU policies view civil society merely as a stakeholder in implementing policies or as part of the common market. This overlooks CSOs' non-profit nature, their role as intermediaries and watchdogs between the state

and individuals (or markets), and their democratic function in promoting and safeguarding human rights.

As a result, EU law and its transposition into national legislation without taking into consideration the specificity of the CSOs sector, has sometimes had negative consequences, impacting the autonomy and operations of civil society, and its capacity to act and interact with institutions for the defence of the common good.

Moreover, while there is growing attention paid to the potential of EU law and initiatives to protect civic space, such as measures to tackle SLAPPs (Strategic Lawsuits Against Public Participation) and funding programs, European policies have sometimes contributed to shrinking civic space, particularly when security and financial considerations take precedence over human rights. Despite international commitments to engage and protect civil society, including by the EU, there is still no comprehensive approach to civil society at the European level.

## **The limitations of EU's approach to democracy and fundamental rights leads to negative civic space developments**

The European Union's approach to democracy, the rule of law, and civic space has been fragmented, technical and transactional, prioritising economic and security interests over human rights and justice. Despite declaring support for civil society, democracy and the rule of law, EU policies have approached these as thematic areas of work, often developed in silos. As a result, this proclaimed support has not resulted in a change of direction and practices across EU governance and policymaking. On the contrary, EU policies have often reiterated the prioritisation of economic, financial interests and a narrow understanding of security through militarisation.

Subordinated to strict economic and financial European rules, many governments are weakening social protection while vital systemic challenges like employment, healthcare, education, and culture are increasingly devolved to individuals. Furthermore, in the pursuit of competitiveness, efforts to combat climate change are being sidelined. Yet, assigning responsibility to individuals who lack the means and power to act only deepens insecurity and precarity, reinforcing the vicious circle of erosion of trust. These socio-economic developments provide fertile ground for the spread of political illiberalism, the weakening of democratic standards and increasing restrictions on rights and freedoms. This has contributed to the popularity of reactionary and divisive political offers that fuel the idea that rights would be better accessible if the part of society considered "outside" and "foreign" is excluded, rather than promoting the universality of rights.

As a result, the EU's fragmented approach overlooks the integration of democracy and human rights into all policies and has resulted in a lack of coherence. In some cases, this risks leading to negative



impact on civic space, as in the case of the directive which aims to “introduce common transparency and accountability standards in the internal market for interest representation activities carried out on behalf of third countries”, also known as the foreign interference directive or defence of democracy directive, which risks legitimising restrictive foreign agents laws in several member states. Additionally, new EU policies, in particular the AI Act and new Migration Pact, are reinforcing the notion that rights are only guaranteed for some and are not universal or accessible to all in the EU.

## Recommendations for the way forward

To foster a thriving civic space and true participatory democracy at the European level, the EU must adopt a comprehensive European Civil Society Strategy. This strategy should provide a coherent compass throughout all the EU policy-making processes and prioritise the following five pillars:

1. A strong Vice President mandate for oversight: Appoint a Commission Vice President responsible for civic space and dialogue with civil society to oversee the implementation of the strategy and ensure coherence between all EU actions.
2. Enabling civil society's democratic mission and its capacities to act for the common good and fundamental rights: Ensure European laws and policies enable civil society's democratic mission without negative side effects.
3. Protecting civil society and human rights defenders against attacks: Enhance efforts to protect civil society and human rights defenders from harassment and attacks, with an intersectional approach, by strengthening the rule of law cycle, and supporting the establishment of a European protection mechanism and/or national protection hubs.
4. Fostering real dialogue and meaningful participation: Recognise civil dialogue as essential for participatory democracy and ensure the structured participation of civil society in all EU policy-making processes by adopting a civil dialogue agreement.
5. Building the resilience of the civic sector through truly empowering funding policies: Implement funding policies that empower communities and respond to real needs, embedding human rights and participatory grant-making principles that get civil society out of the “starvation cycle”.

A large crowd of people at a concert or festival, with a yellow banner overlaid on the image. The banner contains the text 'METHODOLOGY AND ACKNOWLEDGEMENTS'.

# **METHODOLOGY AND ACKNOWLEDGEMENTS**



## Civic Space Report 2024

The following report is coordinated and edited by the European Civic Forum (ECF). It is composed of a horizontal analysis looking at pan-European developments in civic space and the enabling environment for civil society in the European Union for 2023 written by the ECF and 15 country reports written by civil society experts on the ground.

The ECF bases its analysis of civic space in Europe on six elements<sup>2</sup> that we believe are crucial for an open and vibrant civic space:

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

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

The horizontal analysis written by the ECF draws on the findings of the country and thematic reports, the ECF's **Civic Space Watch** platform, data from the Fundamental Rights Agency and the CIVICUS Monitor, and interviews conducted or information collected from the following regional organisations, to whom we are grateful for their expertise: Transgender Rights Europe (TGEU), Saami

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<sup>2</sup>Such categories reflect (I) the European Union Agency for Fundamental Rights (FRA)' methodology analysing challenges facing civil society organisations working on human rights in the EU, (II) the recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lesson learned by the UN Higher Commissioner for Human Rights, and (III) the monitoring matrix elaborated by the Balkan Civic Society Development Network and used by DG NEAR in the European Commission.
















## METHODOLOGY AND ACKNOWLEDGEMENTS

Council, European Sex Worker Rights Alliance – ESWA, Jüdische Stimme, Een Andere Joodse Stem/Another Jewish Voice, European Legal Support Centre (ELSC), Platform for Undocumented Migrants (PICUM).

The pan-European chapter on restrictions against organisations and individuals expressing solidarity with Palestine draws on cases in country reports, interviews and media and social media monitoring.

The country reports are written by 15 member and partner organisations, on the basis of our questionnaire. The authors choose the areas on which to focus on based on their expertise and the relevance of the issues for their national context.

We would like to thank these organisations and individuals, listed below, for their contribution.

-  Bündnis Für Gemeinnützigkeit (Austria)
-  Bulgarian Center for Not-for-Profit Law (Bulgaria)
-  Glopolis and NeoN Coalition (Czech Republic)
-  Human Rights House Zagreb (Croatia)
-  Nyt Europa (Denmark)
-  Maecenata Institute (Germany)
-  Network of Estonian Non-profit Organizations, (Estonia)
-  Ligue des droits de l'Homme - LDH (France)
-  Dominika Spyratou, migration and human rights consultant (Greece)
-  Ökotárs - Hungarian Environmental Partnership Foundation (Hungary)
-  Civic Alliance Latvia (Latvia)
-  National Federation of Polish NGOs – OFOP and Institute of Public Affairs (Poland)
-  Center za za informiranje, sodelovanje in razvoj nevladnih organizacij - CNVOS, Center for Information, Cooperation and Development of Non-Governmental Organizations (Slovenia)
-  International Institute for Nonviolent Action – NOVACT, in cooperation with Omnium Cultural (Spain)
-  Balkans Civil Society Development Network (Western Balkans)



A large crowd of people at a concert or festival, with a yellow text box overlaid on the image. The text box contains the title 'HORIZONTAL ANALYSIS' in bold black letters.

# **HORIZONTAL ANALYSIS**

# Introduction

Civic freedoms are in decline globally, with only two per cent of the world’s population able to enjoy their right to associate, protest and express dissent without significant restrictions.<sup>3</sup> A five-year analysis (2019-2024) of civic space by the CIVICUS Monitor shows that, in Europe, previously stable and established democracies with strong institutions have also experienced a deterioration of civic space.<sup>4</sup> In 2023, this trend of deterioration continued. This chapter analyses developments in civic space in both the EU and Western Balkans, based on information and data stemming from the country and thematic chapters in this report and the findings of the Civic Space Watch platform.

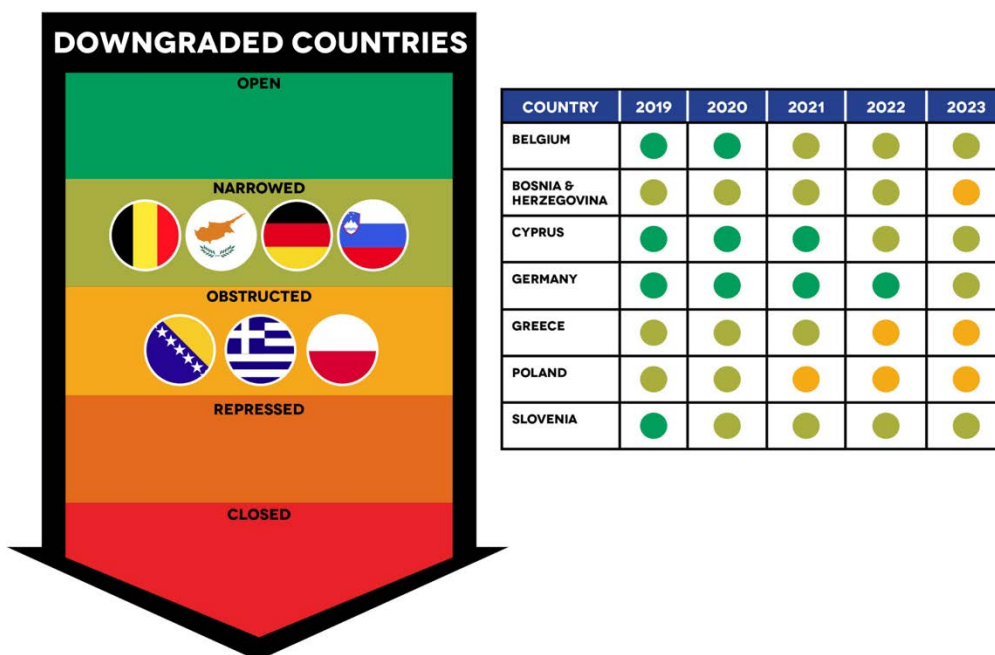


FIGURE 1: DOWNGRADED COUNTRIES IN 2023 (CIVICUS MONITOR, 2024)

It is divided into five sections. The **first section** provides an overview of the political, social and economic context which has shaped the space for civil society, while the **second section** summarises key developments in civic space in 2023.

<sup>3</sup> [https://monitor.civicus.org/globalfindings\\_2023/innumbers/](https://monitor.civicus.org/globalfindings_2023/innumbers/)

<sup>4</sup> <https://monitor.civicus.org/rights-reversed-2019-to-2023/>



## Civic Space Report 2024

The **third section** takes a closer look at the state of three pillars of civic space: structured participation of civil society in policymaking, protection, and funding. These three areas were chosen as the European Council's conclusions on the role of the civic space in protecting and promoting fundamental rights<sup>5</sup> and the European Commission's recommendations on promoting the engagement and effective participation of citizens and civil society<sup>6</sup>, both commit to supporting civil society in these areas. These pillars would also be key components of a European Civil Society Strategy aimed at developing coherent policies and tools addressed at civil society in Europe.<sup>7</sup> In 2022, over 300 CSOs called on the European Commission to develop such a strategy<sup>8</sup>, a call later backed by the European Parliament.<sup>9</sup>

Finally, based on the evidence contained in this report, the **fourth section** provides recommendations to EU institutions to address in the context of the institutional renewal following the European elections. In that context, a coalition of civil society organisations launched the Civil Society for EU manifesto<sup>10</sup>, which calls for the EU to truly recognise and promote the role of civil society through a Civil Society Strategy and a Civil Dialogue agreement.

# Context

Civic space and the enjoyment of associative freedoms cannot be insulated from the socio-economic, political and geopolitical context. These factors profoundly shape not only the regular policies or

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<sup>5</sup> <https://data.consilium.europa.eu/doc/document/ST-7388-2023-INIT/en/pdf>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023H2836#:-:text=To%20enable%20their%20effective%20participation,the%20Internal%20Market%20fundamental%20freedoms>

<sup>7</sup> <https://www.amnesty.eu/wp-content/uploads/2022/06/Letter-to-Ms-von-der-Leyen-pdf.pdf>

<sup>8</sup> <https://civic-forum.eu/call-for-action/300-csos-call-on-the-european-commission-for-a-european-civil-society-strategy-join-our-campaign>

<sup>9</sup> <https://www.europarl.europa.eu/news/en/press-room/20220304IPR24799/civil-society-parliament-calls-for-eu-rules-and-strategy-to-counter-threats>

<sup>10</sup> <https://civic-forum.eu/wp-content/uploads/2023/12/ECF-2024-MANIFESTO-4.pdf>

responses to crisis by authorities, but also the resources and capacities of different civil society actors to mobilise and speak out.

In 2023, **democratic backsliding** continued to be an underlying factor affecting civic space in Europe and globally. V-Dem Institute's Democracy Report 2024 finds that in 2023, the level of democracy experienced by the average person globally decreased to levels reminiscent of those seen in 1985, nearly four decades ago. The most significant declines in democracy have been observed in Eastern Europe, where the level of democracy enjoyed by the average person has steadily decreased to levels last observed in 1990, prior to the collapse of the Soviet Union. Prominent examples of the consolidation of autocracy in the post-Soviet era include **Belarus** and **Russia**, which has a sizable population and is responsible for a large proportion of the overall decline. Autocratisation is also evident within the European Union in countries such as **Greece, Hungary, Poland, and Romania**. According to the index<sup>11</sup>, western Europe has also experienced a gradual decline in democracy since around 2010, with no country showing a trend of significant improvement. Additionally, the World Justice Project Index 2023 shows that the rule of law is in decline globally, with at least 11 EU member states witnessed an overall decline over the last five years, including **Belgium, the Netherlands, Greece, Spain and Romania**.<sup>12</sup> Democratic backsliding goes hand in hand with decline in democratic trust. Many people feel that their needs are unaddressed and their voices are not being heard through democratic processes and by their political representatives, both at national and EU level<sup>13</sup>. In 2023, the Pew Research Centre found that in several EU member states, including the Netherlands (63%), Germany (63%), Poland (69%), France (74%), Hungary (78%), Greece (81%), Spain (85%), many people feel that their elected officials do not care about what they think.

In 2023, the political and socio-economic landscape in the EU was shaped by **elections** in several EU member states including **Bulgaria, Estonia, Latvia, Greece, Poland, Spain, and the Netherlands**. In **Greece**, the New Democracy party, which has restricted the space for civil society, was victorious again. In **Spain** the conservative Partido Popular (PP) and far-right Vox were able to get into government in various city councils and regional executives, and soon after took steps to end their

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<sup>11</sup> [v-dem.net/documents/43/v-dem\\_dr2024\\_lowres.pdf](https://v-dem.net/documents/43/v-dem_dr2024_lowres.pdf)

<sup>12</sup> <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIInsights2023.pdf>

<sup>13</sup> **At least seven out of 10 people in France, Greece and Spain are dissatisfied with the state of their democracy . The largest drop can be seen in France, with a 17 percentage-point decrease in satisfaction between 2022 and 2023, followed by Germany, Netherlands and Hungary. In several EU member states, including the Netherlands (63%), Germany (63%), Poland (69%), France (74%), Hungary (78%), Greece (81%), Spain (85%), many people feel that their elected officials do not care about what they think. The largest drop can be seen in France, with a 17 percentage-point decrease in satisfaction between 2022 and 2023, followed by Germany, Netherlands and Hungary.**

<https://www.pewresearch.org/global/2024/02/28/representative-democracy-remains-a-popular-ideal-but-people-around-the-world-are-critical-of-how-its-working/>

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work supporting victims of sexist violence. In **the Netherlands**, the far-right Freedom Party (PVV) won the largest number of seats in the national elections. Meanwhile, in the Western Balkans, pending elections have blocked major legislative processes in **North Macedonia**, while in **Serbia**, concerns over manipulated elections in December 2023 have intensified civic activism.

In this political context, the scapegoating of excluded groups in society by politicians during electoral campaigns and in general remained a concern. For example, in **Poland**, LGBTQI+ people (in particular transgender people), and asylum-seekers were targeted by negative political rhetoric. Similarly, the **Dutch** elections were dominated by anti-Muslim and xenophobic rhetoric. The targeting of LGBTQI+ groups in **Hungary** and **Romania** through anti-LGBTQI+ legislation continued in 2023. In **Greece**, refugees and migrants, Roma people and LGBTQI+ groups continued to face discrimination and abuse by law enforcement authorities. In the Western Balkans, LGBTQI+ and gender rights groups across the region are navigating a progressively hostile environment. In **Serbia** there have been major attacks on LGBTQI+ activists without adequate legal proceedings, while in **North Macedonia**, the Orthodox Church has continued to promote anti-LGBTIQ+ protests and anti-gender movements. It is worrying that in many countries, anti-rights narratives emerging from the far-right are being channelled and normalised by mainstream institutions and parties. In particular, this has been seen in the case of anti-migration narratives and policy proposals, such as the new EU pact on migration, which paints people on the move as suspects<sup>14</sup>, provoking anti-migrant sentiments.

**Inflation and the cost-of-living crisis** were significant concerns for people and civil society across Europe, affecting the way many people feel democracy works for them. In June 2023, EU data revealed that 95.3 million people, constituting 21.6 per cent of the population, were at risk of poverty or social exclusion in 2022,<sup>15</sup> primarily due to unemployment. Poverty rates soared in countries like **Romania, Bulgaria, Greece, Spain, and Latvia**, exceeding 25 per cent.<sup>16</sup> In **France**, according to the National Energy Ombudsman<sup>17</sup>, there were 178,000 electricity cut-offs and 87,300 gas cut-offs due to unpaid bills, up three per cent on 2022 and 49 per cent on 2019, a stark example of worsening economic conditions. While inflation across the EU decreased in 2023, some member states, notably **Hungary**, continued to experience significant inflation.<sup>18</sup> Concerns were raised about the accessibility of public services for marginalised groups, including the homeless, Roma, people with disabilities, and single-parent households. Additionally, millions of people in non-standard

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<sup>14</sup> [The EU Migration Pact: a dangerous regime of migrant surveillance\\_#ProtectNotSurveil\\_10 April 2024 \(equinox-eu.com\)](#)

<sup>15</sup> [Living conditions in Europe - poverty and social exclusion - Statistics Explained \(europa.eu\)](#)

<sup>16</sup> [File: People at risk of poverty or social exclusion 2022 12-06-2023.jpg - Statistics Explained \(europa.eu\)](#)

<sup>17</sup> <https://www.energie-mediateur.fr/1-million-dinterventions-pour-impayees-de-factures-denergie-en-2023/>

<sup>18</sup> [World Report 2024: European Union | Human Rights Watch \(hrw.org\)](#)



employment<sup>19</sup>, as well as the self-employed, lacked access to unemployment benefits. Despite increased social protection expenditure in most EU states in 2022, overall spending as a proportion of GDP decreased.<sup>20</sup> This grim social picture is expected to worsen in the coming years, as the new EU fiscal rules adopted in 2023 fail to deal with the root causes of poverty and inequalities.<sup>21</sup> The rules introduced stringent debt and deficit benchmarks, which will force the overwhelming majority of member states to cut back on social and green investment.<sup>22</sup>

In this context, calls to defend democracy are ringing out across the European Union. Decision-makers face a dual challenge: responding to internal vulnerabilities and to attacks from outside. The success of the latter depends largely on the erosion of cohesion inside our societies. Addressing these concerns, the European Commission launched the "**Package for the Defence of Democracy**", which is primarily aimed at foreign interference. Civil society has stressed that it is essential to broaden this scope and recognise the importance of tackling our internal democratic vulnerabilities. Democracy's strength lies in its ability to generate fair and effective policies. Its success is measured by how well these policies address societal needs across diverse contexts and lived experiences, including social, economic, environmental, and cultural. Legitimacy is established through the ability of democratic systems to foster social inclusion, address insecurities, and promote cohesion for a shared future. The proposed approach of the Defence of Democracy package fails to take these factors into account and address them. On the contrary, the new EU fiscal rules introducing stringent debt and deficit benchmarks go in the opposite direction.

Additionally, as part of the package, the Commission proposed a directive which aims to "introduce common transparency and accountability standards in the internal market for interest representation activities carried out on behalf of third countries". This proposal, known as the foreign funding directive, has led to serious concern and action in civil society in 2023. Using foreign funding as an indication of an association's risk to democracy contradicts international standards protecting civil liberties. The focus on foreign origins risks mirroring the rise of reactionary nationalism and extreme right-wing ideologies. Such regulations burden associations with excessive administrative requirements and can lead to stigmatisation and harassment. This directive, just like similar national laws already in place, worryingly insinuates that entities funded from outside the EU may be reasonably suspected of engaging in malevolent activities on behalf of third countries. This ultimately

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<sup>19</sup> **An umbrella term for forms of employment that deviate from the standard, including temporary employment, part-time and on-call work and agency work. For more information see: <https://www.ilo.org/topics/non-standard-forms-employment#:~:text=They%20include%20temporary%20employment%3B%20part,employment%20and%20dependent%20self%20employment>.**

<sup>20</sup> **Ibidem.**

<sup>21</sup> **<https://www.eapn.eu/eu-fiscal-rules-reform-risks-going-wrong/>**

<sup>22</sup> **Publication - Fiscal Rules Report.pdf (etuc.org)**

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undermines EU's credibility and legitimacy in defending democracy and civil society beyond our borders.

Finally, the **geopolitical context** has shaped civic space in 2023. A double-standard approach to conflict and migration risks perpetuating Europe's colonial legacy in the Global South. A prominent example being the difference in the treatment of migrants coming from Ukraine compared with those coming via Belarus from other zones of conflict such as Syria, Afghanistan and Iraq. The EU's militarised approach to migration has led to systematic violations of migrants' rights, including illegal pushbacks and the denial of the right to claim asylum, and the criminalisation of those defending them.

This double-standard was dramatically illustrated by EU's response to the escalating violence in Israel and Palestine and the wider Middle East after the Hamas attack on 7 October and Israel's military campaign that has killed more than 35,000 civilians in Gaza and involved actions which are now under investigation by the International Court of Justice. Several member states have silenced the voice of people who are expressing solidarity with the Palestinian people, calling for the protection of civilians and an unconditional ceasefire, while allowing demonstrations in support of Israel.

# Key developments in European Civic Space in 2023

The following section describes some of the main developments emerging across the country and thematic chapters and draws on resources collected on the European Civic Forum's civic space monitoring tool Civic Space Watch in 2023.

## Focus on foreign interference fosters climate of suspicion against civil society

Legislative proposals for so-called Foreign Agents' Registration Acts (FARA) have been put forward in **Bosnia and Herzegovina, Bulgaria, Poland, and Slovakia** in 2023 and 2024. Since 2015, civil society in Bulgaria has continued to advocate against the adoption of a such a law. In April 2023, following the parliamentary elections, a FARA bill was submitted by the far-right party Revival (*Vazrajdana*), which has continuously labelled civil society and the media as "foreign spies." In **Slovakia**, the far-right Slovak National Party (SNS), which is part of the government coalition, put forward draft amendments to the law on CSOs, which introduces provisions for designating CSOs as foreign-supported organisations.<sup>23</sup>

Under the guise of tackling foreign interference, the intentionally vague wording of the Defence of Sovereignty law in **Hungary** potentially targets any critical person or organisation - including CSOs, journalists, philanthropic donors, trade unions or churches. In **Bosnia and Herzegovina**, the recently adopted draft Foreign Agents' Law targets and stigmatises foreign-funded organisations. The proposed act has parallels with Russia's controversial law, aiming to regulate foreign-funded organisations operating within Republika Srpska, through the requirements to register as "foreign

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<sup>23</sup> Dokumenty: Parlamentné tlačé : Parlamentná tlač 245 - Národná rada Slovenskej republiky (nrsr.sk)



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agents” and to disclose detailed financial information, activities, and affiliations. In Georgia, a foreign agents bill was passed into law despite mass protests.<sup>24</sup>

Similarly, at the European level, the proposed foreign interference directive, part of the **Defence of Democracy package**, puts civil society at risk of administrative burden, stigmatisation and harassment.<sup>25</sup> The proposal is already encouraging some political actors to restrict civic space. For example, during a parliamentary debate in **Bulgaria** on the FARA bill, the Revival party claimed that they were merely “transposing” the planned EU directive early. Members of the **Hungarian** parliament also referred to the European law in the debate of the country’s controversial Sovereignty Act.<sup>26</sup>

These newly proposed laws, together with existing restrictive laws, in the absence of reforms, have negatively affected the freedom of association in 2023<sup>27</sup>. In **France**, the law “on the respect of the republican principles” (Law No. 2021-1109 of 24 August 2021), known as the Separatism Law, and its provisions relating to the so-called “Republican Commitment Contract”, has considerably broadened the grounds for dissolving associations and tightened up funding control measures. Between 2021 and 2023, the government ordered the dissolution of several associations and groups, including *Les Soulèvements de la Terre*, *Groupe Antifasciste Lyon et Environs* (known as “GALE”), *Bloc Lorrain* and *Coordination Contre le Racisme et l'Islamophobie*. Each of these organisations applied to the Council of State to have its dissolution annulled, with successful applications in some cases. In **Greece**, following pressure, the Ministry of Migration and Asylum privately communicated to CSOs that the registration requirements for CSOs and individuals working on migration-related issues would be reviewed and amended, but no such actions have been taken to date. In **Romania**, a newly passed law severely restricts CSOs right to appeal to the court and in particular limits the ability of environmental CSOs to challenge development projects and initiate public interest litigations.

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<sup>24</sup> <https://www.politico.eu/article/georgia-parliament-pass-foreign-agent-russian-law-amid-pro-eu-protest-crackdown-tbilisi/>

<sup>25</sup> <https://civic-forum.eu/wp-content/uploads/2024/01/Defence-of-Democracy-an-analysis-of-the-foreign-funding-directive.pdf>

<sup>26</sup> Sándor Czinkóczy. (2023). Varga Judit már a fősodratú médiát is a magyar érdekek ellenségei közé sorolta a parlamentben. 444.hu. Last accessed on 19 March 2024 at <https://444.hu/2023/11/28/varga-judit-mar-a-fosodratu-mediata-is-a-magyar-erdekek-ellensegei-koze-sorolta-a-parlamentben>

<sup>27</sup> <https://civic-forum.eu/civic-space-report-2023-fighting-for-democratic-empowerment-and-resilience>

## Right to protest remains under threat, environmental defenders particularly targeted

In our previous civic space reports, we have documented how several EU member states have passed legislation restricting the right to protest.<sup>28,29,30</sup> The regulatory landscape governing the right to peaceful assembly in several member states continues to contravene international standards.

In **Spain**, both the Organic Law regulating Citizen Security (LO 4/2015, March 30), also known as the Gag Law, and the recently reformed Penal Code (LO 10/1995, November 23), have been criticised for being out of line with international and European human rights standards.

In **Germany**, the Assembly Act in North Rhine-Westphalia bans on counter-demonstrations, joint preparations for demonstrations and demonstrations on motorways, in addition to authorising general – including secret – video surveillance of assemblies and unlimited storage of this data, in violation of the Constitution.

In **Greece**, the 2021 Law 4703/2020 regulating peaceful assemblies remained in force despite concerns by civil society, the opposition and other actors. And in the **Western Balkans**, legislative gaps remain, with online or digitally-mediated assemblies not recognised explicitly as specific forms of assemblies in legislation. This bears an inherent risk of restrictive interpretation of the general rules of assemblies, privacy and data protection.

Violations of the right to peaceful protest have been frequently documented in the EU. According to CIVICUS Monitor's data, intimidation, detention of protesters and disruption of protests are among the top five civic space violations in Europe. Incidents of protest bans, the detention of protesters, police violence and the use of excessive force, and the systematic impunity of police officers have been documented in several member states.

Environmental and climate rights defenders were particularly targeted in 2023, including in **Austria, Denmark, Germany, Italy, the Netherlands** and **Spain**. Authorities in many member states have responded to these forms of activism with criminalisation, such as in Italy, where the “eco-vandalism bill” introduced harsher penalties for environmental defenders.<sup>31</sup> In **Austria**, activists from climate group *Letzte Generation Österreich* (Last Generation Austria) faced detentions and legal threats due to some actions of civil disobedience, with more than 300 legal procedures against the group

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<sup>28</sup> <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-European-Civic-Forum.pdf>

<sup>29</sup> <https://civicspacewatch.eu/elementor-16622/>

<sup>30</sup> [https://civic-forum.eu/wp-content/uploads/2020/11/INT\\_ACTIVIZEN5\\_BAF.pdf](https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf)

<sup>31</sup> <https://www.wired.it/article/ecovandali-legge-governo-meloni-proteste-clima-ultima-generazione/>

reported in 2023. In **Spain**, the *Defender, a quien Defiende* platform, reported at least 60 active cases against climate activists and a new investigation shows the systematic criminalisation and persecution of environmental movements.<sup>32</sup> In **France**, the so-called separatism law has been used to dissolve and defund environmental organisations and movements utilising civil disobedience tactics, such as the association *Alternatiba*<sup>33</sup> and the network *Les Soulèvements de la Terre*.<sup>3435</sup>

## Repressions against those expressing solidarity with Palestine

Following the dramatic escalation of violence in Israel and Palestine, many people in Europe have taken to the streets to peacefully protest, to show solidarity with the victims and to call for the respect of human rights and international law. These protests are unfolding amid an increase in hate speech and hate crimes targeting both Jewish and Muslim communities in Europe. Repression of the movement of people showcasing solidarity with the Palestinian people is one of the most striking cross-cutting trends emerging in the country chapters contained in this report.

In **at least 12 EU member states**, authorities have taken disproportionate measures, including the pre-emptive banning of protests based on apparent risk to “public order” and “security”. Such cases have been documented in **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Poland** and **Sweden**. In several member states, the courts have later overturned these bans.

The crackdown has also included the use of excessive force in **at least seven member states**, including the use of pepper spray, deployment of police dogs, physical aggression, and kettling tactics. This creates a climate of fear and intimidation and violates international human rights standards. Protesters have been subject to intimidation, harassment and arbitrary detentions including in **France, Germany**, and **the Netherlands**. For example, Jewish activist Iris Hefets was

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<sup>32</sup> <https://defenderaquiendefiende.org/defender-a-quien-defiende-denuncia-que-entre-2022-y-2023-ha-sistematizado-al-menos-131-vulneraciones-de-derechos-humanos-contra-futuro-vegetal/>

<sup>33</sup> <https://civicspacewatch.eu/france-victory-for-alternatiba-as-a-court-rejects-a-request-to-withdraw-its-subsidies/>

<sup>34</sup> <https://civicspacewatch.eu/france-the-council-of-state-annuls-the-dissolution-of-les-soulevements-de-la-terre/>

<sup>35</sup> <https://civicspacewatch.eu/france-police-clash-with-environmental-activists-in-sainte-soline/>



arrested after she staged a solo protest in Berlin and held a sign which read “As an Israeli and Jew, stop the genocide in Gaza.”

Several member states, including **Germany, France** and **Italy**, have conflated legitimate criticism of Israeli authorities with antisemitism and silenced Palestinian, Jewish and other activists. Individuals have faced repercussions for speaking out, including dismissal, disciplinary action or threats of deportation if they are foreign nationals. For example, Berlin authorities cancelled the Palestine Kongress event and deported British Palestinian doctor on the grounds of safety and security.

On social media, organisations and individuals showing support for the Palestinian cause have reportedly been shadow-banned, including in **Denmark** and **Spain**. Several member states including **Austria, France, Germany**, and **the Netherlands** have censored and in some cases criminalised the chant “From river to the sea, Palestine will be free”.

## A climate of fear for excluded groups

Online verbal threats and attacks as well as offline, in-person attacks have been documented in several member states including the **Czech Republic, Denmark, Estonia, Germany, Poland** and **Spain**. Often, these attacks are perpetrated by political forces smearing and vilifying critical voices and excluded groups. In the Western Balkans, particularly in Republika Srpska in **Bosnia and Herzegovina**, political leaders' inflammatory rhetoric and persistent attacks have heightened the vulnerability of civil society, while in the Herzegovina-Neretva Canton, CSOs have faced repeated and excessive audits. In **Serbia**, the systematic misuse of the media to tarnish the reputation of CSOs has become alarmingly common, especially for organisations like the Belgrade Center for Security Policy and Center for Research, Transparency and Accountability, which addresses sensitive social issues and often criticises government policies.

Women, LGBTQI+ people, refugees and asylum seekers, and ethnic and religious minorities are disproportionately targeted by such attacks. For example, in **Poland**, those working on sexual and reproductive health and rights have continued to face threats and attacks from non-state and state actors in 2023. In **Spain**, online hate speech including racist, misogynistic, homophobic, transphobic and Islamophobic attacks, particularly on X (formerly Twitter), remain an issue. Offline attacks have also been documented - on 8 March, a driver hit three feminist protesters who were blocking one of the main roads in Barcelona.

Threats to LGBTQI+ rights have continued in 2023. In **Estonia**, during Baltic Pride Solidarity Week, a Finnish pastor was stabbed due to their sexual orientation and/or religious affiliation while participating in an open prayer organised by the Association of Gay Christians. Three other people

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were injured during the attack.<sup>36</sup> In **Bulgaria**, a transgender women activist, who staged a solo protest, was detained and subjected to degrading treatment, including being stripped naked and inspected by a male police officer to “identify her.” In **Denmark**, LGBTQI+ organisations reported an increased sense of fear, affecting their work and sense of security. In some organisations, this has led to senior staff members having secret addresses and to the establishment of direct contact lines with security forces. Activists in **Bosnia and Herzegovina** addressing issues such as anti-corruption, the environment, women’s rights, and LGBTQI+ rights have been subjected to continuous threats, abuse, physical assaults, and legal harassment.

Ethnic and religious minorities and indigenous people continue to face threats and attacks. In **Finland**, the Saami Council reported that, when questions about the Sámi rights are discussed, they often face hate speech, often instigated by political parties, for publicly expressing their opinion and actively participating in the public debate.<sup>37</sup> In the context of the escalating violence in the Middle East, threats and attacks have particularly affected Jewish and Muslim organisations, fostering a climate of fear. For example, in **Germany**, Jewish religious centres and organisations have been attacked and vandalised.<sup>38</sup> At the same time, authorities have patrolled the streets, harassed and arrested civilians in the Berlin district of Neukölln, home to large Turkish and Arab communities, an act that was denounced by 120 Jewish intellectuals.<sup>39</sup>

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<sup>36</sup> <https://humanrights.ee/en/materials/inimoigused-eestis-2024/lgbt-inimeste-olukord/>

<sup>37</sup> <https://yle.fi/a/3-12679816>

<sup>38</sup> <https://www.dw.com/en/molotov-cocktails-thrown-at-berlin-synagogue-police/a-67134803> - :-:text=The attack occurred around 3,broke, extinguishing the fire."

<sup>39</sup> <https://www.nplusonemag.com/online-only/online-only/freedom-for-the-one-who-thinks-differently/>

## **CASE STUDY: Indigenous Sámi people face threats to rights and civic space**

by the Saami Council

The indigenous Sámi people, living in the northern parts of Sweden, Norway, Finland, and Russia, confront a multitude of challenges regarding their rights and safety. Historically, the Sámi have faced challenges such as assimilation policies and being subjected to religious conversion, losing their lands, and being stripped of their culture. Despite some progress, today they still face violations, including discrimination, intimidation, racism, hate speech, and threats to their culture and traditional ways of life, which considerably affect their access to civic space and fundamental rights.

In recent years, increased incidents of threats, hatred, and violence towards the Sámi people have been reported in Sweden. Sámi people have been subjected to death threats, and their reindeers – a crucial part of their livelihood – have been tortured and killed in violation of their economic, social and cultural rights. Investigations by the media show that the Swedish police rarely investigate these hate crimes against the reindeer herding Sámi.<sup>1</sup> During the Swedish elections in 2022, misinformation about Sámi and their rights was spread, which led to further tension in the country.

Similar issues plague Sámi communities in Finland, Norway and Russia, where hate speech has become alarmingly prevalent, particularly in online forums and public debates. A report from Amnesty International Norway shows that every fourth expression about the Sámi on Facebook is negative.<sup>1</sup> According to the study, prejudices and negative stereotypes about Sámi people increase when Sámi issues, particularly Sámi and land rights, are in the media. This was observed in Finland during the renewal of the Sámi Parliament Act in 2023, which ignited heated rhetoric, with notably the Centre Party politicians contributing to a hostile environment. Sámi activists who publicly expressed<sup>1</sup> their opinion about the Act faced online threats and hate speech.

EU policies, especially those related to the green transition, mineral extraction and renewable energy, introduce complexities in Sápmi, the area where the Sámi communities live. The EU's pursuit of climate and environmental goals has resulted in increased land encroachments in Sápmi. This has caused tensions as these policies do not adequately consider the rights of indigenous peoples, leading to disputes over land use, resource management, and the preservation of cultural heritage. These challenges are portrayed as a conflict between indigenous peoples' rights and the interests of the majority population, which gives rise to an increase in hate speech against the Sámi population.



# Legal intimidation and harassment continue

In our previous reports, we have documented the use of legal harassment, intimidation and criminal prosecution against civil society and activists in several member states. This trend has continued in 2023. Data from the CIVICUS Monitor confirms that intimidation is the number one tactic used in the EU to restrict civic actors, organisations and journalists. It is particularly concerning when representatives of civil society organisations and human rights defenders are criminally prosecuted for their human rights actions. For example, in **Spain**, the National Court announced that 12 people are under investigation for terrorism in connection with their alleged participation in peaceful protests and acts of civil disobedience.<sup>40</sup>

According to the Platform for Cooperation with Undocumented Migrants (PICUM), in 2023 at least 117 individuals faced criminal or administrative proceedings for acting in **solidarity with migrants** in the EU, with the highest number of cases documented in **Italy** and **Greece** (74 and 31 respectively). Additionally, at least 76 migrants were subjected to criminalisation under counter-smuggling legislation, with the highest number of cases in **Greece, Italy, and Spain**. In **Poland**, an activist assisting at the Polish and Belarusian border was arrested on charges of human trafficking and is currently awaiting trial. At the same time, European policies, in particular the New Pact on Migration and Asylum introduces a package of reforms expanding the criminalisation and digital surveillance of migrants.<sup>41</sup> In several of the cases mentioned, authorities resorted to surveillance, including through the use of intrusive technologies, to build its case against the human rights defenders.

Strategic Lawsuits Against Public Participation (SLAPPs) have also been documented in several member states including **Austria, Croatia, Poland** and **Romania**. As of July 2023, the CASE coalition database in Europe noted over 820 cases. Notably, over 245 new lawsuits were initiated against journalists in **Croatia**. In **Germany**, sex worker rights defender Ruby Rebelde was found guilty of damage to reputation and defamation in July 2023, after *Sisters e.V.*, which advocates for the end to prostitution, brought a case against her. The decision has been appealed by the European Sex Workers Alliance.

SLAPPs are not only used to legally intimidate actors and organisations, but also to financially drain them, as seen in **Romania**. In December 2023, a court ruled against an NGO in a case brought by a real estate developer, forcing it to close down as it could not pay the exorbitant legal expenses of approximately €12,000, on top of the €10,000 in legal fees it had already paid. **Serbia** and **Bosnia and Herzegovina** rank among the highest in the Western Balkans for SLAPP cases, with journalists,

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<sup>40</sup> <https://civic-forum.eu/publications/open-letter/joint-letter-solidarity-for-activists-in-catalonia-accused-of-terrorism>

<sup>41</sup> <https://www.equinox-eu.com/wp-content/uploads/2024/04/The-Migration-Pact-ProtectNotSurveil.pdf>; **More than 160 Civil Society Organisations call on MEPs to vote down harmful EU Migration Pact - PICUM**

media organisations, activists, CSOs and especially environmental defenders being the primary targets.

### **Draining resources: Burdensome registration and reporting requirements**

Despite some positive developments, such as the start of the first national regranting projects of the Citizens, Equality, Rights and Values Programme (CERV), civil society continues to experience a wide range of funding challenges, including the access, availability, transparency and sustainability of funding. This contributes to slowly eroding civil society's capacities (read the spotlight for more information). Across the region, burdensome registration, funding applications and reporting requirements drain CSOs' resources and capacities and contribute to negatively affecting their ability to focus on their mission.

In several member states, CSOs report experiencing **administrative burden** as a result of complicated funding applications. In **Croatia**, the administrative requirements that organisations must meet are continuously increasing, while the financial support for ensuring sustainable administrative, financial, and operational activity for the organisations is not. In **Denmark**, the application processes and different application systems are costly, and the work that goes into applying is rarely funded. Strict registration requirements for NGOs in Greece, a prerequisite to accessing national funds, make access to these funds even more difficult, especially for smaller organisations.

Despite attempts at reforms, in **Poland**, new registration procedures have not solved long-standing problems with registration. Rather, the process of registering a new organisation continued to take a long time in some parts of the country. In **Romania**, there have been 14 attempts to modify laws dealing with the procedures governing the establishment and operation of CSOs, resulting in a rigid, cumbersome, bureaucratic, and time-consuming landscape. CSOs have raised concerns over unclear laws and non-uniform judicial practices, lengthy procedures, as well as a lack of centralised data and communication between various state institutions.

In **Greece**, the government launched two digital databases to collect information about CSOs, their operations and the state funding they receive (Joint Ministerial Decision 6216/2023). While the registries are important to ensure transparency and NGO regulations, over 300 NGOs expressed concerns about the legislation when it was proposed in 2021, in particular over the databases which introduce many registration requirements.

Legal frameworks on anti-money laundering and terrorism financing further challenge CSOs in several countries in the EU and Western Balkans, including through issues like restricted banking

access, enhanced due diligence processes, unfeasible reporting requirements or inapplicable beneficial ownership registration provisions.<sup>42</sup> Efforts are being made across **Albania, Bosnia and Herzegovina, Montenegro, and Kosovo** to address these challenges through risk assessments and small, but mostly positive, legislative reforms. Additionally, CSOs are navigating a complex landscape of regulatory changes, bureaucratic inefficiencies, and financial uncertainties. While some progress is noted in enhancing operational conditions for non-profits, significant hurdles in the tax framework, public funding reforms, and transparency remain.

## Citizens' assemblies increasingly tested, but structured involvement of CSOs remains weak

In several member states, citizens councils and assemblies were tried and tested in 2023. However, the results have been mixed. For example, in **Germany**, politicians have organised citizens' councils, town hall meetings, and assemblies but have paid little attention to the format for such engagement which tends to crowd out organised civil society. A Climate Assembly convened in **Austria** resulted in 93 proposals for a climate-friendly future, but concerns have been raised about the actual implementation of these proposals. On a positive note, as part of the first Citizens' Climate Assembly (ACC) in **Spain**, twelve face-to-face participatory sessions were held between September 2022 and January 2023 in Barcelona, which resulted in recommendations which were handed over to the City Mayor and representatives of the political group. Additionally, a new mechanism for citizen participation, *Decidim.Barcelona*, was introduced by the Barcelona City Council, which promotes civil society initiatives and neighbourhood proposals which, after collecting a certain number of signatures, are directly included on the agenda of the city council's meetings.

While experimenting with direct citizen participation is an important positive development, 2023 was characterised by little to no progress in the engagement of organised civil society. Notably, in **Hungary**, despite the amendment of the Act on Public Participation in the Preparation of Legislation in response to the milestones set by the European Commission, there remains little or no room for CSOs and citizens to engage with public institutions and in decision-making. In **Bulgaria**, the Council for Civil Society Development (CCSD) barely functioned in 2023, although its establishment in 2022 was outlined as a positive development in the Commission's 2023 Rule of Law Report. However, in **Latvia**, the government has given both a political and financial commitment to support civil dialogue (read more below).

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<sup>42</sup> <https://balkanccd.net/novo/wp-content/uploads/2023/09/112-4-FINAL-Policy-Paper-AMLCFT-Regulations-and-Implications-on-Civil-Society-in-WBT.pdf>



## Positive developments: Civil society's action leads to substantial human rights and democratic victories

Despite ongoing attempts to shrink the space for civic actors and civic organisations, there have been several positive cases demonstrating their resilience. Civil society across the EU increasingly embraced collaboration across sectors and networks, as witnessed in the **Czech Republic, Denmark, Hungary, Latvia** and **Spain**.

The solidarity movement with Palestine in **Spain** saw CSOs, trade unions, social movements and activists join forces. The campaign “Barcelona with apartheid no, Barcelona with human rights” was another remarkable success story of civic actors which saw more than 200 civil society organisations launching a new participatory mechanism in the city to collect signatures from people demanding the city of Barcelona to suspend all institutional relations with Israel. In the **Czech Republic**, *NeoN*, the civil society network of networks has increased to 20 members, associating over 600 CSOs across wide thematic fields ranging from environment, education, youth and informal education, aid, social housing, anti-corruption and volunteering. In **Hungary**, human rights and anti-corruption organisations increasingly cooperate with independent media outlets and with trade unions, teachers’ organisations and students’ movements, as witnessed during the protests related to public education.

Civil society also continues to be at the forefront of challenging violations of fundamental rights and ensuring accountability through the judicial system, as seen in **Estonia, France, Germany** and **Greece**. As a result of a successful case brought by the youth climate group Fridays for Future against **Estonia’s** largest energy company, the construction of an oil shale plant was suspended by a court order. In **Germany**, the *Gesellschaft für Freiheitsrechte* (GFF) sued the Federal Office for Migration and Refugees (BAMF) over its practice of retrieving asylum seekers’ mobile phone data to establish their identity and nationality, and this practice has been declared unlawful. The GFF also took on several other cases related to police violence, privacy and surveillance. As a result of legal challenges brought by *Ligue des Droits des L’Homme* (LDH) in **France** several bans on protestests, including those against pension reform and in solidarity with the Palestinian people, have been overturned.

Furthermore, civil society has played a remarkable role during elections held in several countries. During 2023, a key achievement of civil society in **Poland** was engagement in election monitoring, and the organisation of campaigns to promote voting. Both proved to be effective in targeting the public encouraging them to vote (including via TikTok and social media) and attracted large numbers to monitor the elections on 15 November. In **Estonia**, in the pre-election campaign, civil society actively took part by initiating debates, and analysing election promises, while organisations in different fields assessed the promises of political parties from their own perspective.

There have been some notable positive legal developments in relation to freedom of association as a result of civil society advocacy, including in **Austria, Denmark** and **Latvia**. In **Austria**, a legal reform,

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which entered into force on 1 January 2024, has facilitated administration of the public-benefit status and could improve financial viability, by reducing the waiting period from three years to one, and simplifying procedures of independent auditors to confirm eligibility. In **Latvia**, the Ministry of Justice drafted amendments to the law governing associations and foundations which aim to enhance the regulation for greater participation of members, boards, and other stakeholders in the decision-making processes of organisations. They also seek to enable organisations to operate more efficiently and resourcefully by granting the right to conduct membership meetings electronically.

# In the spotlight: A closer look at European commitments to empower, protect and support civil society

2023 marked important milestones for civic space in Europe, as the European Council adopted the Conclusions on the role of the civic space in protecting and promoting fundamental rights<sup>43</sup> and the European Commission adopted recommendations on promoting the engagement and participation of citizens and civil society.<sup>44</sup> Both of these documents demonstrate a commitment towards engaging, protecting and supporting civil society in Europe. The following section looks at the current state of play in three key areas: civil dialogue, protection, and funding, key areas for an **EU civil society strategy**, and identifies the gaps and extra support needed.

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<sup>43</sup> <https://data.consilium.europa.eu/doc/document/ST-7388-2023-INIT/en/pdf>

<sup>44</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023H2836#:~:text=To%20enable%20their%20effective%20participation,the%20Internal%20Market%20fundamental%20freedoms>



# Structured civil dialogue: implementation, resources and coherence are essential

## What is civic participation and why does it matter?

A significant challenge faced by contemporary democracies is the disconnect between the general public and political institutions and decision-making bodies. Organised civil participation through civil society offers an avenue, in addition to participating in electoral politics, for people to express diverse perspectives and defend the common good in the decision-making arena.

The Council of Europe and the UN provide key principles and standards for civil participation both at the national and regional levels<sup>45</sup>, which include: the transparency and accountability of institutions in decision-making processes; clear legal frameworks to enable participation for all; ensuring mutual respect, trust and cooperation; and sustainable funding and institutional support. Some of these principles are also reflected in the 2023 European Commission's recommendations on promoting the engagement and effective participation of citizens and civil society.

Civil participation for inclusive policy-making and action includes different forms and levels of engagement. From least to most participative, these are: **information, consultation, dialogue, and partnership**.<sup>46</sup>

## The state of civic participation in 2023

### Access to information and consultation

Access to information and consultation are the first two stages of participation, which enable more advanced forms of engagement. Structural challenges such as short consultation times make it difficult for civil society to participate in decision-making, as raised in the country chapters on **Croatia, Denmark, Romania, Slovenia, Hungary, Spain** and **Greece**. Limited access to required information, data or law proposals is also a challenge.

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<sup>45</sup>

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c>

<sup>46</sup>

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c>

### Civil dialogue

Civil dialogue is a permanent, structured and meaningful interaction between institutions and organised civil society. To be relevant, it must be inclusive, transparent and results-oriented, allowing for a substantive exchange of information, expertise, and experience, as well as providing room for feedback. It entails the co-creation of solutions and long-lasting partnerships between public authorities, CSOs and civil society at large. Such dialogue is designed to take place at all stages of the political decision-making cycle, from the framing of positions and priorities to evaluation.<sup>47</sup>

The European Commission's 2023 recommendations on civic participation call on member states to "establish structured dialogues with civil society organisations on specific topics related to public policy-making processes," and to "ensure that such dialogues go beyond consultations for specific policy or legislative proposals, and are regular, long-lasting and result-oriented."<sup>48</sup>

According to the Fundamental Rights Agency's (FRA) annual survey on civic space, the top two difficulties encountered by CSOs in the legal framework are access to information and legislation on civil dialogue and consultation, with 55 per cent and 50 per cent of respondents respectively saying they encountered difficulties often or sometimes. Additionally, transparency and lobbying laws were found to create challenges often or sometimes by 31 per cent of respondents.

In several member states, civil society participation in policy-making is formalised through the creation of committees or councils composed of both representatives of CSOs, elected by the sector, and members of the government, that, in principle, regularly contribute to policy-making. However, as illustrated in the country chapters of this report, the extent to which civil dialogue is implemented in practice varies across member states. In addition, marginalised groups continue to face barriers to participation.

In some member states, while dedicated policy frameworks and forums for such dialogue exist, their implementation remains weak. This was raised in the country chapters of **Croatia, Slovenia, Hungary, Czech Republic** and **Bulgaria**. Notably, in **Hungary**, despite the amendment of the Act on Public Participation in the Preparation of Legislation in response to the milestones set by the European Commission, there remains little or no room for CSOs and the public to engage with public institutions and in decision-making. The little progress on CSO participation in official consultative bodies (monitoring committees, the Anti-Corruption Task Force) is insignificant given the context in which the government adopted the Defence of Sovereignty Act. In **Croatia**, the appointment of civil society organisations to advisory bodies is often non-transparent in practice and the Council for Civil Society Development has almost completely ceased to be an actual platform for consultation and

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<sup>47</sup> <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/strengthening-civil-dialogue-and-participatory-democracy-eu-path-forward>

<sup>48</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023H2836>

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dialogue between CSOs and the government. Such practices have resulted in policy-making being perceived as opaque and inaccessible to the general public and advocacy organisations and undermined the legitimacy of decisions made.

In contrast, in **Latvia**, the government has expressed both the political and financial commitment to promoting a cohesive society, with plans to increase funding for civil society initiatives, develop a legal framework for civil dialogue, and strengthen the resilience of civil society. Two specific programs for civil dialogue will begin in 2024. The first program, funded under the European Social Fund Plus (ESF+), allocates €500,000 for the period 2024-2027 for the implementation of civil dialogue. The second program provides funding from the national budget for the Memorandum Council as the central civic platform.

The implementation of civil dialogue is also often contingent both on political will and the political landscape, including electoral outcomes. For example, in **Bulgaria**, civic participation processes were notably impacted following two years of political turmoil which impacted the work of many state institutions. In **Denmark**, the majority government opted to take decisions internally before opening up to consultation which limited the window for input from stakeholders and reduced access to key decision-makers in 2023. This is particularly the case in countries where there is no civil dialogue framework or civil dialogue legislation to regulate and guide the involvement of civil society in policy-making, such as **Germany, Austria** and **Greece**.

In **Austria**, cooperation between decision-makers and NGOs experienced a new high thanks to the openness of the governing Green Party, leading to important improvements in the framework conditions for NGOs. Nevertheless, this could easily shift with the change of the political landscape in the absence of strong rules for lasting dialogue.

As outlined in the country chapters, the transition from limited *ad hoc* consultations to a culture of participation as an integral part of decision-making requires not only the introduction of institutionalised mechanism, harmonising procedures across public administration, but also:

- 🔍 safe and enabling environment, with strong civic and democratic public education,
- 🔍 the development of motivation, capacities and skills for participation among public administration, politicians, the public and stakeholders<sup>49</sup>,
- 🔍 appropriate funding and resources for civil society and for formal public structures enabling civil dialogue,
- 🔍 early engagement of civil society in the development of policies,

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<sup>49</sup> <https://www.oecd.org/governance/oecd-public-governance-reviews-czech-republic-41fd9e5c-en.htm>



- 🔍 moving away from tokenistic and extractive<sup>50</sup> “check-box” exercises to meaningful, result-oriented partnerships.

Challenges in these areas emerge with different intensity across the different country cases. For example, the quality of the dialogue often depends on individual politicians and officials in the state administration, even in good practice examples like **Latvia** and **Estonia**. For example, in **Estonia**, CSOs who were consulted for the Climate Act received no explanation on how much weight their contributions carried and whether their positions would be included in the legislation.

One of the most important indicators of the quality of the dialogue is whether it is result-oriented and it leads to effective impact. The findings of the FRA civic space survey for 2022<sup>51</sup> showed that 50 per cent of CSOs who responded to the survey expressed concerns over the lack of outcomes and feedback when participating in policy-making.

Responding to the 2023 FRA survey, CSOs stated that the most relevant changes in accessing policy-making are: involving civil society from the onset of the participation process (43.8 per cent); consulting early enough before adoption of law and policy (37.6 per cent); better information about participation possibilities (24.7 per cent); funding for the time spent on input provided (22.7 per cent). Access to funding to participate in civil dialogue, advocacy and campaigning also emerges as the most important need regarding the funding framework.

### Direct citizen engagement

Direct citizen engagement through citizens’ panels, conventions or dialogue is complementary to the participation of civil society. NGOs can play an important role in the organisation of citizens’ assemblies and offer infrastructure to sustain and carry forward the proposals emerging from them. As described above, in recent years, authorities in several member states have experimented by organising citizens’ assemblies on different topics. However, the demands emerging from the assemblies have not always been integrated by policy-makers. It is important to stress that it is dangerous when democratic institutions and policy-makers do not address the messages and demands of this form of participation, as it can feed a sense of powerlessness and distrust. Additionally, the focus on EU citizens can lead to excluding people living in Europe with different legal status and risks making the policy-making process exclusionary and discriminatory.

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<sup>50</sup>By extractive we mean the repeated depletion of energy and resources of civil society with out anything in return.

<sup>51</sup> <https://fra.europa.eu/en/publication/2023/civic-space-2023-update?page=6#read-online>

### Civic participation at the European level

Civil dialogue and the right to participation should be integral components of EU policy-making, as enshrined in Articles 10 and 11 of the Treaty on European Union (TEU)<sup>52</sup> and international standards.<sup>53</sup> However, while the first two stages of participation – access to information and consultation – are regulated at the European level, European policy-making is characterised by the absence of a legal framework and agreement for structured civil dialogue.

In response to the FRA survey on civic space in 2023, CSOs reported better quality of the consultation processes at the European level – which is regulated by the Better Regulation guidelines – than at the national level.<sup>54</sup> The majority of respondents describe their interactions and exchanges with European institutions as rather collaborative or very collaborative (European Commission: 58 per cent, members of the European Parliament: 71 per cent, other European agencies: 40 per cent).

Yet, deeper levels of participation, namely civil dialogue and partnership, despite being codified in TEU, lack harmonised structure for implementation across European governance and decision processes. As a result, participation tends to remain at the level of information sharing or consultation (both through the online platforms and exchanges with policy-makers) and can be extractive, tokenistic and lack proper impact, as seen from the following examples in 2023.

Since the announcement of the Artificial Intelligence Act, civil society has made great efforts to coordinate horizontally to feed into the process, engaging diverse organisations at the national and European levels. In the absence of results-driven dialogue ahead of the drafting of the law, the framework proposed by the European Commission to address the widespread impact of AI technologies on society and fundamental rights was flawed.<sup>55</sup> While the European Parliament's position included important safeguards, this came as a result of civil society advocacy towards individual MEPs who championed the protection of fundamental rights. On the contrary, the process of the formulation of the position of the European Council was opaque and inaccessible to civil society, while technology industry lobbyists and representatives of law enforcement authorities and security services had greater influence throughout the legislative process.<sup>56</sup> The safeguards

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<sup>52</sup>[resource.html \(europa.eu\)](#)

<sup>53</sup>CoE, Committee of Ministers (2017), **Guidelines on civil participation in political decision-making, 27 September 2017**; ECNL (2016), **Civil participation in the decision-making processes, May 2016**; CoE (2009), **Code of Good Practice for Civil Participation in the Decision Making Process, CONF/PLE (2009)CODE1, 1 October 2009**.

<sup>54</sup> **Ranking of EU versus national level consultation (9%, 7% respectively), high (29%, 14%), acceptable (44%, 38%)**

<sup>55</sup> <https://edri.org/our-work/the-european-commission-does-not-sufficiently-understand-the-need-for-better-ai-law/>

<sup>56</sup> <https://corporateeurope.org/en/2023/11/big-tech-lobbying-derailing-ai-act>

demanded by civil society were then significantly watered down during the EU trilogue negotiations between the member states, the Commission, and the Parliament – a process which was characterised by great opacity.

The extractive and tokenistic nature of consultation processes at the EU level was illustrated during the legislative process for the Defence of Democracy package. While the Commission launched two rounds of consultation (one targeted and another more general) and engaged in meetings with civil society, informal exchanges with European Commission officials revealed that the proposal was developed in a short time frame, while the initial public consultation was still underway. Despite repeated attempts to raise concerns about the directive<sup>57</sup>, to date, the Commission has continued to dismiss them.

Additionally, the challenges with civil society participation at the national level are mirrored at the European level, undermining the quality of policy-making as well as efforts to uphold the rule of law. For example, in the case of monitoring public spending and the dispersal of EU funds to **Hungary**, an Anti-Corruption Task Force was created to assist the Integrity Authority (established in late 2022). However, several CSOs, including Transparency International Hungary and K-Monitor Association, criticised the task force after its first report largely neglected CSOs' opinions. In contrast, as an example of good practice, in December 2023, the parliament, the European Commission, and the European Parliament Liaison Office in Latvia signed a Memorandum of Understanding on strategic partnership which aims to raise awareness about **Latvia's** membership in the EU and promote broader public participation in EU-related discussions.

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<sup>57</sup> <https://civic-forum.eu/wp-content/uploads/2024/01/Defence-of-Democracy-an-analysis-of-the-foreign-funding-directive.pdf>; <https://civic-forum.eu/position/defence-of-democracy-package-ecf-responds-to-the-latest-european-commission-consultation>; <https://civic-forum.eu/publications/open-letter/joint-ngo-statement-eu-foreign-interference-law-is-civil-society-at-risk>

# Protection needs to be intersectional<sup>58</sup>

## What is the duty of institutions and why does it matter?

States have a duty to safeguard civil society and human rights defenders from physical harm by external parties. At the same time, they have to uphold the right to life, physical integrity and freedom from ill-treatment for everyone in their jurisdiction as well as safeguarding their right to association, peaceful assembly and expression, without any undue interference. This includes the obligation to proactively prevent such incidents and promptly conduct impartial investigations when they occur.<sup>59</sup> Without a safe space, genuine and meaningful democratic participation is not possible.

States' duty to protect has been reiterated by the European institutions. The European Commission's 2023 recommendation on civic engagement stress that civic participation requires a safe and enabling environment. The recommendation also emphasises that "Member States should take the necessary steps to protect civil society organisations from threats, criminalisation, intimidation, harassment as well as attacks and other forms of criminal acts, both offline and online." This includes:

1. Ensuring that timely and effective protection is available to civil society organisations, their staff and volunteers, as well as persons close to them;
2. immediate condemnation, prompt investigation and prosecution of any illegal acts.

Additionally, the EU Council conclusions on civic space also call on member states to ensure the safety and security of civil society actors and human rights defenders, recognising their vulnerability to threats, harassment, and violence. The document stresses the necessity of concrete actions to safeguard the rights and safety of these individuals, urging member states and relevant institutions to take appropriate measures.<sup>60</sup>

## The role of national protection institutions and infrastructure

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<sup>58</sup> **Building on the earlier work of black feminists, such as the Combahee River Collective, the term was formerly coined in 1989 by civil rights activist and African American feminist Kimberlé Crenshaw as a metaphor to explain the ways in which black women under the US legal system are often caught between multiple systems of oppression marked by race, gender, and economic hierarchies without recognising how their unique experiences converge or intersect. Thus intersectionality seeks to understand how our individual identity characteristics, together with systems of oppression intersect or come together to shape our unique lived experiences.**

<sup>59</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf), p 47

<sup>60</sup> <https://data.consilium.europa.eu/doc/document/ST-7388-2023-INIT/en/pdf>



In addition to EU-level mechanisms, strengthening the role of National Human Rights Institutions (NHRIs) and national-level protection infrastructure is important for ensuring enabling conditions for rights defenders. NHRIs stand out as unique national institutions, with a mandate to independently promote and protect human rights within their respective countries. Therefore NHRIs play a key role in bridging independent actors, civil society, and state actors together and can sometimes have more influence in national decision-making than CSOs.<sup>61</sup> The importance of national protection institutions is documented in several country chapters. For example, in **Poland**, the human rights ombudsman has played an important role in monitoring and access to justice in relation to police brutality during protests. Nevertheless, at least 13 NHRIs in the EU and accession countries do not fully comply with the Paris principles.<sup>62</sup> Civil society has also in some cases developed protection hubs.<sup>63</sup> Strengthening national-level protection infrastructure and establishing and/or allocating more resources to NHRIs to address these internal challenges is essential.

In many EU countries, efforts to protect HRDs are already developed or underway, with political-level guidelines and actions in place to address threats against HRDs outside of the EU. For instance, **Finland** has developed comprehensive guidelines<sup>64</sup> for HRD protection, recognising the importance of civil society and HRDs. Likewise, support programmes in **the Netherlands**<sup>65</sup> have been established to assist HRDs facing risks abroad and supporting HRDs that have relocated to the country. However, these initiatives focus on external actions and are managed within ministries of foreign affairs, overlooking the need for internal, national and EU-level protection mechanisms. Such policies should be adapted to take into account the threats faced by civil society within the EU.

### Safe space in 2023

Physical, verbal and legal threats against CSOs and human rights and environmental defenders have become an increasing concern in Europe. Qualitative evidence collected since the launch of the Civic Space Watch monitoring tool in 2018 and our first Civic Space Report in 2019<sup>66</sup> shows that threats

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<sup>61</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

<sup>62</sup> <https://fra.europa.eu/en/publication/2024/nhri-accreditation-status-and-mandates-update-2024>

<sup>63</sup> <https://civitates-eu.org/wp-content/uploads/2021/04/Mapping-shrinking-civic-space-in-Europe-final.pdf>

<sup>64</sup>

[https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164904/UM\\_2023\\_11.pdf?sequence=4&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164904/UM_2023_11.pdf?sequence=4&isAllowed=y)

<sup>65</sup> <https://www.government.nl/topics/human-rights/human-rights-worldwide/supporting-human-rights-defenders>

<sup>66</sup> <https://civicspacewatch.eu/wp-content/uploads/2021/06/activizenship-4.pdf>

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and attacks have shifted from being an issue on the fringes to a systemic concern for civic space in Europe. Data collected by the FRA through its civic space survey shows that the vast majority of respondents from EU member states faced some form of threat and attack in 2023<sup>67</sup>.

While undoubtedly difficult to identify, the consequences of these incidents can be categorised into four themes:

- 🔍 **Psychosocial impact:** HRDs and civic actors face repercussions on their mental health linked to feeling fear and unsafe. In some cases, it can lead to traumatic physical and emotional experiences. According to the FRA civic space survey, in 2023, 46 per cent of respondents reported that psychological effects like burnout, depression and anxiety had a high and medium impact on their work and organisations, while 20 per cent reported that their employee or volunteers experienced post-traumatic stress disorder (PTSD);
- 🔍 **Financial impact:** It can be costly to respond to such threats and attacks, as organisations are forced to shift their resources away from their core missions. This drains resources, as CSOs have less capacity to effectively communicate about their activities, strategically cultivate a network of supporters and fulfil their mission. Disinformation campaigns can also threaten the resources of CSOs and HRDs and can lead to the loss of donors. According to the FRA civic space survey, 34 per cent of CSOs reported financial problems or loss of funding and 29 per cent discontinued or reduced activities as a consequence of attacks;
- 🔍 **Self-censorship and chilling effect:** Such developments can diminish rights defenders' efforts to hold governments, institutions and corporations accountable. In at least four country reports, CSOs reported toning down their campaigns or not daring to speak out on some issues.
- 🔍 **Negative impact on the sustainability of civil society:** All the above undermine the resilience of civil society and can lead to employees and volunteers leaving the organisation (19 per cent according to the FRA in 2023) or in serious cases result in relocation (6 per cent).

Below is a breakdown of the most common threats and attacks in 2023.

### Negative public discourse, smear campaigns and stigmatisation

In 2023, democratic civil society and critical voices continued to be targeted by smear campaigns, especially when acting as public watchdogs or performing advocacy functions. For example, in **Hungary**, the EU Citizens, Equality, Rights and Values (CERV) and USAID Central Europe funding programmes were targeted publicly for supporting so-called "Soros-organisations" and the "LGBTQI-lobby". Most major human rights groups were named in a series of news articles, particularly those awarded under the new re-granting programme managed by a consortium led by the *Ökotárs Foundation*. At the EU level, youth and Muslim rights organisation FEMYSO was subjected to a smear

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<sup>67</sup> FRA Protecting civil society – Update 2024, upcoming

campaign which led to increased censorship towards the organisation by European institutions.<sup>68</sup> Meanwhile, at the EU level, anecdotal evidence shows that the foreign funding directive included in the **Defence of Democracy package** is already contributing to the climate of suspicion and stigmatisation at the national level.<sup>69</sup>

Reputational attacks can create the impression that critical voices are 'legitimate targets' for other measures and create a breeding ground for the deployment of other legal, judicial or financial obstacles. It can also affect public trust in the sector and, as a result, its ability to mobilise masses on matters linked to democracy and the rule of law.

### Threats and attacks intersect with hate of excluded groups

According to the FRA's 2023 civic space survey, 62 per cent of respondents said that they sometimes or often faced online verbal threats and attacks and 40 per cent reported in-person (offline) verbal threats and attacks. Physical attacks are also a concern, with 15 per cent reporting vandalism of premises and nine per cent reporting physical attacks. Data from the CIVICUS monitor confirms intimidation as the main trend in Europe, with incidents recorded in at least 10 EU countries. The country chapters illustrate a clear pattern between the verbal and physical attacks reported and hate crimes against excluded and marginalised groups (as described above in the developments section). Racialised groups, migrants and asylum seekers, and the LGBTQI+ community have been particularly affected by the rise of the far right and mainstreaming of their narratives by other parties and institutions. Civil society organisations and rights defenders which represent and advocate for the rights of these groups, often face specific challenges to their actions. This is enabled by discriminatory and exclusionary trends promoted or tolerated by some authorities. As a consequence, these groups are further silenced and made invisible, and often afraid of expressing themselves and exercising their rights in public spaces.

### Legal harassment and criminalisation of human rights actions

Civic actors have regularly faced legal harassment and criminalisation. These legal frameworks, strategies and political actions intend to treat actions for human rights as illegitimate and illegal. They include:

-  Legislation criminalising specific actions (i.e., 2018 "Stop Soros" Law in **Hungary**);

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<sup>68</sup> <https://femyso.org/investigation-statement/>

<sup>69</sup> <https://civic-forum.eu/wp-content/uploads/2024/01/Defence-of-Democracy-an-analysis-of-the-foreign-funding-directive.pdf>

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- 🔍 Criminal prosecution of CSOs, activists or other critical voices for their actions (e.g. criminalisation of solidarity with migrants and civil disobedience actions by environmental defenders), words (e.g. the move to criminalise the slogan “From the river to the sea Palestine will be free” in several countries) or organising and participating in peaceful demonstrations (e.g. the criminal charges against the leader of the Polish Women’s Strike in **Poland**, and the prosecution of the organisers of the Democratic Tsunami protests in **Spain**<sup>70</sup>);
- 🔍 SLAPPs: malicious civil lawsuits abusing the judicial system with the aim of draining the target through long court processes (such as those initiated by anti-rights groups against LGBTQI+ NGOs in **Poland**).

These legal proceedings often do not lead (or even aim to lead) to a conviction and many complaints end in acquittal or dismissal. Nevertheless, they result in serious material and symbolic costs such as reputational damage or intimidation.

Over the past years, several states have adopted increasingly restrictive legal frameworks for CSOs working on migrants’ rights, also known as the **criminalisation of solidarity**. Increasingly, all acts around the migration journey can be criminalised, including steering a boat which is going adrift; rescuing people at sea; providing essential services, basic humanitarian aid, information, and assistance during the asylum procedure; denouncing human rights violations at borders; and helping people in return procedures. At the core of this trend, there is the criminalisation of migration itself, a denial of human dignity – both in the language and narrative, as well as in the legal framework of several EU member states. Migrants who act in solidarity with other migrants are disproportionately hit by criminalisation policies.<sup>71</sup> A similar trend is now faced by environmental rights defenders and movements, as restrictive legislation targeting these groups have been passed in the past years.

### Surveillance and threats emerging from new technologies

Following the trend of recent years, in 2023, new technologies, digital tools and artificial intelligence (AI) are increasingly utilised to narrow civic space in Europe. State authorities have used technology to surveil<sup>72</sup>, infiltrate, harass and criminalise civil society organisations and activist groups more efficiently, as examples from **Germany** and **Spain** show. State authorities' use of intrusive spyware and mass surveillance technology is typically justified under the guise of “national security” or crime prevention purposes. However, it is often deployed for political aims or to suppress dissent, intimidate CSOs, rights defenders, journalists, lawyers and opposition as well as collect sensitive data

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<sup>70</sup> <https://civic-forum.eu/publications/open-letter/joint-letter-solidarity-for-activists-in-catalonia-accused-of-terrorism>

<sup>71</sup> [https://civicspacewatch.eu/wp-content/uploads/2022/03/Activizanship06\\_Web.pdf](https://civicspacewatch.eu/wp-content/uploads/2022/03/Activizanship06_Web.pdf) (pp31-43)

<sup>72</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2023-0189\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.html)



and legitimise privacy violations. The Pegasus and Predator spyware systems, for instance, have been extensively used to target individuals unrelated to crimes or security threats.<sup>73</sup> Similarly, the use of AI-powered mass surveillance in public spaces poses a significant threat to individuals, civic actors and fundamental freedoms. These technologies not only target individuals exercising their rights to assembly and expression but also disproportionately impact marginalised communities on a larger scale. Predictive policing systems and other intrusive surveillance tools are frequently deployed to monitor and criminalise marginalised neighbourhoods and racialised "suspect" communities in the name of public safety and combatting crimes. In reality, these tools exacerbate existing inequalities and undermine the principle of the rule of law.<sup>74</sup>

Additionally, when intrusive surveillance technologies are used, state authorities are often passive or reluctant to investigate and bring the deployers of the systems to justice, as the example of **Greece** shows, where investigations into the Predatorgate spyware scandal have been obstructed. The government has refused cooperation with the national and EU institutions investigating the incidents.<sup>75</sup>

### EU policies and tools for protection

In 2023, much-welcomed legislation was put forward. This includes the **European Cross Border Associations directive**, which creates a new legal form that will facilitate cross-border activities for not-for-profit associations.<sup>76</sup> The **Anti-SLAPP directive** introduces protections for journalists, media, civil society and activists engaged in public participation. However, gaps and limitations remain.

#### Protection for who? The discriminating approach of EU policies

While migrants, asylum seekers and undocumented people are amongst the most vulnerable categories of human rights defenders, as described above, new EU legislation passed in 2023 has not only failed to protect them but risks further contributing to discrimination and criminalisation.

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[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/740514/IPOL\\_STU\(2022\)740514\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/740514/IPOL_STU(2022)740514_EN.pdf)

<sup>74</sup> <https://reclaimyourface.eu/predictive-policing/>

<sup>75</sup> <https://www.politico.eu/article/greek-government-spying-regulators-wiretapping-predatorgate-scandal/>

<sup>76</sup> <https://civilsocietyeurope.eu/wp-content/uploads/2024/02/Policy-input-on-the-ECBA-Directive.pdf>

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Hailed as the first legally-binding proposal to regulate AI in the world, the **EU AI Act** was finalised in December 2023. However, the AI Act is a missed opportunity to protect civil society, human rights defenders and civic space. While the final text includes limitations and prohibitions on harmful systems such as biometrics for identification, recognition and categorisation, the act has major gaps that weaken its ability to protect human rights, the rule of law and democracy. The act allows police to deploy real-time face recognition for tasks like locating missing persons, preventing terrorism, and identifying serious crime suspects. These broad exceptions jeopardise the safeguards and could lead to violations of the right to peaceful assembly and expression.<sup>77</sup> For instance, it could empower authorities to identify, harass, or detain protesters, undermining their fundamental rights. Similarly, high-risk systems may be used by law enforcement and intelligence authorities to undermine democratic principles and processes, particularly in countries where civic space, fundamental rights and the rule of law are already under strain.

Worryingly, the act also includes fewer protections for specific groups, particularly migrants. For example, while emotion recognition systems will be banned in workplaces and educational settings, after pressure from member states, the use of such high-risk systems would not be prohibited in policing, border control, and migration contexts. The act also includes major exemptions for law enforcement and security authorities to use high-risk AI systems.<sup>78</sup> The new Pact on Migration and Asylum adopted in April 2024 further expands digital surveillance of migrants<sup>79</sup> and criminalisation of migrants' rights defenders.<sup>80</sup> During a political agreement reached on the EU directive on violence against women, member states failed to protect undocumented women who report sexual violence, after a provision that would ban police from sharing victims' data with immigration authorities was removed.<sup>81</sup>

## Existing gaps in European protection toolbox

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<sup>77</sup> [https://civic-forum.eu/wp-content/uploads/2024/04/AI\\_Act\\_RoL\\_Analysis-0424.pdf](https://civic-forum.eu/wp-content/uploads/2024/04/AI_Act_RoL_Analysis-0424.pdf)

<sup>78</sup> <https://civic-forum.eu/statement/after-the-trilogues-the-eu-ai-act-falls-short-of-needed-guarantees-to-people>

<sup>79</sup> <https://www.equinox-eu.com/wp-content/uploads/2024/04/The-Migration-Pact-ProtectNotSurveil.pdf>

<sup>80</sup> [More than 160 Civil Society Organisations call on MEPs to vote down harmful EU Migration Pact - PICUM](#)

<sup>81</sup> <https://picum.org/blog/new-eu-directive-on-violence-against-women-leaves-out-migrant-women/>; <https://www.theparliamentmagazine.eu/news/article/ngos-warn-eu-gender-justice-bill-leaves-most-vulnerable-behind>

It is noteworthy that the existing tools which includes the [ProtectDefenders.eu](https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders_en) platform and the EU External Action Service's Guidelines on Human Rights Defenders<sup>82</sup>, focuses exclusively on the protection of human rights defenders outside the EU. Currently, there is no EU mechanism to document attacks that would allow the EU to better understand the trends and nature of attacks inside the EU or respond with emergency support to HRDs and their organisations. The annual **Rule of Law Report** covers civic space, but only marginally and superficially, especially with regard to the right to protest and attacks on human rights defenders and their organisations. As such, to date it cannot be considered an effective accountability mechanism for countries that fail to protect civic space or intentionally restrict it.<sup>83</sup> In the next two years, the CERV programme will support civil society projects monitoring civic space and alerting EU institutions to restrictive measures and incidents. The EU institutions will need to formally address these alerts and integrate them into the report.

Some lessons could be learned from the 2021 recommendation on the protection, safety and empowerment of journalists, which aimed to ensure safer working conditions for all media professionals and sets out concrete actions for member states to take, such as the development of a rapid response mechanism.<sup>84</sup> The adoption of the **EU Media Freedom Act (EMFA)** in March 2024 marked a significant step towards safeguarding protection for journalists and their sources, enhancing media freedom across the EU. However, the act falls short of adequately protecting journalists from the threat of spyware.<sup>85</sup> As a result, the EMFA inadvertently legitimises the use of spyware against journalists, by enabling EU governments to potentially deploy spyware under the guise of national security.<sup>86</sup> The proposed **EU Child Sexual Abuse (CSA) Regulation** allows authorities to access private online communications, jeopardising encryption and potentially legitimising mass surveillance.<sup>87</sup> In countries where the space for CSOs, activists, political opposition, journalists and lawyers is narrowed and they are under surveillance and harassed, end-to-end encryption as a means of communication is highly important.

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<sup>82</sup> [https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders\\_en](https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders_en)

<sup>83</sup> <https://civicspacewatch.eu/wp-content/uploads/2021/12/Report-Civic-Space-in-the-European-Rule-of-Law-Framework.pdf>

<sup>84</sup> <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>

<sup>85</sup> <https://www.euractiv.com/section/media/news/eu-parliament-passes-european-media-freedom-act-concerns-over-spyware-remain/>

<sup>86</sup> <https://edri.org/our-work/challenges-ahead-european-media-freedom-act-falls-short-in-safeguarding-journalists-and-eu-fundamental-values/>

<sup>87</sup> <https://edri.org/our-work/rearranging-deck-chairs-on-the-titanic-belgiums-latest-move-doesnt-solve-critical-issues-with-eu-csa-regulation/>

## Funding: a slow and steady erosion of civil society's sustainability and resilience

### Why does funding civil society matter?

The freedom to seek, receive, and use resources is inherent to the right to freedom of association and essential for the effective operation of civil society. Nurturing funding policies can lead to an overall positive impact on human rights and democracy, since it provides civil society with resources and capacities to fulfil its democratic mission.

Numerous international human rights instruments and regional monitoring bodies recognise the right of associations to seek, receive, and use financial resources, as well as the duty of state authorities to create an enabling environment for accessing funding.<sup>88</sup>

This includes:

1. **Positive duty:** States should provide various forms of support to associations, including public funding, tax benefits, grants, and exemptions, while ensuring fair and non-partisan distribution of public support. They should refrain from placing illegitimate restrictions and protect CSOs from attacks by third parties.
2. **Transparency and accountability:** Regulatory authorities should implement legislation and regulations concerning access to funding transparently and impartially and should be accountable for their actions.
3. **Non-Discrimination:** States must provide safeguards against discriminatory practices targeting organisations representing the most excluded groups, burdensome reporting requirements disproportionately targeting civil society, and stigmatisation of foreign-funded organisations.

### The public funding landscape in 2023

Despite the importance of funding for civil society, the 2023 FRA civic space survey found that 75.4 per cent of respondents thought that funding concerns threatened some, much or all of their work in the past 12 months. 90.4 per cent of respondents said that their financial reserves covered less than one year of activity with 42.6 per cent stating that their reserves could only provide for less than

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<sup>88</sup> <https://www.ohchr.org/en/documents/thematic-reports/ahrc5023-access-resources-report-special-rapporteur-rights-freedom>



6 months.<sup>89</sup> These figures are corroborated by developments in the funding landscape as described in the national country chapters and unpacked below.

The barriers, limitations and restrictions to funding have very deep consequences on civil society, including:

1. **Less resources to act as a watchdog:** In the past few years, civil society has been in a constant state of mobilisation, at the forefront of addressing social needs and democratic challenges linked to the COVID-19 health emergency, the wars in Ukraine and other countries, which have led many to flee the country and to find safety in Europe, the effects of climate change and related natural disasters, as well as democratic backsliding in Europe. Often, these efforts were not supported by specific funding but instead required reallocating existing resources. On top of these challenges, shrinking civic space, the lack of protection from attacks and the need to adapt to increasingly complex bureaucratic regulatory requirements mean that CSOs have less means and resources to dedicate to their missions.

2. **Donor-dependency:** Fewer sources of funding make it more difficult to diversify funding, thus making organisations dependent on just a few donors and vulnerable to changes in their funding strategies. This weakens civil society's capacity to address the root causes of social and democratic issues. At the same time, the lack of coordination among private and public donors, as well as participatory mechanisms to draft donors' funding policies, considerably exacerbates this risk.

3. **Self-censorship to chilling effect:** The politicised access to funding in several countries and the increased use of funding cuts against organisations critical of government policies, has led to a chilling effect on advocacy groups. This can include cautiously toning down their messages and activities deemed as "too political or radical" out of a fear of jeopardising their funding sources. These developments are compromising civil society organisations' roles as watchdogs and their ability to drive change.

4. **Precarious work to organisational vulnerability:** volunteers and workers in civil society are not immune from the socio-economic challenges in Europe.<sup>90</sup> While data and literature on precarious work inside NGOs is very sparse, recent research<sup>91</sup> and the anecdotal evidence contained in the country chapters shows that funding policies, in particular the reliance on project funding and excessive bureaucracy, lead to precarious working conditions in civil

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<sup>89</sup> FRA Protecting civil society – Update 2024, upcoming

<sup>90</sup> <https://www.ipsos.com/en/29-europeans-say-they-are-currently-precarious-financial-situation>

<sup>91</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0148296322003228>  
<https://link.springer.com/article/10.1007/s11115-021-00512-w>

society organisations. This creates “a sense of instability, insecurity and uncertainty among employees”, weakens the development of organisations and increases their vulnerability.<sup>92</sup>

As a consequence, bureaucratic, precarious and project-oriented funding policies lead to vulnerabilities not only for civil society but for our democracy.

### Financial viability and sustainability remain a concern, with some inspiring exceptions

The funding landscape varies greatly from country to country and comparable data is missing. In some countries, like **Bulgaria** and **Romania**, CSOs continue to face significant challenges regarding financial viability. The lack of diverse funding opportunities, including public funding schemes and access to EU funding, poses a threat to sustainability. On the contrary, in **Austria**, CSOs appear to be relatively financially stable, thanks to the significant support of the state. However, there is a risk of dependence on governmental funding.

In 2023, the financial viability of the sector in **Germany** and **Denmark** saw significant funding cuts. In **Germany**, as the substantial savings targets for the 2024 federal budget led to cuts in funding to civil society organisations, with the consequent reduction or cancellation of programmes and the departure of experienced staff. Additionally, the planned Democracy Promotion Act – a large funding programme for CSOs working to promote democracy, human rights and the rule of law – has been on hold for several months due to disagreements within the governing coalition.

In **Slovenia**, where financial sustainability is ensured by the strong public support for CSOs, the vast majority of NGO funds remained undistributed following a major government scandal involving the minister in charge.

Financial viability and sustainability are not only linked to the available public funding for the sector but also to the government policies to create an environment where multiple funding opportunities, such as donations and private philanthropy, are available. A positive example is the new National Philanthropy Policy in **Ireland**, which underscores the public sectors’ role to support the development of private philanthropy and relevant areas of action.<sup>93</sup> In the **Czech Republic**, the Strategy for the

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[https://www.researchgate.net/publication/354876187\\_What\\_affects\\_employment\\_by\\_NGOs\\_Counteraction\\_to\\_precarious\\_employment\\_in\\_the\\_Polish\\_non-profit\\_sector\\_in\\_the\\_perspective\\_of\\_COVID-19\\_pandemic\\_crises](https://www.researchgate.net/publication/354876187_What_affects_employment_by_NGOs_Counteraction_to_precarious_employment_in_the_Polish_non-profit_sector_in_the_perspective_of_COVID-19_pandemic_crises)

<sup>93</sup> <https://assets.gov.ie/278827/96f3aabc-9802-4716-b437-bf5072526060.pdf>

Cooperation of the Public Administration with NGOs 2021 to 2030<sup>94</sup> is a key government document for the cooperation of the Czech public administration with the non-profit sector. It sets out a commitment to support the development of conditions under which CSOs can perform their role from the local to the national level, including the promotion of philanthropy, volunteering, the efficiency of the financing system from public budgets. From January 2024, new tax measures enable individual and corporate donors to take advantage of increased tax deductions.<sup>95</sup>

In **Austria**, 2023 saw significant improvements for civil society organisations regarding financial viability, most importantly: 1) amendments to tax law enabling donations to human rights organisations to be deducted from taxes; 2) a simplification of administrative process to achieve public-benefit status and associated tax benefits; 3) subsidies to address rising energy costs extended to the civil society sector; and 4) favourable legal changes to strengthening the voluntary involvement of citizens and respective organisations.<sup>96</sup>

On the contrary, in **Hungary**, there are no tax benefits for private persons who donate. However, if companies donate to CSOs with public benefit status, they may decrease their corporate tax base by 20 per cent of the donation). Nevertheless, in 2023, both the amount collected from the assigned one per cent of income taxes (available since 1997) and the number of taxpayers using this option grew significantly, by approximately 26 per cent compared to 2022 (total amount HUF 15.3 billion, €40 million, number of taxpayers 1.8 million).<sup>97</sup>

An additional factor affecting the financial viability of the sector is the cost-of-living crisis that led to an exponential increase of fixed costs for the running of organisations. In most countries, with few notable exceptions like **Austria**, government subsidies did not extend to civil society organisations. In **Latvia**, while the revenues of the sector have increased, the overall expenditures remain higher.

## Controlling NGOs through funding policies

In our previous reports, we documented how governments have used funding policies in an attempt to curtail and control the work of CSOs in some countries. The most notable cases documented were

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<sup>94</sup> **The Strategy for the cooperation of the Public Administration with NGOs for the years 2021 to 2030** was approved by the Czech government on 12 July 2021:

<https://vlada.gov.cz/cz/ppov/rnno/aktuality/vlada-schvalila-strategii-spoluprace-verejne-spravy-s-nestatnimi-neziskovymi-organizacemi-na-leta-2021-az-2030-189691/> and <https://vlada.gov.cz/assets/ppov/rnno/dokumenty/BROZURA-FINAL-S-PRILOHAMI.pdf>

<sup>95</sup> **The Act No. 586/1992 Coll., on Income Taxes.**

<sup>96</sup> **Parlament Österreich (14 June 2023). *Freiwilligengesetz, Änderung (2085 d.B.)***. Retrieved 3 January 2024, from: <https://www.parlament.gv.at/gegenstand/XXVII/I/2085>

<sup>97</sup> <https://www.nonprofit.hu/hirek/Nagy-meglepetesek-a-2023-as-1-felajanlas-teren-novekvo-osszegek-novekvo-felajanlasok-uj-szereplok>

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**Hungary** and **Poland**, through centralised and politically-controlled institutions disbursing funding for civil society. The lack of transparency in the distribution of funding remains an ongoing and major challenge in these countries. As a result, civil society continues to be characterised by an abundance of funding of politically affiliated organisations on the one hand, and “starving” organisations, particularly those in rural areas, on the other.

Nevertheless, the use of politically-motivated funding cuts to censor or control NGOs has emerged in other countries. The FRA civic space survey data for 2023 shows that 33 per cent of respondents “often” or “sometimes” faced this type of threat and attacks. For example, in **France**, during a hearing at the Senate about the deployment of excessive police violence during a public protest, Minister of the Interior Darmanin made public remarks questioning the public subsidies allocated to a human rights organisation monitoring police actions during demonstrations, suggesting they could be threatened by its watchdog activities.<sup>98</sup> The French Separatism Law has broadened the grounds for controlling organisations through funding policies, with several organisations faced with the question of self-censorship or having had their public funding withdrawn.

In **Germany**, the tax law on public benefit organisations continues to remain a threat to the political activity of organisations, creating a chilling effect on NGOs from speaking out on social justice issues. In addition, in the context of the escalation of violence in Israel and Palestine, there have been several cases of curtailing free expression by education and cultural institutions. Between 7 October 2023 and 31 January 2024, the ELSC recorded 139 instances of cultural stifling in Germany, including 8 instances where threats of defunding were made for expressing views on Palestine.<sup>99</sup> In one example, the bank account of Jewish organisation *Jüdische Stimme* was frozen by the state-owned bank.<sup>100</sup>

### Discrimination in access to funding

Funding challenges remain exacerbated for CSOs working with marginalised and excluded groups. For example, in **Greece**, the government has delayed the continuation of some CSO work programmes and the renewals of contracts and payments, which resulted in *Metadrasi*, an organisation providing interpretation services for migrants and refugees, reducing its interpretation services by 80 per cent. In **Denmark**, the Finance Bill has resulted in funding cuts for CSOs advocating for LGBTQI+ rights. The municipality of Copenhagen did not extend the grant of *Normstormerne*, an

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<sup>98</sup> <https://civicspacewatch.eu/france-police-clash-with-environmental-activists-in-sainte-soline/>

<sup>99</sup> <https://civic-forum.eu/wp-content/uploads/2024/04/ECF-Rule-of-Law-Submission-Repeated-repressions-of-Palestine-solidarity.pdf>

<sup>100</sup> <https://www.aljazeera.com/news/2024/4/1/we-jews-are-just-arrested-palestinians-are-beaten-german-protesters>

organisation offering educational processes on gender identity, norms, and LGBTQI+ rights, in next year's municipal budget. In **France**, as part of a recent debate on the Budget Bill for 2024<sup>101</sup>, organisations that provide assistance to migrants and refugees were threatened with funding cuts. Organisations protecting the rights of transgender people and sex workers have faced significant challenges accessing funding across Europe.<sup>102</sup>

### **Bureaucracy and project funding keeps civil society in a starvation cycle**

Across Europe, CSOs continue to face a growing challenge of heightened administrative demands, including inflexible reporting and budgetary adjustments, which consume significant human and financial resources and detract from the effective planning and execution of program initiatives. Funding is insufficient to sustain the operational functions of these organisations. The primary issue underlying the financial instability and sustainability of civil society is the absence of long-term programs tailored to support these organisations. All over Europe (and beyond), a combination of myths— such as that nonprofits should cost very little to run, and that all funding must be project-restricted and allocated to outputs and activities – keep civil society in a “**starvation cycle**”, which reduces their financial health.<sup>103</sup> When asked what changes in funding framework would be most relevant for their organisations, respondents to the FRA civic survey mentioned unrestricted core funding (58.4 per cent), longer funding cycles (45.5 per cent), higher allocation of salaries (25.7 per cent) and less complicated reporting obligations (20.3 per cent).

On a positive note, there is a growing awareness among private funders about how funding practices significantly impact on the power, voice, resilience and creativity of grantees, especially civil society organisations and social movements. Private donors are beginning to recognise the need to look into new funding models which shift the power to civil society. This includes providing core support instead of project funding; focusing on outcome instead of output; trust-based philanthropy and participatory grantmaking. While such practices have mostly been limited to the private sector, the

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<sup>101</sup> **TF1 Info. (2023) 'Eric Ciotti veut diminuer de moitié les subventions allouées par l'État aux associations venant en aide aux réfugiés,'** <https://www.tf1info.fr/politique/eric-ciotti-veut-diminuer-de-moitie-les-subventions-allouees-par-l-etat-aux-associations-venant-en-aide-aux-refugies-2274135.html>

<sup>102</sup> **Interview with TGEU and ESWA**

<sup>103</sup> <https://humentum.org/blog-media/new-findings-show-how-funders-need-to-break-the-ngo-starvation-cycle/>



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Active Citizens Fund by the EEA and Norway Grants has experimented with some of these. For example, in Latvia a new organisational grant call has been piloted to test unrestricted core funding. Through this approach, organisations are not required to predict and plan specific activities and detail budgets over several months. Instead, funding is guided by the organisation's action plan or strategy and through mutual trust in its integrity and professionalism. Much greater strategic coordination and exchange of practices is needed between public and private donors.

### CERV: what needs to be strengthened?

European funding is an important source of support for civil society, the most valuable being the European Social Funds, Erasmus Programme and the Citizens, Equality, Rights and Values Programme (CERV). In particular, the CERV aims to address the general lack of national public funding for civil society organisations or projects working on human rights, democracy, the rule of law, transparency and similar topics relevant for the functioning of a democratic society. The system of **national intermediaries**, which distributes funding at national level, is an important innovation towards decentralised access to funding at the national level, enabling grassroots organisations – including in rural and remote areas – to access European funding. This helps to overcome politicised and arbitrary disbursement of funding from certain member states. It is fundamental to ensure this programme continues and the budget is at least sustained, or increased, as the challenges to rights and values in Europe are not going to subside in the near future.

Nevertheless, there are important challenges and limitations that need to be overcome in order for this measure to meet its full potential and nurture the sector.

Firstly, as explained above, **core unrestricted funding** aimed at sustaining and developing the operational capacities of organisations for multiple years is crucial for flexibility and adaptability. Currently, this support is provided by a four-year Framework Partnership Agreements (FPA). However, the FPAs are organised as project grants through action-oriented “work packages” and “deliverables”, with a yearly application and reporting cycle. This approach is counterproductive, costly and resource-consuming, and it is challenging to reflect organisational needs while following the logic of the application. This structure should be reconsidered, through dialogue with civil society and taking stock of the lessons learned from the Active Citizens Fund pilots.

Secondly, **the administrative burden and complexity of the application and reporting procedures** are greater for EU funding, including the CERV, compared to national and private funding. With regards to the CERV operating grants programme, the first half of the year must be dedicated to periodic reporting for the year N-1, ongoing reporting for the year N and application for the year N+1. This exacerbates existing challenges that keep civil society in the starvation cycle. Additionally, these funds are only accessible to experienced NGOs with strong infrastructure to apply for and manage such complex procedures, de facto excluding many organisations in Europe. Organisations led by

excluded groups such as religious minorities, migrants and youth are disadvantaged, given that they tend to rely on volunteers.

The system of intermediaries under the **Union Values' strand** is designed to reduce these barriers by requiring regranting organisations to shoulder the administrative burden and simplifying the procedures for small grantees. However, it therefore places a great burden on intermediary organisations, which are required to take over the responsibilities that are normally assumed by the European Commission including the selection of projects, monitoring, and reporting. This is particularly the case when 1) assessing potential conflict of interests, 2) detecting and preventing irregularities and fraud, and 3) detecting and remedying reputational risks, especially the “non-respect of EU values by the member organisation”. Additionally, the system requires regranting organisations to carry out rather invasive inquiries to comply with the requirements of the due diligence process.<sup>104</sup> The requirement regarding the “non-respect of EU values” is particularly concerning as it is vague and therefore leaves room for discretionary interpretation of what “European values” means. Organisations that are critical of the authorities and European policies, as well as those led by excluded groups, are particularly vulnerable to these arbitrary interpretations, as has been witnessed in some member states such as France, with regards to the respect of “republican values”.

Thirdly, to ensure the success of the CERV, it is fundamental that the funding must be accessible for CSOs advocating for excluded and marginalised groups. This requires an intersectional approach in the preparation of calls for applications, selection and evaluation processes. To date, the process ensures strong gender mainstreaming but does not use an intersectional lens.

Other weaknesses of the programme include the high co-funding requirement and unrealistic unit costs.

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<sup>104</sup> **Information from the ENAR Internal briefing on the European Commission re-granting scheme.**

# The way forward: Recommendations

Promoting a thriving European civic space requires a shared commitment of European institutions and member states. In order to do so and respond to the challenges and gaps described above, European institutions should launch a **proactive European strategy towards open civic space and resilient civil society**. The European Civil Society Strategy should give genuine political recognition to the crucial role played by CSOs in giving substance to EU's democratic values, which should drive all EU policies, not just those on democracy and fundamental rights. Additionally, the strategy should set a long-term vision on how to develop European civil society and expand civic space.

The **Commission Vice President responsible for civic space and dialogue with civil society** should have appropriate means to oversee the implementation of the strategy at the European and national level, ensuring coherence between EU actions that aim to expand civic space, and enabling civil society participation in different policy areas. It should also include proactive diplomatic support to civic actors under pressure and timely follow-up on civil society complaints on attacks, using the public and diplomatic means at their disposal, in dialogue with civil society organisations. The European Civil Society Strategy should include the pillars outlined below, which were developed by civil society actors from across Europe as well as donors and representatives of European and international institutions in a two-day participatory process.

The following sections build on these collective civil society proposals and recommendations in four key areas of EU action.<sup>105</sup>

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<sup>105</sup> These include **CSO joint statement Civil Society on the Frontline - 5 points for EU action 2019-2024 (2019)**: <https://civilsocietyeurope.eu/wp-content/uploads/2019/08/CIVIL-SOCIETY-ON-THE-FRONTLINE-2019-FINAL.pdf> ; **Recommendations for a Comprehensive European Policy and Strategy on Civil Society (2020)**: <https://www.environmentalpartnership.org/environmentalpartnership.org/files/89/897c5fe9-0f5d-45ad-a3ff-0a2196fbc2fa.pdf>; **final output of the Civil society convention for the future of Europe (2022)**: <https://civilsocietyeurope.eu/civil-society-convention-on-the-future-of-europe/thematic-clusters/> ; **Study on The implications of the COVID-19 pandemic on fundamental rights and civic space (2022)**: <https://www.eesc.europa.eu/it/our-work/publications-other-work/publications/implications-covid-19-pandemic-fundamental-rights-and-civic-space> ; **the final report of the Conference on the Future of Europe in the**

# 1. Enable civil society to carry out its democratic mission

The strategy should define civil society at the European level and set political priorities to develop its capacities and support it when facing attacks. The strategy and the definition of civil society should be grounded on Articles 2 and 11 of the TEU and embedded in international human rights standards, recognising the diversity of not-for-profit actors in terms of structures, modus operandi, scope and actions. It should also identify civil society organisations as key actors for European democracy, resilient societies, a just green and digital transition and for the European social economy.

The **European rule of law cycle** should contribute to an enabling environment at the national level by:

- 🔍 Monitoring, documenting and analysing challenges faced by civil society in a fully-fledged, stand-alone pillar on the enabling environment for civil society and human rights defenders<sup>106</sup>. The deficiencies and obstacles to a free and vibrant civic space identified in the annual Rule of Law Reports and the FRA civic space reports should be addressed by putting forward concrete country recommendations with targets and deadlines, as well as European policies in relevant areas.
- 🔍 Monitoring member states' implementation of the European Commission's recommendations on civic participation and the European Council's conclusions on civic space. This should include monitoring the adoption of dedicated action plans, or equivalent initiatives for fostering a safe and enabling civic space and effective participation of civil society organisations.

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**chapter on European democracy (2022):** [https://wayback.archive-it.org/12090/20220915201021/https://prod-cofe-platform.s3.eu-central-1.amazonaws.com/2po250fn174z62m8g8c9ya9e62m7?response-content-disposition=inline%3B%20filename%3D%22Book\\_CoFE\\_Final\\_Report\\_EN\\_full.pdf%22%3B%20filename%2A%3DUTF-8%27%27Book\\_CoFE\\_Final\\_Report\\_EN\\_full.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA3LJJXGZPDFYVOW5V%2F20220915%2F2Feu-central-1%2Fs3%2Faws4\\_request&X-Amz-Date=20220915T200910Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=9da6e64b707df344c8772d076bc07e818cd0e1e0b662480f30d2f367446042e8](https://wayback.archive-it.org/12090/20220915201021/https://prod-cofe-platform.s3.eu-central-1.amazonaws.com/2po250fn174z62m8g8c9ya9e62m7?response-content-disposition=inline%3B%20filename%3D%22Book_CoFE_Final_Report_EN_full.pdf%22%3B%20filename%2A%3DUTF-8%27%27Book_CoFE_Final_Report_EN_full.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA3LJJXGZPDFYVOW5V%2F20220915%2F2Feu-central-1%2Fs3%2Faws4_request&X-Amz-Date=20220915T200910Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=9da6e64b707df344c8772d076bc07e818cd0e1e0b662480f30d2f367446042e8), Recharging Advocacy for Rights in Europe (RARE)'s document on "an European strategy for civil society: recognition, inclusion, protection": [RARE\\_Policy\\_Paper\\_for\\_Brussels\\_final.docx \(stiftung-mercator.de\)](https://www.stiftung-mercator.de/en/publications/research-and-policy-papers/rare-policy-paper-for-brussels-final); Civil Liberties Union for Europe's "Bringing human rights and Article 2 values to life: the roles, challenges and solutions for civil society", How can we enable, protect and expand Europe's civic space, to strengthen democracy, social and environmental justice? Recommendations for the European Commission (2023): <https://civic-forum.eu/wp-content/uploads/2023/02/Recommendations-European-Convening-on-civic-space.pdf>.

<sup>106</sup> see the European Parliament draft report

[https://www.europarl.europa.eu/doceo/document/LIBE-PR-704642\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/LIBE-PR-704642_EN.pdf)

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- 🔍 Creating a permanent alert mechanism which constantly feeds into the European Commission's European Rule of Law mechanism, allowing for a fast response. Such an alert mechanism should lead to a rapid (re)assessment of the situation, allowing for timely and concrete reaction at the EU level, such as recommendations, dialogue and sanctions.
- 🔍 Ensuring NHRIs comply with the Paris Agreements and have appropriate resources. It is a positive step that the Rule of Law Report addresses specific recommendations to member states in this sense, and it will need to lead to enforcement measures if they remain unaddressed.

The European Commission should **ensure that European laws and policies are coherent with the aim of securing an enabling space for civil society and do not lead to negative side effects** related to their implementation. This requires:

- 🔍 Systematically involving the Fundamental Rights Agency in structured ex-ante fundamental rights impact assessments of all EU policies. This should involve the intersectional collection of evidence from a broad range of stakeholders, particularly from excluded communities, including migrant and racialised communities. If CSOs are regulated or affected by EU policies directly or indirectly, the European Commission should ensure that these policies are grounded in international human rights standards;
- 🔍 The EU should review all EU legislation and policy – as well as related national transpositions - regarding immigration, organised crime, anti-money laundering and counter-terrorism for its impact on the rights of migrants, racialised communities and human rights defenders. Where such instances are identified, the European Commission should provide remedies, such as through appropriate guidelines on how to interpret EU law (especially in the area of money laundering and terrorist financing) and ad hoc exemptions. The European Commission should repeal the proposed directive which aims to “introduce common transparency and accountability standards in the internal market for interest representation activities carried out on behalf of third countries” and the new Migration Pact.
- 🔍 The EU institutions must address loopholes in recent legislation, such as the AI Act and the EU Media Freedom Act, to prevent member states from exploiting national security exemptions and fundamental rights safeguards to target civic actors.




## 2. Protect civil society and human rights defenders against attacks

The European institutions and member states must step up their efforts to ensure the protection of civil society from harassment, intimidation and attacks. It is crucial that such efforts are grounded in an intersectional analysis and adapt to the needs of the specific groups that require protection.



Efforts to protect specific groups, such as racialised communities and LGBTIQ+ individuals, should integrate the need to support their organisations and take into account the specific challenges that activists from these groups face for their human rights actions.

The EU institutions should:

-  Adopt **guidelines for the protection of civil society and human rights defenders** based on the EU External Action Service's Guidelines on Human Rights Defenders and the recommendation on the protection, safety and empowerment of journalists. In particular, building on the anti-SLAPP directive and recommendations, procedural safeguards to grant an early dismissal of manifestly unfounded court proceedings against public participation should be extended to cases of criminalisation of human rights actions. They should also aim to provide other remedies against abusive court proceedings criminalising the defence of human rights, including requiring claimants to bear all the costs of the proceedings, providing compensation for damages as a result of abusive court proceedings, and imposing effective, proportionate and dissuasive penalties on the party who initiated abusive court proceedings. They should also explicitly prohibit any form of intimidation or harassment directed at civic actors through digital means and technologies. The use of spyware to monitor the communications of rights defenders, activists, civil society actors, lawyers, journalists and their sources should be prohibited in the EU.
-  Support the **creation of national civil society protection hubs or an EU mechanism to protect civil society and human rights defenders**, which should be built on the example of the existing external EU human rights defenders' mechanism [protectdefenders.eu](https://protectdefenders.eu) to support civil society abroad. The protection mechanism or hubs should be established by consortiums of diverse civil society organisations<sup>107</sup> and NHRIs. A mechanism should enable rapid response to support human rights defenders (HRDs) that face immediate risk. A 24/7 hotline, run by independent civil society organisations on behalf of and financed by the EU institutions, could provide a wide range of measures, including legal representation, medical costs, protection measures, communication and psychological support, and relocation. It is crucial that this action, whether through a mechanism or protection hubs, is completely independent from interference from member states and EU institutions and not subject to a restrictive understanding of who can benefit from such protection on the basis of vague notions of "national security" or "European values".
-  Support the establishment of an **early warning mechanism** building on the projects piloted under the CERV grants. The EU institutions should endorse the mechanisms developed by civil society and adequately respond to the alerts received. On the basis of such alerts, EU institutions should engage with member states requesting a **public reaction** to complaints registered on such a platform, explaining measures adopted to address the complaints. Additionally EU institutions, and in particular the **Commission Vice President responsible for civic space and dialogue with civil society**, should provide proactive support of civic actors under pressure and timely follow-up to civil society complaints registered on the platform, via public




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<sup>107</sup> See opinion 5, **PROTECTING CIVIC SPACE IN THE EU, FRA 2021**.

and diplomatic means at their disposal (such as communications, country missions, public statements, and infringement procedures) in dialogue with civil society organisations.

### 3. Foster real dialogue and meaningful participation

European civil dialogue is an essential element of European participatory democracy, which is distinct from, but complementary to, forms of citizen engagement. Beyond consultations, **civil dialogue should be recognised and organised on an equal footing to social dialogue in EU policy-making, in all areas of EU action and along all policy cycles. The European institutions should adopt a civil dialogue agreement to ensure structured participation of civil society in all EU policy-making processes.**<sup>108</sup> This should include:

-  **Co-programming<sup>109</sup> and participatory design of public policies:** Civil society should be involved in the initiation of legislation, including identifying which needs should be addressed and what are the appropriate policy solutions, and in the preparation of the European Commission work programme. Such involvement is already happening at the national level through supervisory committees involving civil society organisations, among other partners.<sup>110</sup> Civil society should also be involved throughout the policy cycle, including in the design, implementation and assessment of policy. For this purpose, permanent civil dialogue structures should be established in each European Commission DG, following the example of positive practices in DG EMPL, DG Trade and DG AGRI. One member of the cabinet of the President of the European Commission should be responsible for cross-sectoral dialogue, and there should be a dedicated unit within the Secretariat General coordinating the civil society (or civil dialogue) units within each DG and reporting to the Commission President and Vice President in charge of civic space and civil dialogue.
-  **Sectoral dialogue:** The Commission should engage in dialogue with civil society before submitting policy proposals on the possible direction of Union action and on the content of the envisaged proposal, as is the case for social dialogue, as well as the feasibility and impact assessment.
-  **Cross-sectoral dialogue:** The EU should establish an annual summit enabling civil society to contribute to the political dialogue on the direction of EU action and policies, in the context, for example, of the State of the Union.

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<sup>108</sup> See opinion 4, PROTECTING CIVIC SPACE IN THE EU, FRA 2021.

<sup>109</sup> See, for example, coprogrammazione and coprogettazione in Italy:

<https://www.cantiereterzosettore.it/la-co-programmazione/>

<sup>110</sup> Following Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0240>

- 🔍 **Interinstitutional coordination on the implementation of Article 11.2 TEU:** Permanent civil dialogue structures should also be established in the European Parliament and European Council.

The civil dialogue agreement should clearly define the scope, levels and phases of the European civil dialogue as well as instruments and outcomes.

## **4. Build the resilience of the civic sector through truly empowering funding policies**

Truly empowering funding policies aim to shift the power to communities and those representing them, to ensure they respond to and meet real needs. EU funding policies for civil society should embed human rights grant-making principles<sup>111</sup> and learn from other funders' best practices such as trust-based philanthropy<sup>112</sup>, "funding for real change"<sup>113</sup>, and participative grant making<sup>114</sup> to ensure real empowerment and strengthening of civil society. The following recommendations should be embedded in funding for civil society, particularly the **CERV programme**:

- 🔍 Develop inclusive and participatory funding and budgeting:
  - Negotiations on the multiannual financial framework and the definition of key funding programmes at the EU and national levels, and towards third countries, should include civil society through structured dialogue.
  - Funding policies, including thematic priorities, accessibility, reporting and evaluation should be designed together with civil society.
  - A bi-annual structured dialogue should be put in place between relevant European Commission DGs and beneficiaries of EU funding, who should have a say on the agenda of the meetings, in order to provide space for feedback and adjustments of the funding programmes (i.e. in face of crises, inflation...). Best practices of such dialogues are already taking place through the Humanitarian Partnership Watch Group between the DG ECHO of the European Commission and humanitarian CSOs<sup>115</sup>, as well as through the Programming Committee on Youth at the Council of Europe level.<sup>116</sup>
- 🔍 Reduce the administrative burden and cost of applying and reporting. Application procedures should be simplified, for instance by introducing 2-step applications and differentiated co-funding levels and administrative procedures based on the type of applicants and the size of grants. Written reporting should be simplified, and institutions should invest in evaluation

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<sup>111</sup> <https://www.hrfn.org/wp-content/uploads/2016/11/Principles-English-Sept-2020.pdf>

<sup>112</sup> <https://www.trustbasedphilanthropy.org/>

<sup>113</sup> <https://www.fundingforrealchange.com/>

<sup>114</sup> [https://okotars.hu/sites/default/files/epa\\_grantmaking\\_final\\_web.pdf](https://okotars.hu/sites/default/files/epa_grantmaking_final_web.pdf)

<sup>115</sup> <https://voiceeu.org/humanitarian-partnership-watch-group>

<sup>116</sup> <https://www.coe.int/en/web/youth/programming-committee>

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approaches focused on dialogue and learning. The level of administrative procedures required should be proportionate to the amount funded and the annual budget of the organisation.

- 🔍 Replicate the "cascading grants" model of regranting through national CSO intermediaries beyond the CERV, to other EU funding programmes, such as the structural funds, in order to overcome government interference.
- 🔍 Support organisational development, fair salaries (including by rising personnels costs in project funding) and good working conditions (including eligibility of sick and maternal payments, severance and other payments if necessary) so that self-care and community care are at the heart of internal working cultures.<sup>117</sup>
- 🔍 Cover the full and fair costs of administration and financial management, including in project grants (at least 20% overheads), and reduce the co-funding rate.
- 🔍 Move towards truly multi-annual, unrestrictive core funding practices<sup>118</sup> by overcoming the yearly application and reporting cycle for multiannual funding, which is counterproductive for multiyear commitments, costly and resource-consuming.
- 🔍 Ensure thematic priorities and funded activities cover civil society's needs, including services for the protection and care of activists (e.g. access to psychologists, legal costs, and training on digital, physical and psychological safety,) networking and coalition building, and strategic litigation.
- 🔍 Support in crisis situations through ongoing emergency grants.
- 🔍 Embed intersectionality in the preparation of calls for applications, selection and evaluation processes. For example, the selection of project evaluators should take into account the need to ensure and foster a diversity of experiences, with a particular preference for evaluators who have lived experience on the topic being addressed and different types of discrimination which the CERV aims to eradicate.

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<sup>117</sup> <https://www.hrfn.org/wp-content/uploads/2016/11/Principles-English-Sept-2020.pdf>

<sup>118</sup>

[https://static1.squarespace.com/static/607452f8ad01dc4dd54fc41f/t/629e7f6e63704d64040cc554/1654554478550/6+Grantmaking+Practices+of+TBP\\_June+2022.pdf](https://static1.squarespace.com/static/607452f8ad01dc4dd54fc41f/t/629e7f6e63704d64040cc554/1654554478550/6+Grantmaking+Practices+of+TBP_June+2022.pdf)





## Civic Space Report 2024

# AUSTRIA

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# Key trends

- 🔍 Significant improvement for the regulatory environment for CSOs but civil dialogue mechanism and participation processes must be systematised.
- 🔍 Climate activists - in particular the group Letzte Generation - face legal and political pressure.
- 🔍 Independent journalism is at risk as more and more media outlets struggle financially.

# Summary

Civic space continues to be rated as 'Open' in Austria.<sup>119</sup> In its 2023 Rule of Law report the European Commission recommended that the government "Advance with the reform on access to official information taking into account the European standards on access to official documents."<sup>120</sup> In early 2024 the Austrian government took a first step and passed the *Freedom of Information Act*, however, monitoring the implementation of the *Freedom of Information Act* remains crucial.

In 2023, positive legal developments for the rule of law in Austria were reported. Some important laws to strengthen civil society, which had been negotiated between civil society representatives and the government for years, were finally passed. These include the comprehensive expansion of tax deductibility for donations to all non-profit organisations, a strengthening of voluntary involvement and respective initiatives, and the expansion of government subsidies as a response to rising energy costs. It must be noted that further progress in terms of systematic and structured participation processes for civil society, including civil dialogue between the sector and governing bodies is

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<sup>119</sup> Civicus Monitor (2023). *Austria*. Retrieved 29 February 2024 from: <https://monitor.civicus.org/country/austria/>

<sup>120</sup> European Commission (2023). *2023 Rule of Law Report*. Retrieved 29 February 2024 from: [https://commission.europa.eu/document/download/8f5af879-8756-44af-9641-2c07310a2426\\_en?filename=46\\_1\\_52626\\_coun\\_chap\\_austria\\_en.pdf](https://commission.europa.eu/document/download/8f5af879-8756-44af-9641-2c07310a2426_en?filename=46_1_52626_coun_chap_austria_en.pdf)

essential to ensure a resilient future. In addition, some civil society groups have experienced increased political pressure and primarily include informal organisations and activists promoting climate action.

# Institutional, political and socio-economic landscape

2023 saw a continuation of the coalition between the centre-right People's Party (ÖVP) and The Green Party (*Die Grünen*), led by Chancellor Karl Nehammer (ÖVP) and Vice-Chancellor Werner Kogler (*Die Grünen*). The current government programme originated in early 2020 and outlines comprehensive plans in favour of civil society, including funding, participation, and other framework conditions.<sup>121</sup> With new and ongoing crises and challenges – from COVID-19, wars in Europe and beyond to climate change and high inflation – the importance of civil society organisations (CSOs) has become even more evident.

A rather stable Austrian political landscape resulted in enhanced dialogue with stakeholders and some major legal improvements for the Third Sector. These include a reform of tax rules for non-profit organisations, subsidies to mitigate rising energy costs, the strengthening of voluntary organisations and a reform of the public service media. The Freedom of Information Act has finally borne fruit and was passed in early 2024. However, its implementation will have to be monitored closely.

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<sup>121</sup> Bundeskanzleramt (2020). *Aus Verantwortung für Österreich. Regierungsprogramm 2020-2040*. Retrieved 3 January 2024, from <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/die-bundesregierung/regierungsdokumente.html>

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This positive development goes hand in hand with an improved opinion of the political system among the Austrian public, the perception of being sufficiently represented, and with increased trust in institutions, as found in the *Demokratiemonitor 2023*. *Demokratiemonitor* is a representative nationwide survey that assesses the population's perception towards democracy in general and towards the political system in particular. While this data signals a positive turn, the overall figures remain comparably low: only 39 per cent of people think that the political system functions well and only 32 per cent trust the government. In addition, positive developments are only evident among the economic middle and upper thirds of the population. On the contrary, the approval towards institutions among people in the remaining third has further decreased, to the extent that authors of the survey speak of an increasingly radicalised and anti-democratic part of the population. The authors claim that trust in institutions decreases with the impression of not being represented. They observe that this impression is particularly common among people who experience low social status and less public acknowledgment as well as among those who lack financial resources.<sup>122</sup> This radicalisation of certain parts of the population together with a lack of trust in democracy and political institutions is certainly one of the major current challenges to democracy in Austria.<sup>123</sup>

In 2023, rights and freedoms could largely be exercised without religious, gender, LGBTQIA+, or ethnic discrimination. However, combating structural and institutional racism continues to be crucial. As an example, ZARA - an Austrian NGO working on anti-racism in Austria - reports 1,479 notified cases of anti-racism in 2022. While the majority (68 %) occurred online, offences were also experienced in public space, (public) institutions, by the police, in media and political environments.<sup>124</sup> Another NGO, *Dokustelle Austria*, documents discrimination against Muslims and reported 1,324 cases in 2022.<sup>125</sup> Both organisations claim stagnating overall reported numbers but an increase in online cases. Both organisations urge for implementation of a national action plan against racism.

In addition, residence title and citizenship still impact the access to various rights, such as the right to vote, which depends on Austrian citizenship. For example, in Vienna, one third of residents have no right to vote in national elections. This includes non-Austrian EU citizens, who can only vote in

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<sup>122</sup> **Demokratiemonitor (28 November 2023). *Demokratie in stürmischen Zeiten*. Retrieved 3 January 2024 from: [https://www.demokratiemonitor.at/wp-content/uploads/2023/11/2023\\_SORA-Pressunterlagen-DM-2023.pdf](https://www.demokratiemonitor.at/wp-content/uploads/2023/11/2023_SORA-Pressunterlagen-DM-2023.pdf)**

<sup>123</sup> **Demokratiemonitor (28 November 2023). *Demokratie in stürmischen Zeiten*. Retrieved 3 January 2024 from: [https://www.demokratiemonitor.at/wp-content/uploads/2023/11/2023\\_SORA-Pressunterlagen-DM-2023.pdf](https://www.demokratiemonitor.at/wp-content/uploads/2023/11/2023_SORA-Pressunterlagen-DM-2023.pdf)**

<sup>124</sup> **ZARA - Zivilcourage & Anti-Rassismus-Arbeit (2023). *Rassismus Report 2022*. Retrieved 29 February 2024 from: [https://migrant-integration.ec.europa.eu/system/files/2023-07/ZARA-Rassismus\\_Report\\_2022.pdf](https://migrant-integration.ec.europa.eu/system/files/2023-07/ZARA-Rassismus_Report_2022.pdf)**

<sup>125</sup> **Dokustelle (2023). *Antimuslimischer Rassismus Report 2022*. Retrieved 29 February 2024 from: [https://dokustelle.at/fileadmin/Dokuments/Reports/Report\\_2022/Dokustelle-Report-2022.pdf](https://dokustelle.at/fileadmin/Dokuments/Reports/Report_2022/Dokustelle-Report-2022.pdf)**

certain local elections.<sup>126</sup> Furthermore, asylum seekers and refugees are largely excluded from the labour market, increasingly lack adequate housing, and are often stigmatised in the public debate, which promotes societal polarisation.<sup>127</sup>

# Civic freedoms: regulatory environment and implementation

In Austria, civil society organisations are of great importance to political, cultural and economic development, and they positively contribute to many people's lives. In comparison to other countries, the legal framework conditions are rather NPO-friendly, as civil rights and democracy are relatively well-developed.<sup>128</sup> However, recent studies confirm that certain conditions for NPOs are largely dependent on the composition of the government and its stance towards civil society organisations.<sup>129</sup>

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<sup>126</sup> Stadt Wien (November 2023). *6. Wiener Integrationsmonitor 2023*. Retrieved 3 January 2024, from: <https://www.wien.gv.at/spezial/integrationsmonitor/gleichstellung-and-partizipation/fehlendes-wahlrecht-und-demokratiedefizit/>

<sup>127</sup> Amnesty International – Austria (20 June 2023). *Weltflüchtlingstag: Österreichische Regierung muss aufhören zu jammern und anfangen zu handeln*. Retrieved 3 January 2024 from: <https://www.amnesty.at/presse/weltfluechtlingstag-oesterreichische-regierung-muss-aufhoeren-zu-jammern-und-anfangen-zu-handeln/>

<sup>128</sup> More-Hollerweger, E., R. Simsa, G. Kainz, F. Neunteufl, R. Grasgruber-Kerl, and F. Wohlgemuth. 2014. *Civil Society Index – Rahmenbedingungen für die Zivilgesellschaft in Österreich*, pp 16. Wien: Kompetenzzentrum für Nonprofit Organisationen. Retrieved 3 January 2024, from: [https://www.gemeinnuetzig.at/wp-content/uploads/2017/06/civil\\_society\\_index\\_ra\\_juni\\_2014.pdf](https://www.gemeinnuetzig.at/wp-content/uploads/2017/06/civil_society_index_ra_juni_2014.pdf)

<sup>129</sup> Simsa, R. (2019). Civil Society Capture by Early Stage Autocrats in Well-Developed Democracies – The Case of Austria. *Nonprofit Policy Forum* 10(3). <https://doi.org/10.1515/npf-2019-0029>

# Freedom of association

The Austrian constitution guarantees the right to freedom of association. Freedom of association applies to natural persons and legal entities. An association, club or society is recognised as such if it is made up of two or more people with the objective of achieving a common, non-material goal. The registered office of the association has to be located inland. According to the Associations Act, an association may not be profit-oriented, and the association funds may only be used in pursuit of the association's original purpose (Vereinsgesetz 2002 - VerG).<sup>130</sup>

If an association wants to acquire public-benefit status and associated tax benefits for the purpose of the federal tax code (Bundesabgabenordnung - BAO), it has to pursue a public-benefit purpose and its statutes have to ensure that the association funds will be used exclusively for equal or similar non-profit purposes in the event of dissolution of the legal entity. According to Austrian lawyers and CSO representatives, establishing associations or aligning to another legal form is unproblematic in Austria. The legal framework for the establishment of associations, foundations, and other kinds of non-profit or non-governmental organisations with social, political, cultural or other aims is neither obstructive or restrictive.<sup>131</sup>

A reform of the respective law that entered into force on 1 January 2024 has facilitated administration of the public-benefit status, by reducing the waiting period from three years to one, and simplified procedures of independent auditors to confirm eligibility. As a result, the procedure will be more accessible and attractive to smaller NPOs when applying for public-benefit status, with a positive impact on their financial viability.<sup>132</sup>

In order to ensure independence, a recommendation for further improvement is to transfer the responsibility for maintaining the register of associations from the Federal Ministry of Internal Affairs to the courts (where the commercial register is already kept).

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<sup>130</sup> **Bundesgesetz über Vereine (Vereinsgesetz 2002 – VerG), BGBl. I 66/2002 idF I 211/2021. Retrieved 3 January 2024, from: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001917>**

<sup>131</sup> **More-Hollerweger, E., R. Simsa, G. Kainz, F. Neunteufl, R. Grasgruber-Kerl, and F. Wohlgemuth. 2014. *Civil Society Index – Rahmenbedingungen für die Zivilgesellschaft in Österreich*, pp 30. Wien: Kompetenzzentrum für Nonprofit Organisationen. Retrieved 3 January 2024, from: [https://www.gemeinnuetzig.at/wp-content/uploads/2017/06/civil\\_society\\_index\\_ra\\_juni\\_2014.pdf](https://www.gemeinnuetzig.at/wp-content/uploads/2017/06/civil_society_index_ra_juni_2014.pdf)**

<sup>132</sup> **Parlament Österreich (2023). *Gemeinnützigkeitsreformgesetz 2023 (299/ME)*. Retrieved 3 January 2024, from: <https://www.parlament.gv.at/gegenstand/XXVII/ME/299>**



## Freedom of peaceful assembly

In Austria, freedom of peaceful assembly is regulated by law in the “Versammlungsgesetz”<sup>133</sup>. In 2023, discussions regarding freedom of peaceful assembly primarily addressed climate group activities and pro-Palestine demonstrations.

As a result of the Hamas-Terror and the ongoing war in Gaza, demonstrations in solidarity with both Israeli and Palestinian people have taken place in several Austrian cities. While the authorities carried out individual assessments of each demonstration resulting in only a few demonstrations being banned, this gave rise to public argumentation.<sup>134 135</sup>

However, earlier in the year, police used pepper spray to disband a meeting of climate protesters at the European Gas Conference<sup>136</sup> and politicians posed threats of legal action against climate activists (see *Safe Space*).

In 2020, the government announced the establishment of an independent body to investigate allegations of abuse against police.<sup>137</sup> Although introduced in early 2023, the matter is still criticised by NGOs and needs further improvements. Major criticism concerns the independence of the body. As the body is located at the Federal Bureau of Anti-Corruption in the Interior Ministry, institutional, hierarchical and practical independence - as required by the ECtHR and other international institutions - cannot be guaranteed.<sup>138</sup>

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<sup>133</sup> **Versammlungsgesetz 1953, BGBl. 98/1953 idF BGBl. I 63/2017. Retrieved 3 January 2024, from:**

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

<sup>134</sup> **Pflügl, J. (9 October 2023). Polizei sah keinen Spielraum für Untersagung der Palästina-Demos. *DerStandard*. Retrieved 3 January 2024, from:**

<https://www.derstandard.at/story/3000000190324/polizei-sah-keinen-spielraum-fuer-untersagung-der-palaestina-demos>

<sup>135</sup> **APA, sino, red (12 October 2023). Mehr als 300 Anzeigen bei untersagter Pro-Palästina-Demo in Wien. *DerStandard*. Retrieved 3 Januar 2024, from:**

<https://www.derstandard.at/story/3000000190812/mehr-als-300-anzeigen-bei-untersagter-pro-palaestina-demo-in-wien>

<sup>136</sup> **Elton, C. (28 March 2023). *Vienna protests: 143 protestors detained at demonstration against European Gas Conference*, Euronews. Retrieved 3 January 2024, from:**

<https://www.euronews.com/green/2023/03/28/vienna-protests-143-protestors-detained-at-demonstration-against-european-gas-conference>

<sup>137</sup> **APA (4 January 2023). Versprochene unabhängige Beschwerdestelle zu Polizeigewalt bleibt ausständig. *DerStandard*. Retrieved 3 January 2024, from:**

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

<sup>138</sup> **Amnesty International - Austria (15 June 2023). *Polizeigewalt: Ermittlungsstelle im Ministerrat*. Retrieved 3 January 2023, from: <https://www.amnesty.at/news->**

# Freedom of expression

Freedom of expression is guaranteed in the European Convention on Human Rights, which was elevated to constitutional status in Austria in 1964.<sup>139</sup> Furthermore, the Media Law of 1981 provides the basis for free media in Austria.<sup>140</sup> However, media ownership remains highly concentrated and intertwined with Austrian politics. These strong links became apparent once again due to political scandals in 2019.

In comparison to many other European countries, the public-service broadcasting (ORF) enjoys a high market share.<sup>141</sup> A law concerning the ORF was amended in 2023 with major changes in terms of the organisations' income strategy. The new structure ensures long-term financing of the ORF - a first step towards financial independence from the government's funding.<sup>142</sup> In general, concerns about the ORF's independence remain. After the law was passed by the parliament, the Austrian Constitutional Court found that parts of the law were unconstitutional, in particular, the composition of the ORF's governance bodies.<sup>143</sup> The change of law is due in March 2025.<sup>144</sup> It is of utmost importance that the changes are implemented as soon as possible in order to ensure independence and the long-term financial stability of the ORF.

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[events/polizeigewalt-ermittlungsstelle-im-ministerrat-einige-verbesserungen-im-geaenderten-gesetz-doch-unabhaengigkeit-weiterhin-nicht-sichergestellt/](#)

<sup>139</sup> Konvention zum Schutze der Menschenrechte und Grundfreiheiten, BGBl 210/1958 idF III 171/2023. Retrieved 3 January 2024, from:

<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000308&Artikel=10&Paragraf=&Anlage=&Uebergangsrecht=>

<sup>140</sup> Bundesgesetz vom 12. Juni 1981 über die Presse und andere publizistische Medien (Mediengesetz – MedienG), BGBl. 314/1981 idF128/2023. Retrieved 3 January 2024, from:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000719>

<sup>141</sup> Trappel, F. (2023). Medien und Politik – ein Geben und Nehmen, in K. Praprotnik & F. Perlot (eds.), *Das Politische System Österreichs* (129-153). Wien: Böhlau Verlag.

<sup>142</sup> Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz, ORF-G). BGBl. 379/1984 idF 116/2023. Retrieved 3 January 2024, from:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>

<sup>143</sup> Wallnöfer, Isabell (10. October 2023). Der VfGH hebt das ORF-Gesetz auf. *Die Presse*. Retrieved 3 January 2024 from: <https://www.diepresse.com/17729627/der-vfgh-hebt-das-orf-gesetz-auf-was-fuer-eine-blamage>

<sup>144</sup> Verfassungsgerichtshof Österreich (10. October 2023). VfGH: Teile der Bestellung und Zusammensetzung von ORF- Stiftungs- und Publikumsrat sind verfassungswidrig. Retrieved 3 January 2023, from: [https://www.vfgh.gv.at/medien/ORF\\_Gesetz\\_Gremien.php](https://www.vfgh.gv.at/medien/ORF_Gesetz_Gremien.php)

Changing consumer habits and a lack of trust in established media outlets are currently challenging the media sector.<sup>145</sup> Rising costs due to high inflation in 2023, decreasing ad revenues and artificial intelligence prominence into the media's daily business, are further aspects that place established media outlets under pressure and result in austerity measures such as staff cuts.<sup>146</sup> With less money and staff, established media face challenges to obtain quality content and even struggle for existence. A loss of quality media would further increase media concentration and eventually impair freedom of expression.

In addition, the spread of fake news is a critical challenge to freedom of expression in Austria and beyond, particularly in the context of the upcoming elections in Austria and the EU.<sup>147</sup>

## Safe space

In 2023, non-profit organisations and civil society in general were able to act independently and enjoy comprehensive freedoms and frameworks to do so. However, some incidents confirm that even in an NPO-friendly environment, it is important to closely watch developments and identify grievances. Regarding safe space, the cases of human rights as well as climate activists facing legal threats and other hostilities remain a concern.

As an example of a Strategic Lawsuit Against Public Participation (SLAPP) a complaint was brought by the international organisation *International Centre for Migration Policy Development (ICMPD)* against the human rights organisation *SOS Balkanroute* and its founder, Petar Rosandić. ICMPD accused the NGO of damaging the Centre's reputation after the organisation criticised a newly constructed building within the existing Lipa Camp, a temporary reception centre camp in Bosnia and

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<sup>145</sup> Trappel, F. (2023). *Medien und Politik – ein Geben und Nehmen*, in K. Praprotnik & F. Perlot (eds.), *Das Politische System Österreichs* (129-153). Wien: Böhlau Verlag.

<sup>146</sup> Fidler, F. (20 September 2023). *Österreichs Medien vor heftigen Herbststürmen*. *DerStandard*. Retrieved 3 January 2024, from: <https://www.derstandard.at/story/3000000187597/oesterreichs-medien-vor-heftigen-herbststuermen>

<sup>147</sup> APA (5 November 2023). *EU vor Wahl besser gerüstet gegen Desinformation im Netz, Risiko bleibt*. *Der Standard*. Retrieved 3 January 2023, from: <https://www.derstandard.at/story/3000000193797/eu-vor-wahl-besser-geruestet-gegen-desinformation-im-netz-risiko-bleibt>

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Herzegovina, which is expected to function as a “deportation centre”.<sup>148</sup> On 18 July 2023, the Vienna Commercial Court dismissed the lawsuit.<sup>149</sup>

Examples of climate activists facing hostilities include a demonstration against the European Gas Conference and activities of the climate group *Letzte Generation Österreich* (Last Generation Austria):

In March 2023, police detained 143 people during a demonstration organised in Vienna against the European Gas Conference. The police used pepper spray to disperse the protesters<sup>150</sup>.

Members of the climate group *Letzte Generation Österreich* (Last Generation Austria) faced detentions and legal threats due to some actions of civil disobedience: One example is German activist Anja Windl who took part in “sticking” climate protests by glueing herself to roads to block traffic. Besides detentions she is the subject of legal proceedings that could see her deported from Austria.<sup>151</sup> Throughout the year, activists from the group continued a campaign of roadblock protests in Vienna and on other major routes.<sup>152</sup> Some parties suggested increasing the penalties and punishments for climate activists.<sup>153</sup> Investigations towards *Letzte Generation* with the claim of being

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<sup>148</sup> FronLine Defenders (18 July 2023), Austria: SOS Balkanroute and its chairman Petar Rosandić are facing a SLAPP case. Retrieved 29 February 2024 from: <https://www.frontlinedefenders.org/en/austria-sos-balkanroute-and-its-chairman-petar-rosandic-are-facing-a-slapp-case>

<sup>149</sup> Frontline Defenders (21 July 2023). *Lawsuit against the human rights organisation SOS Balkanroute and its founder Petar Rosandić dismissed*. Retrieved 3 January 2024, from: <https://www.frontlinedefenders.org/en/lawsuit-against-the-human-rights-organisation-sos-balkanroute-dismissed>

<sup>150</sup> Elton, C. (28 March 2023). Vienna protests: 143 protestors detained at demonstration against European Gas Conference, Euronews. Retrieved 3 January 2024, from: <https://www.euronews.com/green/2023/03/28/vienna-protests-143-protestors-detained-at-demonstration-against-european-gas-conference>

<sup>151</sup> Euronews (20 April 2023), Austria's 'Climate Shakira' has come up with a novel way to try and escape deportation, , <https://www.euronews.com/green/2023/04/20/meet-the-climate-shakira-who-could-be-deported-from-austria>

<sup>152</sup> Der Standard (24 November 2023), Landesgericht Wien weist Untersuchungshaft für Klimaaktivistin Anja Windl ab. Retrieved 29 February 2024 from: <https://www.derstandard.at/story/3000000196754/landesgericht-wien-prueft-untersuchungshaft-fuer-klimaaktivistin-anja-windl>

<sup>153</sup> ORF (11 August 2023), ÖVP-Vorschlag sieht Strafe für Klimaaktivisten vor, <https://orf.at/stories/3327189/>

a criminal association started in late 2023.<sup>154</sup> More than 300 legal procedures against Letzte Generation were reported in 2023.<sup>155</sup>

## Funding for civil society

Figures from 2020 show that the Third Sector comprises around 130,500 organisations and employs six per cent of all working Austrians over 14 years old and contributes three per cent of the GDP. Figures suggest a trend for a growing sector.<sup>156</sup>

The public sector plays a decisive role in the financing of CSOs. Slightly more than half of the income of organisations, with at least one employee, comes from performance-related payments from the public sector, another 16.5 percent comes from other public funding. There have been no major changes in the financing structure since these last numbers were published in 2013.<sup>157</sup>

In some areas of NGOS activities the high ratio of governmental funding together with a low systematic approach of political participation of civil society (see section on the right to participation) confirms the risk of dependence on the good-will of governing parties on local, regional or national level.

Donations are another important source of income for civil society organisations. Recently, Fundraising Verband Austria – the umbrella organisation for all organisations receiving donations in Austria – reported a record in donations and the largest increase in the history of Austria: In 2022,

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<sup>154</sup> **APA (4 December 2023), Ermittlungen gegen Letzte Generation wegen Bildung einer kriminellen Vereinigung. Der Standard. Retrieved 29 February 2024 from: <https://www.derstandard.at/story/3000000198058/ermittlungen-gegen-letzte-generation-wegen-krimineller-vereinigung>**

<sup>155</sup> **Angerer, S. (2024), Tausende Strafen über Aktivisten der “Letzten Generation” verhängt. Kurier. Retrieved 29 February 2024 from: <https://kurier.at/chronik/oesterreich/2500-straften-ueber-aktivisten-der-letzten-generation-verhaengt/402777961>**

<sup>156</sup> **Pennerstorfer, A., and Schneider, U. (2022). Der Nonprofit-Sektor in Österreich, in R. Simsa, M. Meyer, & C. Badelt (eds.), *Handbuch der Nonprofit-Organisationen. Strukturen und Management* (55-72). Stuttgart: Schäffer-Poeschel Verlag.**

<sup>157</sup> **Ibid**



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Austrians donated €1.1 billion. Reasons can be found primarily in a huge wave of solidarity with Ukraine.<sup>158</sup>

Good communication and exchange with the current government has led to major improvements for civil society organisations regarding financial viability in 2023, most importantly:

- 🔍 Amendments to tax law: As of 1 January 2024, all donations to non-profit organisations can be deducted from tax. Previously, the law excluded major fields of action like human rights, animal protection, education, sports or culture. This is seen as a huge success for the sector, as NPOs had advocated for the amendment of the law for decades.
- 🔍 Simplification of administrative process to achieve public-benefit status and associated tax benefits.
- 🔍 Subsidies to address rising energy costs: In previous years, the government provided financial subsidies regarding the energy crisis to a wide range of people and companies. However, it failed to reach most civil society organisations. In 2023, a new law that includes all non-profit organisations was passed and implementation is in process.
- 🔍 Amendment of the voluntary law: Strengthening of voluntary involvement of citizens and respective organisations in acknowledging their contributions financially and publicly and in determining long-term subsidies by law.<sup>159</sup>

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<sup>158</sup> Fundraising Verband Austria (2023). *2023 Spendenbericht*. Retrieved 3 January 2023, from: [https://www.fundraising.at/wp-content/uploads/2023/12/FVA\\_Spendenbericht\\_2023\\_FINAL.pdf](https://www.fundraising.at/wp-content/uploads/2023/12/FVA_Spendenbericht_2023_FINAL.pdf)

<sup>159</sup> Parlament Österreich (14 June 2023). *Freiwilligengesetz, Änderung (2085 d.B.)*. Retrieved 3 January 2024, from: <https://www.parlament.gv.at/gegenstand/XXVII/I/2085>

# Civil dialogue and the right to participation

A study by the Vienna University of Economics and Business finds that “CSOs in Austria are deeply involved in political decision-making. CSOs have engaged in dialogue and negotiations with the government in many areas and have often been involved in legislative processes. Further, they provide social services and in return, they receive large shares of their funding from public sources. The public sector thus plays an important role for CSOs, influencing their organisational and financial structures. CSOs are particularly active in social services, health care and education. Furthermore, federalism and self-governance of the nine federal provinces are reflected in civil society and there are both strong local and umbrella organisations at the federal level.”<sup>160</sup>

Nevertheless, a civil dialogue framework or civil dialogue legislation is lacking but needed to regulate and guide the involvement of civil society in policy-making. As a result, civil dialogue and most participation processes are not systematic but strongly vary depending on the culture and openness of the respective departments in ministries in charge. This creates a high risk of exclusion and financial shortcuts once the political landscape changes toward a less NPO-friendly environment, as was the case in the period of the Freedom Party (FPÖ) – People’s Party coalition until 2019.<sup>161</sup>

On the contrary, cooperation between decision-makers and NPOs experienced a peak in 2023. For the first time in history, the Austrian government invited representatives of Austrian non-profit and voluntary organisations to discuss framework conditions and necessary legislative changes for the sector during an official government summit. On 3 May 2023, promising talks were held between leaders of the Austrian government and representatives of civil society. Both representatives of the government and representatives of the non-profit and voluntary sector appreciated each other’s willingness to jointly strengthen civil society in Austria and to contribute to a better life for all. The

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<sup>160</sup> Simsa, R., Mayer, F., Muckenhuber, S., & Schweinschwaller, T. (2021). **Framework Conditions of Austria’s Civil**

**Society.** *Opuscula 153*. Berlin: Maecenata Institut für Philanthropie und Zivilgesellschaft. <https://www.ssoar.info/ssoar/handle/document/73928>

<sup>161</sup> Simsa, R. (2019). **Civil Society Capture by Early Stage Autocrats in Well-Developed Democracies – The Case of Austria.** *Nonprofit Policy Forum*. <https://doi.org/10.1515/npf-2019-0029>

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first results include above mentioned improvements concerning tax, subsidies, and voluntary services.

During the current period of governance, certain initiatives were launched to increase participation and dialogue with various stakeholders. One of the most prominent ones was the Climate Assembly (citizen assembly). From January to June 2022, 100 randomly selected citizens from all regions of Austria and from all parts of society formed the Climate Assembly to discuss actions needed for a climate-friendly future. They developed 93 proposals to actively shape the country's climate future together with experts.<sup>162</sup> In 2023, critics claimed that although many proposals were developed, only a few have been implemented so far.<sup>163</sup> This goes in line with overall complaints about a rather slow implementation of measures to combat climate change in Austria.<sup>164</sup>

The national elections coming up in 2024 may affect the dialogue and right to participation.

# Civil society resilience

Since the establishment of *Bündnis für Gemeinnützigkeit* – the umbrella organisation of non-profit and voluntary organisations in Austria – in 2022, civil society organisations, for the first time, speak with one voice. Its umbrella consists of more than 100 members ranging from small and local associations to large organisations like the Austrian branches of *Red Cross*, *Caritas*, *Amnesty International*, *WWF*, *Transparency International* or *Birdlife* and include sector-specific umbrella organisations such as *Sozialwirtschaft Österreich* and *arbeit plus* (social and health) or *Ökobüro* and *Umweltdachverband* (environment). Together they represent more than 3,000 Austrian civil society organisations. Members cover all areas – from the environment to human rights and inclusion, from culture to social issues, education and humanitarian aid. *Bündnis für Gemeinnützigkeit* is an

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<sup>162</sup> Klimarat (2022). Retrieved 3 January 2024, from: <https://klimarat.org/>

<sup>163</sup> Prager, A. (5 June 2023). Der Klimarat hat 93 Empfehlungen formuliert, umgesetzt ist bisher wenig. *DerStandard*. Retrieved 3 January 2024, from: <https://www.derstandard.at/story/3000000172694/93-empfehlungen-des-klimar>

<sup>164</sup> APA (16 September 2023). Klimaschutzgesetz bald 1000 Tag in Verzug. *Die Presse*. Retrieved 3 January 2024, from: <https://www.diepresse.com/16554384/klimaschutzgesetz-bald-1000-tage-in-verzug>

advocacy body that promotes general civil society matters and offers easy-access consulting services to the entire Third Sector.

In comparison to media<sup>165</sup> and politicians<sup>166</sup>, NPOs enjoy a very high level of public trust with organisations providing medical services enjoying the highest levels of trust while climate activists are on the very bottom of the trust scale.<sup>167</sup>

The establishment of Bündnis für Gemeinnützigkeit contributed to civil society's resilience. It is a major development to identify and aggregate the most pressing issues for civil society and to put it at the top of the government's agenda. As a result, the cooperation and networking within the Austrian civic sector increased in 2023.

# Recommendations

## Targeted recommendation:

🔍 Prioritise establishing and systematising structured civil dialogue to ensure open, inclusive, ongoing and transparent participation of civil society at all stages of the policy and decision-making processes

🔍 Ensure the efficient and consistent implementation of the Freedom of Information Act and thorough monitoring thereof.

<sup>165</sup> Klotz, J. (12 June 2023). *OGM/APA-Vertrauensindex Branchen Juni 2023*. Retrieved 3 January 2024, from: <https://www.ogm.at/2023/06/12/ogm-apa-vertrauensindex-branchen-juni-2023/>

<sup>166</sup> OGM/Bachmayer (7 December 2023). *OGM APA-Vertrauensindex PolitikerInnen Dezember 2023*. Retrieved 3 January 2024, from: <https://www.ogm.at/2023/12/07/ogm-apa-vertrauensindex-politikerinnen-dezember-2023/>

<sup>167</sup> OGM/Bachmayer (14 December 2023). *OGM/APA-Vertrauensindex NGOs*. Retrieved 3 January 2024, from: <https://www.ogm.at/2023/12/17/ogm-apa-vertrauensindex-ngos/>

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- 🔍 Amend the ORF-law in accordance with the ruling of the Austrian Court of Constitution to ensure independence of the Austrian public service broadcasting. In addition, take measures to secure a diverse and sustainable media landscape.
- 🔍 Refrain from harassing climate activists through legal and other means.



# About the author

Bündnis für Gemeinnützigkeit is the umbrella organisation of non-profit (NPOs) and voluntary organisations in Austria. Its 100+ members range from small and local associations to large organisations such as the Austrian branches of Red Cross, Caritas, Amnesty International, WWF, Transparency International or Birdlife and include sector-specific umbrella organisations such as Sozialwirtschaft Österreich and arbeit plus (social and health) or Ökobüro and Umweltdachverband (environment). Together, they represent more than 3,000 organisations. Members cover all areas of civil society – from the environment to human rights and inclusion, from culture to social issues, education, and humanitarian aid. Since 2022, Bündnis für Gemeinnützigkeit has been the advocacy body for all non-profit and voluntary organisations in Austria. It promotes general civil society matters and offers easy-access consulting services to the whole Third Sector.





## Civic Space Report 2024

# BULGARIA



BULGARIAN CENTER  
FOR NOT-FOR-PROFIT  
LAW



# Key trends

- 🔍 Foreign Agents Registration Act, similar to Russia's NGO law, promoted by far-right parties.
- 🔍 Restrictions on the right to protest for those showing solidarity with Palestine and for LGBTQI people.
- 🔍 The newly established Council for the Development of the Civil Society barely operational in 2023.

# Summary

Civic space is rated as narrowed<sup>168</sup> in Bulgaria. There were no recommendations on civic space in the EU Commission's Rule of Law report 2023<sup>169</sup>, although it noted concerns around a foreign agents law in 2023, the far-right Revival party resubmitted a Foreign Agents bill.

There were several concerning developments related to peaceful assembly, including, use of excessive force against protesters and banning of protests in particular against those expressing solidarity with Palestinian people. Civil society faced smear campaigns and Strategic Lawsuits against Public Participation (SLAPPs). LGBTIQ+ and women's rights groups were especially targeted by attacks, usually carried out by far-right groups.

While the registration process of civil society organisations became easier, civic actors did not have adequate access to policy-making processes as the newly established Council for Civil Society Development was barely operational in 2023. Insufficient state funding resulted in civil society' dependence on EU and private funding, however the sector struggled to access EU funding.

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<sup>168</sup> <https://monitor.civicus.org/country/bulgaria/>

<sup>169</sup> [https://commission.europa.eu/system/files/2023-07/10\\_1\\_52568\\_coun\\_chap\\_bulgaria\\_en.pdf](https://commission.europa.eu/system/files/2023-07/10_1_52568_coun_chap_bulgaria_en.pdf)

# Institutional, political and socio-economic landscape

In April 2023, Bulgaria had its fourth parliamentary election in a span of two years. Regrettably, these elections once again failed to yield a decisive majority. Consequently, an intense negotiation process ensued, culminating in the formation of a regular government. Interestingly, the prime minister and deputy prime minister positions were allocated to candidates from the runner-up and the winner of the election, respectively. Instead of forming a coalition in the traditional sense, the two parties opted for an unprecedented approach – a rotational arrangement for the roles of prime minister and deputy prime minister every nine months without a coalition agreement. As a result, Bulgaria found itself lacking a clear parliamentary majority, rendering every political or legislative decision subject to intricate, case-by-case negotiations. Additionally, in September 2023 regular local elections were held which resulted in a shift in power in some major cities including the capital, Sofia.

The ongoing parliamentary and political crisis has had a notable impact on the operational capacity of key institutions responsible for upholding the rule of law. The Constitutional Court is facing challenges as it has been awaiting the appointment of two new members from its Parliamentary quota since the end of 2021. The Supreme Judicial Council and institutions such as the Data Protection Commission, the head of the National Audit Office and others are functioning with expired mandates.<sup>170</sup> The highly controversial position of the Prosecutor General is also held by a temporarily appointed deputy after the premature termination of Ivan Geshev's mandate by the Supreme Judicial Council for "undermining the prestige of the judiciary" in mid-2023.<sup>171</sup> Additionally, the director of the Public TV Broadcast is also acting outside of his mandate after a failed attempt to elect a new director in 2022.

Despite the complicated political situation in the last days of 2023 the Parliament managed to pass major constitutional amendments diluting presidential powers and reducing the power of the

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<sup>170</sup> See more: <https://btvnovinite.bg/bulgaria/16-darzhavni-organa-sa-s-iztekal-mandat.html>

<sup>171</sup> See more: <https://www.rferl.org/a/bulgaria-prosecutor-geshev-fired-analysis-judicial-independence/32466120.html>

Prosecutor General, meeting a long-standing demand of the EU.<sup>172</sup> However, the constitutional reform remains to be reviewed by the Constitutional Court.

# Civic freedoms: regulatory environment and implementation

## Freedom of association

The Non-profit Legal Persons Act of 2000 regulates the establishment and operation of civil society organisations in Bulgaria. The act sets a relatively simple procedure for the registration of NGOs with limited powers of the administration (previously the court) to refuse registration based on the goals and means of achieving those goals. However, since the introduction of COVID-19 measures in 2020 it became clear that the Bulgarian legislation is outdated and does not provide proper guarantees for the legality of online assemblies of civil society organisations' governing bodies. Thus, a bill proposing the introduction of clear rules on participation in online assemblies of the supreme bodies of civil society organisations was proposed during the short-lived 47<sup>th</sup> and 48<sup>th</sup> Parliament in 2022 but in both cases the bill did not reach the voting stage of the legislative procedure. The same bill was once more proposed by a bipartisan group of MPs in the current 49<sup>th</sup> Parliament in June 2023.<sup>173</sup> However, by the end of 2023, the bill has not been discussed in any of the parliamentary commissions assigned to do so, and the legislative procedure remains in a stalemate.

A positive trend was observed with the administrative procedure for registration of newly established civil society organisations. According to information provided by the State Registration Agency the

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<sup>172</sup> <https://www.euractiv.com/section/politics/news/bulgarian-mps-dilute-presidential-powers-in-bid-to-boost-schengen-bid/>

<sup>173</sup> Bill available here: <https://www.parliament.bg/bg/bills/ID/164248>



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number of registration refusals is decreasing – e.g. in 2021, there were 1,379 newly registered civil society organisations, while refusals for initial registration were 1,055, in contrast in 2022 there were 1,586 new registrations and only 608 refusals.<sup>174</sup> On the other hand, the number of active civil society organisations is declining as only 13 847 annual financial and/or narrative reports were submitted to the State Registration Agency in 2022 in contrast to 15 501 in 2021.<sup>175</sup>

However, the shrinking civic space trend remains unaddressed by the authorities. Notably, the Council for the Development of Civil Society (CDCS), a body composed of CSOs elected directly by other CSOs and chaired by a Deputy Prime Minister with competences set in the Non-profit Legal Persons Act, was barely operational in 2023. In June, the newly formed government was unable to make the symbolic decision to appoint its single Deputy Prime Minister to chair the CDCS for months. This provoked an open letter from the civil society members of the CDCS,<sup>176</sup> published in October 2023. However, the letter was ignored until 13<sup>th</sup> December when the Deputy Prime Minister was finally formally appointed as chair of the CDCS. As a result, the CDCS had only one meeting at the very end of 2023 after the formation of the current government. This delayed the development of new public funding opportunities as well as the process of drafting a Strategy to Support the Development of Civil Society Organisations- a competence of the CDCS.

Another concern was the adoption of the new Counter-Corruption Act which obliged members of the governing bodies of Chitalishta (traditional Bulgarian associations which serve as community centres) to declare their private interests and publish them on the website of the entity. Additionally, some CSOs providing social services with public money were contacted by authorities to submit private interest declarations under the same law without any clear guidelines or interpretation about why they are obliged to do so.

On the other hand, in 2023 the first Terrorist Financing Risk Assessment for the Non-Profit Sector in Bulgaria<sup>177</sup> was adopted and found that there are no known cases of abuse of non-profit organisations for the purpose of terrorist financing. It concluded that the risk for the non-profit sector is low to medium.<sup>178</sup> Consequently, the Anti-Money Laundering (AML) Act was amended excluding certain categories of NPOs from the scope of the law in line with the definition for NPOs provided by the Financial Action Task Force. Additionally, after the amendments obliged under the AML Act, NPOs with annual turnover exceeding 50,000 BGN (approximately €25,000) have the additional obligation

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<sup>174</sup> Data provided to BCNL by the State Registration Agency. Data for 2023 would be available in 2024.

<sup>175</sup> *Ibid.*

<sup>176</sup> <https://bcnl.org/news/otvoreno-pismo-ot-yuridicheskite-litsa-s-nestopanska-tsel-chlenove-na-saveta-za-razvitie-na-grazhdanskoto-obeshtstvo.html>

<sup>177</sup> More information: <https://bcnl.org/en/news/there-are-no-serious-risk-factors-for-npos-to-be-used-to-finance-terrorism-according-to-the-adopted-sectoral-risk-assessment.html>

<sup>178</sup> The Risk Assessment is confidential. The summary of the results is available here: [https://www.dans.bg/images/stories/FID/NOR/RA\\_NPO/Summary\\_ranpo\\_bg.pdf](https://www.dans.bg/images/stories/FID/NOR/RA_NPO/Summary_ranpo_bg.pdf)

to carry out internal risk assessment as the previous threshold was a mere 20,000 BGN (approximately €10,000).<sup>179</sup>

In 2023, civil society in Bulgaria remained targeted by smear campaigns led by politicians. Most notably these attacks come from the ever-growing in popularity Eurosceptic, far-right and pro-Russian party "Revival" (Vazrajdane) which improved its electoral popularity from 2.45 per cent<sup>180</sup> in April 2021 to 14,16 per cent in April 2023<sup>181</sup>, making it the third largest political party in the current Parliament. The "Revival" Party has been promoting the idea for the adoption of a Foreign Agents Registration Act since 2015<sup>182</sup> and used this as a tool to attack civil society and the media. In 2022 it also submitted a Foreign Agents Registration Bill to the Parliament.<sup>183</sup>

In brief, the Bill:

- 🔍 Defines all legal entities and individuals who have received **funds over BGN 1,000 during one tax year** from abroad, except for funds received under commercial transactions and gambling, as foreign agents.
- 🔍 Defines "**individuals associated with foreign agents**" as "the founders, directors, participants or employees of organisations designated as foreign agents" , i.e. anyone with a connection to a particular civil society organisation (not just employees, but also members, donors, and volunteers).
- 🔍 Introduces the establishment of a *de facto* **blacklist of foreign agents** maintained by the Ministry of Justice (a concept well known from the Hungarian Transparency Act declared contrary to EU law and the similar proposal of VMRO to amend the Non-Profit Legal Entities Act in 2020) and sanctions if the relevant persons, according to the vague definitions in the draft law, fail to declare their inclusion in it. The condition for a person to be removed from this list is that one does not receive funding from abroad for a period of five years.
- 🔍 Introduces the obligation for any "foreign-assisted entity" to **indicate that it is a "foreign agent"** on printed and other publications, photographs, address cards, print samples, engravings, etc. (the list of forms of expression to which the rule applies is long and is contained in Article 12 of the Bill)
- 🔍 Introduces several **prohibitions on foreign agents and their affiliates** from exercising activities in public spaces, such as schools, kindergartens, The Bulgarian Academy of Science, as well as

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<sup>179</sup> **More about the amendments of the AML Act:** <https://bcnl.org/en/news/ngos-and-measures-against-money-laundering-and-terrorist-financing-changes-in-the-law-and-first-risk-assessment-for-the-sector.html>

<sup>180</sup> <https://results.cik.bg/pi2021/rezultati/index.html>

<sup>181</sup> <https://results.cik.bg/ns2023/rezultati/index.html>

<sup>182</sup> **More information:** <https://bcnl.org/en/news/proposal-to-adopt-a-foreign-agents-registration-act-in-bulgaria-when-a-legislative-initiative-is-used-for-political-propaganda-and-an-attack-on-civil-rights.htm> |

<sup>183</sup> <https://www.parliament.bg/bg/bills/ID/164424>

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restrictions on political rights and access to state funding and participation in public procurement procedures. One of the many internal contradictions in the Bill is that under Art. 11, para. 3 prohibits foreign agents from "engaging in political activities," and Article 7, para. 2. (3) requires them to file "a detailed declaration of any activity of a political nature that the declarant is carrying out or intends to carry out"<sup>184</sup>

The same Bill has been submitted once more by "Revival" in April 2023<sup>185</sup> shortly after the Parliamentary elections showcasing the continuous efforts of the party to gain popularity by labelling the civic sector and media as "foreign spies."

Bulgarian CSOs, particularly those dedicated to safeguarding the rights of children, women, and victims of gender-based violence, found themselves subjected to a malicious smear campaign during parliamentary debates on the proposed amendments to the Domestic Violence Prevention Act in July and August 2023. Amidst the much-anticipated legislative reforms aimed at combating domestic violence, members of the "Revival" party and two other parliamentary factions positioning themselves as opposition seized the moment to launch an offensive against civil society organisations.

Their attacks insinuated that these organisations lacked transparency, had no rightful place within the domestic violence prevention system, and were unsuitable for providing social services. Additionally, the unfounded claim that civil society exerted control over politicians was perpetuated during this period.<sup>186</sup>

## Freedom of peaceful assembly

Legislation regarding freedom of peaceful assembly in Bulgaria is in line with international standards.<sup>187</sup> The law does not require permission from the authorities for a protest or assembly to take place in public and does not introduce other unreasonable restrictive conditions. Furthermore, the rules and regulations for policing protests were improved in recent years. For instance, after lengthy anti-government protests in 2021 new rules were introduced to ensure that police officers'

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<sup>184</sup> <https://bcnl.org/en/news/proposal-to-adopt-a-foreign-agents-registration-act-in-bulgaria-when-a-legislative-initiative-is-used-for-political-propaganda-and-an-attack-on-civil-rights.html>

<sup>185</sup> <https://www.parliament.bg/bg/bills/ID/164765>

<sup>186</sup> Quotes available here:

[https://bcnl.org/uploadfiles/documents/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B4%D0%B0%D1%82%D0%B5%D0%BB%D0%B5%D0%BD%20%D0%B8%20%D0%BA%D0%BE%D0%BC%D1%83%D0%BD%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B5%D0%BD%20%D0%BD%D0%B0%D1%80%D0%B0%D1%82%D0%B8%D0%B2\\_%D0%94%D0%9C\\_%D0%91%D0%A6%D0%9D%D0%9F\\_2023.pdf](https://bcnl.org/uploadfiles/documents/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B4%D0%B0%D1%82%D0%B5%D0%BB%D0%B5%D0%BD%20%D0%B8%20%D0%BA%D0%BE%D0%BC%D1%83%D0%BD%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B5%D0%BD%20%D0%BD%D0%B0%D1%80%D0%B0%D1%82%D0%B8%D0%B2_%D0%94%D0%9C_%D0%91%D0%A6%D0%9D%D0%9F_2023.pdf)

<sup>187</sup> See: General comment No. 37 (2020) on the right of peaceful assembly (article 21)

personal identification numbers are visible. Despite this, in 2023, Bulgarian authorities did not fully respect the right to protest and serious violations including police violence, intimidation and discrimination took place.<sup>188</sup>

Most notably, the Bulgarian police forcefully dispersed a major non-political protest on November 16 in Sofia.<sup>189</sup> Under circumstances which remain unclear due to conflicting information about violence between participants in the protest, the police decided to use a water cannon (not a common practice) and to violently disperse the protest. Dozens were arrested and injured. Amongst the victims of the police brutality were at least nine journalists some of whom were streaming live while attacked.<sup>190</sup> Many of the videos taken during the protest showed indiscriminate police violence used by law enforcement officers wearing anti-riot armour without the obligatory personal identification which make recognising them difficult.

In the aftermath of the protest, authorities undertook some steps to respond to the police brutality and violence by starting an investigation and instituting disciplinary measures against at least 10 officers.<sup>191</sup> However, both the Ministry of Interior (MoI) and the Mayor of Sofia were quick to accuse the person who submitted the notification for the protest for the mayhem. The mayor announced<sup>192</sup> publicly via social media that the municipality will seek reparations for the damages from the “organiser” of the protest, disregarding the international human rights standards which states that an organiser of a protest might be held accountable only for their own unlawful conduct, including the incitement of others. If, in exceptional circumstances, organisers are held accountable for damage or injuries for which they were not directly responsible, it must be confined to cases in which evidence shows that the organisers could reasonably have foreseen and prevented the damage or injuries.<sup>193</sup> Similarly, the representatives of the MoI stated the name and area of residence of the organiser during a live broadcasted ad-hoc parliamentary hearing claiming that he failed to disclose that the protest would not be peaceful.<sup>194</sup> The actions of both institutions were not addressed appropriately and thus could have a detrimental effect on public trust and enjoyment of the freedom of peaceful assembly.

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<sup>188</sup> **More information:** [https://bcnl.org/news/zashtita-na-pravoto-na-protest-v-sofiya.html#\\_ftn12](https://bcnl.org/news/zashtita-na-pravoto-na-protest-v-sofiya.html#_ftn12)

<sup>189</sup> <https://www.rferl.org/a/bulgaria-football-federation-mikhailov-demonstration-hungary/32687951.html>

<sup>190</sup> <https://aej-bulgaria.org/%d0%b0%d0%b5%d0%b6-%d0%b1%d1%8a%d0%bb%d0%b3%d0%b0%d1%80%d0%b8%d1%8f-%d1%81%d1%8a%d0%b1%d0%b8%d1%80%d0%b0-%d0%b4%d0%b0%d0%bd%d0%bd%d0%b8-%d0%b7%d0%b0-%d0%bf%d0%be%d0%bb%d0%b8%d1%86%d0%b5%d0%b9%d1%81/>

<sup>191</sup> <https://www.mediapool.bg/distsiplinarni-proizvodstva-sreshtu-oshte-7-politsai-zanasilie-na-protesta-na-futbolnite-fenove-news353689.html>

<sup>192</sup> <https://www.facebook.com/VassilTerzievZaSofia/posts/pfbid0rr3wWCqkyF4a9hNcuSfWAR49fHoSicD2wrgA7RFvKCK4vzfNdT28nPnSWL7fFqCal>

<sup>193</sup> **Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, p. 65, 17.9.2020**

<sup>194</sup> **Recording of the hearing:** <https://www.parliament.bg/bg/parliamentarycommittees/3209>

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On November 13, a transgender woman was subject to harassment and detention while protesting in front of the Court House in Sofia after a refusal of the court to legally change her gender and issue her with new identification documents. Following the court decision in question, a third party notified the municipality that the woman, Mrs. Bankova, planned to protest “on the stairs” of the Court. Although the protest was peaceful without any accidents, on November 16 the municipality issued a fine to the person who submitted the notification for the protest because a tent was placed in front of the stairs instead of on the stairs, the spot allocated in the notification. A few hours later the police apprehended Mrs Bankova after she was unable to show her ID. According to Mrs. Bankova, she was kept at the police station for a few hours during which she was subjected to degrading treatment, including being stripped naked and inspected by a male police officer to “identify her.”<sup>195</sup> After her release, she continued her protest peacefully and was arrested yet again for failing to produce identification on November 21 and once more harassed. There is no available information about any actions taken by the authorities in connection with these incidents.

Between October and November 2023, Sofia Municipality issued at least five bans<sup>196</sup> on peaceful demonstrations organised by the Palestinian people. This is significant compared to the four bans issued by the municipality between January 2020 to April 2023.<sup>197</sup> The bans were issued due to alleged possibility of hate speech at the demonstrations, the potential for the messages of the demonstration to provoke dissent, and that other events were taking place in the city at the same time. The justifications by the Municipality were in contradiction of both the domestic law as well as the international standards and thus the municipality should have resorted to less intrusive measures than a ban.

## Freedom of expression

According to the Reporters Without Borders’ (RSF) Index, media freedom in Bulgaria has been in constant decline since 2006 (when the country was ranked 36<sup>th</sup>).<sup>198</sup> In 2021<sup>199</sup> (112<sup>th</sup>) it was ranked the lowest among all EU Member States and second lowest after Turkey in the Balkans. In 2021, however, a shift in power ensued ending a lengthy period during which the political landscape was dominated by the GERB party. Since then, the situation in Bulgaria has improved, with media freedom ranking 71<sup>st</sup> in 2023.

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<sup>195</sup> <https://bcnl.org/en/news/violation-of-the-right-to-peaceful-protest-in-3-steps.html>

<sup>196</sup> Information received by BCNL from the persons who have submitted the notifications for the protests.

<sup>197</sup> <https://rsf.org/en/index?year=2006>

<sup>198</sup> <https://rsf.org/en/index?year=2006>

<sup>199</sup> <https://rsf.org/en/index?year=2021>



In several cases before the ECtHR Bulgaria has been criticised for its legislation criminalising insult or slander and in particular – for punishing insult and slander against public officials more severely.<sup>200</sup> For instance, in its decision of *Bozhkov v. Bulgaria*, issued on July 19, 2011, the ECtHR explicitly explained that treating defamation of a public official as an aggravating circumstance contradicts the well-established jurisprudence of the Court: *“It should also be observed that the individuals mentioned in the article were public officials, whom the Court has found as a rule to be subject to wider limits of acceptable criticism than private individuals... However, the national courts were unable to take that into account and were instead bound to punish the applicant more severely ... because Article 148 §§ 1 (3) and 2 of the Penal Code treats the official capacity of the victim of an alleged defamation as an automatic aggravating circumstance...”*<sup>201</sup>. This concern has been successfully addressed by amendments to the Penal Code adopted in July 2023.<sup>202</sup> With the amendments, insult or slander directed at public officials is not an aggravating circumstance anymore, the punitive fine is reduced, and the court is allowed under certain conditions to substitute the punishment for slander or insult directed at public officials with an administrative fine.

On the other hand, journalists and activists remain targeted by SLAPPs in the form of civil cases as there are no concrete procedural measures to prevent them, which leaves the legality of SLAPPs open to the court's interpretation. In 2023, a small media outlet, Mediapool, fell victim to a textbook example of a SLAPP when a civil defamation case was brought against it by the major insurance company Lev Ins.<sup>203</sup> The alleged defamation stems from a quote in an article from 2022, which comes from an official ministerial meeting transcript. The company is claiming damages amounting to one million BGN (apx. 500 000 Euro). As of 2023, the case is still pending and the legal fees for the media outlet are covered by a fundraising campaign.

In a positive development in late 2023, the Sofia City Court dismissed a civil lawsuit against investigative journalist Dimitar Stoyanov due to abuse of rights by the plaintiff. In the reasoning of the decision the judge described the case as a SLAPP, marking the first use of the term in the Bulgarian jurisprudence.<sup>204</sup>

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<sup>200</sup> See among others **MARINOVA AND OTHERS v. BULGARIA** available here: <https://hudoc.echr.coe.int/eng?i=001-164668>; **KARZHEV v. BULGARIA** available here: <https://hudoc.echr.coe.int/eng?i=001-176816>; **Kasabova v. Bulgaria** available here: <https://hudoc.echr.coe.int/eng?i=001-104539> ;

<sup>201</sup> Decision available here: <https://hudoc.echr.coe.int/eng?i=001-104541>

<sup>202</sup> <https://www.parliament.bg/bg/bills/ID/164861>

<sup>203</sup> <https://aej-bulgaria.org/levins-slapp/>

<sup>204</sup> [https://www.mediapool.bg/balgarskiyat-sad-prizna-za-sashtestvuvaneto-na-delata-shamari-news354901.html?fbclid=IwAR34gJhrGYhiNfm2Itl8Zr7GzIJ36\\_NmMI-c2GttsM2ECHIpDN0zVCUw8Mo](https://www.mediapool.bg/balgarskiyat-sad-prizna-za-sashtestvuvaneto-na-delata-shamari-news354901.html?fbclid=IwAR34gJhrGYhiNfm2Itl8Zr7GzIJ36_NmMI-c2GttsM2ECHIpDN0zVCUw8Mo)

# Safe space

After a slight improvement in 2022<sup>205</sup>, there was an increase in serious attacks against the LGBTIQ+ community, activists, and supporters in 2023. The most notable were the intimidating protests organised by supporters of the far-right "Revival" party against the screening of an award-winning film about LGBTIQ+ experiences.<sup>206</sup> These protests were dominated by homophobic slogans falsely claiming that the movie and the LGBTIQ+ community support and promote paedophilia.

On June 10, a protest against the movie took place in the capital Sofia before a planned screening, which was part of the program of Sofia Pride Film Fest.<sup>207</sup> The authorities failed to protect the freedom of peaceful assembly and expression of the people who were attending the screening by:

- 🔍 Failing to ensure sufficient police presence, despite information available on social media that a counterdemonstration was planned and information about similar events in the past<sup>208</sup>
- 🔍 allowing the protesters to invade the cinema and block the entrance and physically preventing the screening from taking place.
- 🔍 allowing the counter-protesters to insult and intimidate specific persons present in the cinema. Some of the harassed persons are well-known LGBTIQ+ activists.
- 🔍 allowing counter-protesters to take close-up photographs of persons present in the cinema while making defamatory and discriminatory statements towards them, thereby creating a serious risk to the safety of those involved during and after the incident.

Ultimately the screening was cancelled despite the presence of police. Just days after this incident a group of people led by a MP from the far-right "Revival" Party disrupted the screening of the same movie in the second biggest city in Bulgaria, Plovdiv. The group harassed members of the public, including staff of the cinema. Those who participated in the attack were wearing merchandise of the party, and carrying banners with the slogan "Gender Propaganda," some were also wearing the so-called Ribbon of Saint George – a symbol in support of Russian aggression against Ukraine. In this

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<sup>205</sup> See p. 15 - <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-BULGARIA-European-Civic-Forum.pdf>

<sup>206</sup> Movie Close - <https://www.imdb.com/title/tt9660502/>

<sup>207</sup> More information here: <https://bcnl.org/news/splashvaneto-pogazvaneto-na-pravoto-na-lichen-zhivot-i-ogranichavaneto-na-pravoto-na-mirni-sabraniya-ne-sa-formi-na-zashtiten-ot-zakona-protest.html>

<sup>208</sup> See for example: <https://www.marginalia.bg/novini/natsionalisti-obsadiha-prozhektsiyata-na-zmiya-film-v-kojto-nyama-nishto-pedofilsko/>

instance the police managed to disperse the aggressive protest and let the screening take place.<sup>209</sup> Similar protests dominated by hate speech targeting the LGBTIQ+ community also took place in the end of June in Varna – the biggest coastal city of Bulgaria, where a crowd sabotaged yet another screening of the movie in question in the absence of a proper police intervention.

On the other hand, there were some positive developments regarding the safety of the LGBTIQ+ activists and civic actors in 2023. In July, the Sofia Court of Appeals convicted former presidential candidate Boyan Ras sate of hooliganism following a 2021 attack on the LGBTIQ+ community centre Rainbow Hub and sentenced him to six months' probation.<sup>210</sup> In July, the Parliament adopted amendments to the Penal Code to include “perceived sexual orientation of the victim” as aggravating circumstance for multiple crimes such as homicide, bodily harm, hate speech<sup>211</sup>, kidnapping and others.<sup>212</sup> These amendments were a longstanding advocacy goal of LGBTIQ+ and human rights organisations in Bulgaria.

## Funding for civil society

According to the CSO Sustainability Index<sup>213</sup>, the financial viability of civil society organisations in Bulgaria has been in decline since 2014 and this indicator has consistently been the lowest score compared to the others. None of the major issues regarding access to funding of CSOs were addressed in 2023, including the lack of diverse funding opportunities, development of public funding schemes, improvement of the access to funding provided by the EU and promoting the culture of donating.

<sup>209</sup> <https://clubz.bg/137952>

<sup>210</sup> <https://www.svobodnaevropa.bg/a/boyan-rasate-lgbt/32497016.html>

<sup>211</sup> The term “hate speech” is not official in the Bulgarian legislation, however, art. 320 of the Penal Code is considered to prohibit some forms of hate speech: art. 320 A person who, by preaching before many people, or by dissemination through the mass media or in any other similar manner openly abets to the perpetration of a crime, shall be punished by imprisonment for up to three years, but not by a more severe punishment than that provided for the crime itself.

<sup>212</sup> See: **Победа за ЛГБТИ хората в България: По-тежки наказания за престъпления заради сексуалната ориентация**

<sup>213</sup> Available here: <https://csosi.org/> ; The CSO Sustainability Index was discontinued for Bulgaria in 2022

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In 2023, Bulgaria dropped significantly in the World Giving Index<sup>214</sup> which measures money donated to charities and volunteered time to organisations. According to the Index, Bulgaria is ranked 133<sup>rd</sup> from 142 countries, compared to 54<sup>th</sup> place amongst 119 countries in 2022. This ranking shows that the country has regressed to its pre-COVID state with regards to donations made.<sup>215</sup> Additionally, in 2023, the Bulgarian government launched yet another initiative to draft a law which regulates volunteering and supports organisations working with volunteers. However, since the initially announced date, on December 5, 2023, no draft law has been presented. Thus, in 2023, Bulgaria marked another year without undertaking effective policy measures to encourage the culture of donating and volunteering.

A long-standing problem in terms of access to EU funding for CSOs, remains the misinterpretation of the *de minimis* rule stipulated in Regulation (EU) 651/2014 by local authorities.<sup>216</sup> As noted in the 2023 Rule of Law Report of the European Commission, “it is hard for CSOs to receive EU funding (through state agencies dealing with EU funds) because they are considered as commercial entities and the state applies the same state aid restrictions as for private companies receiving EU funding.”<sup>217</sup>

Another concern related to EU funding is that project finding of the European Commission is not based on the rules of public procurement. This means that Bulgarian CSOs do not have any advantage when offering a lower price for the same work. Additionally, the per hour reimbursement budgeted for projects is limited to country rates. This ultimately means that civil society staff get significantly less money for their work than other member states. This is deeply discriminatory and contradictory to the principles of equity.

In 2023, a new funding scheme for CSOs to develop projects to prevent domestic violence and specialised services for victims of domestic violence was adopted due to amendments to the Domestic Violence Prevention Act. The amendments entered into force in January 2024 and their implementation remains to be seen. On the other hand, the public funding scheme for civil society projects envisaged in the Non-for-Profit Legal Persons Act was not launched in 2023 even though the body responsible for it, the Council for Civil Society Development, was established in 2022. The Council for Civil Society Development had only one meeting after the April 2023 elections. The meeting took place in December, during which the administration, without adequate motivation, took a controversial position that the legal basis for the funding needs to be amended. Additionally, in 2023 CSOs advocated for a major reform of the social entrepreneurship legal framework which would

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<sup>214</sup> [https://www.cafonline.org/docs/default-source/about-us-research/wgi\\_report\\_2023\\_final.pdf](https://www.cafonline.org/docs/default-source/about-us-research/wgi_report_2023_final.pdf)

<sup>215</sup> <https://www.bcause.bg/news/news-sredata/952-bulgaria-e-s-po-nisak-reiting-spered-caf-world-giving-index-2023.html>

<sup>216</sup> Available here: <http://data.europa.eu/eli/reg/2014/651/oj>

<sup>217</sup> [https://commission.europa.eu/system/files/2023-07/10\\_1\\_52568\\_coun\\_chap\\_bulgaria\\_en.pdf](https://commission.europa.eu/system/files/2023-07/10_1_52568_coun_chap_bulgaria_en.pdf)

enable organisations to access subsidies for entrepreneurship.<sup>218</sup> By the end of 2023, no amendments to the dysfunctional 2019 Companies of the Social and Solidarity Economy Act were proposed in the Parliament.

The lack of appropriate actions by the state, together with the under- developed donation culture in the country, make civil society highly dependent on EU and private funding. This jeopardises the sustainability of the sector and is instrumentalised by far-right groups for smear campaigns, including the Foreign Agents Act narrative.

# Civil dialogue and the right to participation

Civic participation was notably affected after two years of political turmoil which led to disturbance in the work of many state institutions. According to the bi-yearly Civic Participation Index, Bulgaria scored lower in 2023 than in 2021 in all monitored categories – environment, practices, effect, and the overall score.<sup>219</sup>

Key civic participation mechanisms were not functioning properly in 2023. Most notably, the Council for Civil Society Development (CCSD), whose establishment in 2022 was outlined as a positive development in the 2023 EC's Rule of Law Report<sup>220</sup>, barely functioned in 2023 after the government failed for months to appoint a deputy-prime minister to chair it after the April elections. The case of the CCSD raises serious concerns about the government's commitment to engage with civil society as the current Cabinet only has a deputy-prime minister and therefore the act of appointing her as chair of CCSD was merely formal. This led to serious delays in the work on the Strategy to Support the Development of Civil Society Organisations, which is in the competence of the CCSD and prevented the CCSD from voting on several bills.

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<sup>218</sup> <https://bcnl.org/news/podkrepete-razvitiето-na-sotsialnoto-predpriemachestvo-v-balgariya.html>

<sup>219</sup> <https://index.fgu.bg/data/files/e1fa97fff17bcbf0ab0b1ac4cf511318.pdf>

<sup>220</sup> [https://commission.europa.eu/system/files/2023-07/10\\_1\\_52568\\_coun\\_chap\\_bulgaria\\_en.pdf](https://commission.europa.eu/system/files/2023-07/10_1_52568_coun_chap_bulgaria_en.pdf)



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Bulgaria is also falling behind with its commitments to the Open Governance Partnership initiative.<sup>221</sup> In July 2022, the previous government adopted its fourth OGP Plan (2022-2024)<sup>222</sup> after a lengthy delay and after being threatened with expulsion from the partnership. The Plan was drafted in collaboration with civil society and consists of 14 commitments in the field of access to information, open data, and direct democracy. All commitments are to be carried out by public institutions in close collaboration with CSOs. However, the intermediate report by the Independent Reporting Mechanism of OGP published in July 2023 concluded that there is only one commitment with “substantial potential for results” and one which is promising for modest progression.<sup>223</sup> The National Council for Coordination and Monitoring of the Open Government Partnership only had one meeting at the end of 2023. On the other hand, in December 2023, the Ministry of Electronic Governance kickstarted a civil society working group to develop human rights standards on the implementation of Artificial Intelligence technologies as part of one of the OGP commitments.<sup>224</sup>

The political crisis also had a toll on the motivation of CSOs to engage in participatory mechanisms. After several short-lived parliaments in recent years, in May 2023 the Parliamentary Commission on Direct Citizen Participation and Interaction with Civil Society started a procedure to establish the Civil Council to it. However, the procedure was prolonged several times<sup>225</sup> due to lack of civil society candidates in certain fields such as charity and volunteerism, justice, internal security, public order and defence and agriculture. The Civil Council was established in September 2023. However, by the end of the year it did not have a joint session with the Commission on Direct Citizen Participation and Interaction with Civil Society as stipulated in the rules and regulations of the Parliament.

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<sup>221</sup> <https://www.opengovpartnership.org/>

<sup>222</sup> <https://www.strategy.bg/Articles/View.aspx?lang=bg-BG&categoryId=&Id=40&y=&m=&d=>

<sup>223</sup> <https://www.strategy.bg/Articles/View.aspx?lang=bg-BG&categoryId=&Id=46&y=&m=&d=>

<sup>224</sup> <https://bcnl.org/news/choveshkite-prava-v-osnovata-na-regulatsiyata-na-sistemite-s-izkustven-intelekt.html>

<sup>225</sup> <https://www.parliament.bg/bg/parliamentarycommittees/3220>

# Civil society resilience

In 2018, Bulgaria became the first and only country whose Constitutional Court announced that the Istanbul Convention is unconstitutional.<sup>226</sup> According to the Court, the definition of “gender” formulated in Art. 3 of the Istanbul Convention distinguished between “biological sex” and “social sex” and thus contradicted the definition in the Bulgarian Constitution, defined as “sex binarity of the human.”<sup>227</sup> To reach this conclusion the Court relied on two provisions of the Constitution – Art. 46. (1) Matrimony shall be a voluntary union between a man and a woman. Only civil marriage shall be legitimate; and Art. 47, item 2 Mothers shall enjoy special protection of the State, which shall guarantee them paid leave before and after confinement, free obstetrical care, relaxed conditions of work, and other types of social assistance. This decision resulted in a detrimental effect on the protection of the survivors of domestic violence and on the rights of LGBTIQ+ people.

Relying on the Constitutional Court’s decision on the Istanbul Convention, the Bulgarian Supreme Court issued an interpretative decision according to which legally changing one’s gender is not permissible. Thus, the Supreme Court reversed the practice which comes from numerous strategic litigation cases over several years according to which a legal gender change is possible after examination of biological and psychological criterions.<sup>228</sup> Additionally, in 2023, the Supreme Administrative Court dismissed the plea of a same sex family to receive a Bulgarian birth certificate for their daughter, contravening a decision of the Court of the EU from 2021.<sup>229</sup> The so-called “Baby Sara,” however, is still considered a land-mark strategic litigation case for LGBTIQ+ rights protection as the family is expected to challenge the refusal by the Bulgarian state to issue documents to the child in the ECtHR.<sup>230</sup>

In 2023, after years of dedicated work by civil society, the public came together to demand proper state reaction to the cases of domestic violence. Mass protests<sup>231</sup> took place across the country in late July and early August after a man from Stara Zagora was charged with a “minor bodily harm” and released in June in connection with an attack against his 18-year-old girlfriend which involved

<sup>226</sup> <https://balkaninsight.com/2021/10/27/bulgarian-courts-rejection-of-istanbul-convention-alarms-activists/>

<sup>227</sup> <https://www.24chasa.bg/mneniya/article/6983990>

<sup>228</sup> <https://www.ngobg.info/bg/legal/124710-%D0%B2%D0%B5%D0%BB%D0%B8%D0%BD%D0%B0-%D1%82%D0%BE%D0%B4%D0%BE%D1%80%D0%BE%D0%B2%D0%B0.html>

<sup>229</sup> <https://www.svobodnaevropa.bg/a/32295713.html>

<sup>230</sup> <https://www.deystvie.org/baby-sara-court-of-justice-eu>

<sup>231</sup> <https://dariknews.bg/novini/bylgariia/sled-sluchaia-debora-vtori-nacionalen-protest-sreshtu-nasilieto-snimkivideo-2355691>

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numerous cuts made with a model knife treated with more than 400 stitches. The public outcry triggered a swift legislative change to include “intimate relations” in the Domestic Violence Prevention Law, weeks after another set of major amendments including measures envisaged by the otherwise “unconstitutional” Istanbul Convention. The systematic amendments to Domestic Violence Prevention Law which entered into force in January 2024 included the establishment of a Coordination Anti-Domestic Violence Council made up of state representatives and CSOs; rules on data collection; financial support for services and campaigns and other measures.<sup>232</sup> This was seen as a major advocacy success. In March 2023, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Bulgaria to review the implementation of the long-standing CPT recommendations on the situation of persons deprived of their liberty in psychiatric institutions and social care homes.<sup>233</sup> As the appalling conditions for people with psychiatric issues and the inhumane treatment which they receive can no longer be ignored by authorities and the public, civil society took the opportunity to pressure decision-makers to take action. As a result, in July, the Minister of Health revealed after a question by an MP, that there were 2,691 recorded cases of immobilisation measures undertaken in the Bulgarian psychiatric institutions and 330 deaths nearly all of which are due to heart failure. Additionally, in October, a person tied to his bed and locked up died during a fire in a psychiatric clinic in Lovech.<sup>234</sup> With the participation of civil society, this led to the creation of a temporary parliamentary commission to protect the rights of mental health patients and draft legislative changes to guarantee them.<sup>235</sup>

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<sup>232</sup> <https://bcnl.org/news/kakvo-novo-v-zakona-za-domashnoto-nasilie-i-kak-da-integrirame-obshtestvenata-energiya-za-promyana-po-temata.html>

<sup>233</sup> <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-carries-out-a-visit-to-bulgaria>

<sup>234</sup> <https://bntnews.bg/news/zavarzan-i-zaklyuchen-pacientat-pochinal-pri-pozhara-v-psihiatriyata-v-lovech-bil-v-izolatora-1251482news.html>

<sup>235</sup> <https://www.parliament.bg/bg/parliamentarycommittees/3247>

# Recommendations

## Targeted recommendation:

- 🔍 Take urgent steps to ensure the regular and effective work of the Council for the Development of Civil Society (CDCS)
- 🔍 Resolve the legality issue of the online participation of members of the supreme collective bodies of civil society either by passing the bill of amendments already filed in the Parliament or by adopting internal policies of the administrative bodies concerned for them to implement a broader interpretation of the term “present at an assembly.”
- 🔍 Refrain from applying the same anti-corruption measures for public officials to representatives of civil society organisations receiving public funding.
- 🔍 Adopt the Civil Society Support Strategy and commit to increased civic dialogue in policy-making processes and support for civil society.
- 🔍 Adopt procedural safeguards to prevent and protect journalists and civic actors from SLAPPs.
- 🔍 Provide training to police officers and authorities on how to properly and effectively protect the freedom of peaceful assembly, in line with international standards.
- 🔍 Immediately stop the discriminatory and disproportionate bans of peace demonstrations organised by the Palestinian community.
- 🔍 Urgently implement protection measures and fully investigate the attacks against the LGBTIQ+ community and activists in the light of the amendments to the Penal Code including motives driven by the sexual orientation of the victim as an aggravating circumstance.

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- 🔍 Revise the implementation practices of the de minimus rule in a manner which does not discriminate against civil society when EU funding is distributed.
- 🔍 Adopt the law on volunteering.



# About the author

The Bulgarian Center for Not-for-Profit Law (BCNL) is a public-benefit foundation that provides support for the drafting and implementation of legislation and policies aiming to advance civil society, civic participation, and good governance in Bulgaria. BCNL has participated in the development and discussion of a number of laws related to the activities of non-profit organisations, such as the Law on Non-Profit Legal Entities, the Social Assistance Act, the Law on Normative Acts, and many others.





## Civic Space Report 2024

# CROATIA



# Key trends

- 🔍 SLAPP cases against journalists and some civic actors remain a concern
- 🔍 Government has failed to deliver National Plan for Creating an Enabling Environment for civil society
- 🔍 Civil dialogue between government and civil society remains eroded due to ineffective Government council

# Summary

Civic space is rated as ‘narrowed’ in Croatia<sup>236</sup>. In its 2023 Rule of law report on Croatia, the European Commission recommended that the government “Make further efforts to address the issue of strategic lawsuits against public participation targeted at journalists, including by reviewing the legal provisions on defamation and encouraging wider use of procedural rules that allow dismissing groundless lawsuits, taking into account the European standards on the protection of journalists”<sup>237</sup>. In 2023 there was no review of legal provisions related to defamation. Although the Judicial Academy reviewed and improved educational materials for the training of judges on Strategic Lawsuits Against Public Participation, currently the number of participating judges and their profiles remain unknown.<sup>238</sup>

Last year’s EC report also noted that “the preparation of the new National Plan for Creating an Enabling Environment for the Civil Society Development 2021- 2027 has not progressed. This remains the case to date. Even though the process of drafting a new strategic document was initiated in 2021,

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<sup>236</sup> <https://monitor.civicus.org/country/croatia/>

<sup>237</sup> [https://commission.europa.eu/system/files/2023-07/27\\_1\\_52610\\_coun\\_chap\\_croatia\\_en.pdf](https://commission.europa.eu/system/files/2023-07/27_1_52610_coun_chap_croatia_en.pdf)

<sup>238</sup> [https://hudoc.exec.coe.int/#{%22execidentifier%22:\[%22DH-DD\(2023\)1507E%22\]}](https://hudoc.exec.coe.int/#{%22execidentifier%22:[%22DH-DD(2023)1507E%22]})

and the Working Group for drafting the National Plan was established in January 2022, the document was not presented for the public consultations, and it is unknown when it will be adopted.

Furthermore, dysfunctionality, sidelining and overall marginalisation of the Government's Council for Civil Society Development continued in 2023 with only one session of the Council held. Although the elections for the new civil society members of the next iteration of the Council were concluded in time, it took the Government approximately six months to appoint the new Council only at the beginning of 2024. This additionally eroded the possibility for genuine dialogue between the government and civil society and deprived access and opportunity for civil society organisations to participate in decision-making processes relevant to areas of their work.

# Institutional, political and socio-economic landscape

In 2023, civic space continued to be burdened by the erosion of the institutional framework for civil society development. The adoption of the new National Plan on Human Rights is regarded as a step forward<sup>239</sup>. However, the quality, scope and ambitiousness of the proposed measures and activities are inadequate to tackle complex challenges in areas of fundamental rights, democracy, rule of law or economic and regional inequalities.

The judiciary remains burdened by a low level of citizens' trust, insufficient transparency, and poor quality of judgements. At the end of 2023, 28 leading judgments of the European Court of Human Rights against Croatia were pending implementation. This points to systemic problems in the area of

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<sup>239</sup> <https://www.ombudsman.hr/hr/kuca-ljudskih-prava-predstavila-godisnje-izvjesce-o-stanju-ljudskih-prava-u-hrvatskoj/>

respect for and the protection of human rights<sup>240</sup>. The violation of the human rights of refugees and asylum seekers remains a concern. As documented by a recent investigation into pushbacks taking place at the border of Croatia and Bosnia and Herzegovina, Croatian police “regularly and often violently” push back refugees, asylum seekers, and migrants to Bosnia and Herzegovina without assessing their asylum requests or protection needs<sup>241</sup>.

Although the fight against corruption has accelerated, primarily due to the work of the European Public Prosecutor’s Office, the prevention of corruption has weakened, primarily through the weakening of the Commission for Conflict of Interest<sup>242</sup>. Regional inequalities and differences in access to basic social services between urban and rural parts of Croatia remain pronounced with more than a fifth of Croatia’s population still at risk of poverty<sup>243</sup>.

# Civic freedoms: regulatory environment and implementation

The Croatian Act on Associations regulating the right to association remains in place and, for the most part, is adequate from the civic space perspective.

For seven years, Croatia has been without a fundamental public policy in the field of civic space. The current, third attempt to create the new National Plan for Creating an Enabling Environment for Civil

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<sup>240</sup> <https://www.coe.int/en/web/execution/croatia>

<sup>241</sup> <https://www.hrw.org/news/2023/05/03/croatia-ongoing-violent-border-pushbacks>

<sup>242</sup> [https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP\\_GI2022-Online-1.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP_GI2022-Online-1.pdf)

<sup>243</sup> [https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP\\_GI2022\\_DIGI.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP_GI2022_DIGI.pdf)



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Society Development for 2021-2027 was initiated in 2021, and for the past three years was unsuccessful in producing a new policy document. Additionally, after six years without a fundamental human rights policy, at the beginning of 2023, the Government finally adopted the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination until 2027. Although the plan recognises the importance of improving cooperation with civil society and human rights defenders, the accompanying Action Plan on Human Rights for 2023 did not predict any new measures that would aim to remedy identified problems in the field of public participation, financing of civil society and in other relevant domains. The process of drafting action plans for the National Plan for 2024 and 2025 began in the middle of 2023 with the inclusion of more than 10 representatives of civil society organisations as members of the working group. Unfortunately, the aforementioned action plans for 2024 and 2025 still need to be adopted which halts the implementation of the overall National plan.

## Freedom of peaceful assembly

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

Freedom of peaceful assembly was significantly and negatively impacted by the securitisation of Saint Mark's Square in Zagreb which is surrounded by metal fences blocking free and unhindered access of the public to the square, including, most importantly for protest purposes. The current *regime* was introduced in late 2020 following a shooting at the government building, and ever since it has not been removed. The government cites security concerns as a reason for not reinstating full and free access and movement on the square thus public gatherings could only be organised on St. Mark's Square with prior notification, while access is possible only through designated police checkpoints. The square is where most important institutions have their seats - Government, Parliament and the Constitutional Court.

Therefore, this has severely affected citizens' right to free expression and protest given that this is the most politically relevant location where they can be heard and seen by elected democratic representatives and officials.

# Safe space

Although in 2023 there were no recorded cases of violence against human rights defenders and civil society organisations, Strategic Lawsuits Against Public Participation (SLAPPs) continued to be a consistent problem that hampers freedom of expression in Croatia. Although journalists are the main targets of SLAPPs, environmental CSOs are also at risk.

At the beginning of 2023, a first-instance court decision was rendered in the 2017 SLAPP case against the Friends of the Earth Croatia (Zelena Akcija). Following the public campaign by the association against the construction of a golf resort on the hill above Dubrovnik, a private investor initiated a criminal procedure for honour and reputation and a civil procedure for damages against three designated legal representatives of the association at the time, in which the sum of claims (without interest and court costs) amounts to about €26,000. The court ruled in favour of the investor and found Friends of the Earth guilty of damaging the honour and reputation of the investor. An appeal is currently ongoing before the High Criminal Court.<sup>244</sup>

# Funding for civil society

The financial framework and conditions for civil society remain inadequate in 2023. With the scarce presence of foreign private donors and undeveloped private and corporate philanthropy, the National Foundation for Civil Society Development and the European Social Fund are the backbone of the financial support system of the Croatian civil sector. However, there is a general lack of national public funding for programs of civil society organisations working on human rights, democracy, the rule of law, transparency and similar topics relevant to the functioning of a democratic society. The lack of funding for watchdog, research, and advocacy activities is particularly worrying. CSOs continue to be burdened with increasing administrative requirements, such

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<sup>244</sup> [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP\\_ThematicDefenders1-1-1.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP_ThematicDefenders1-1-1.pdf)

as rigidity in implementing reporting and budget changes, which take up a large portion of human and financial resources at the expense of quality preparation and implementation of program activities. While the administrative requirements that organisations must meet are continuously increasing, the financial support for ensuring sustainable administrative, financial, and operational activity for the organisations is not proportional to these requirements. The main reason for the lack of financial viability and sustainability of civil society lies in the lack of national public funding that would fund long-term programs for civil society organisations working in different areas according to the identified needs.

# Civil dialogue and the right to participation

Challenges to the participation of civil society organisations in the decision-making process remained the same as in previous years. E-consultations are almost always held solely as a way to fulfil formal obligations, while numerous issues with this form of public consultation continue to raise concerns, including the shortening of the consultation period without justification<sup>245</sup>. Public consultations on draft laws and public policies are often more formal than substantive, which weakens opportunities for participation and has a negative impact on the quality of public policies. The appointment of civil society organisations to advisory bodies is often non-transparent in practice, while those appointed through the Council for Civil Society Development do not always reflect the most qualified candidates, which sends the message that the government does not care about the meaningful participation of civil society in decision-making processes<sup>246</sup>.

Challenges in exercising the right to participation are also manifested in the shortcomings in the work of the Council for Civil Society Development, which has almost completely ceased to be an actual

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<sup>245</sup> [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP\\_ThematicDefenders1-1-1.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP_ThematicDefenders1-1-1.pdf)

<sup>246</sup> [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP\\_ThematicDefenders1-1-1.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP_ThematicDefenders1-1-1.pdf)

platform for consultation and dialogue between civil society organisations and the government, thereby increasingly failing to fulfil its role of encouraging intersectoral cooperation. The above concerns on civic participation were showcased during the process of drafting the new Election Constituencies Act which was not transparent. The government did not establish an official working group in charge of drafting the new legislation that would have included external experts on electoral issues from academia and civil society. There was no consultation with the wider public during the drafting process which is contrary to the international electoral standards, good democratic practices, and the right to public participation. Names of the drafters of the new law were not publicly made available immediately. Following a decision of the Information Commissioner, the Ministry of Justice and Public Administration published the names of the officials from the Directorate for the Political System and General Administration sector within the Ministry, without explicitly stating anywhere that they are the creators of the new election law.

## **Civil society resilience**

It is worth mentioning the government Council for Human Rights as an example of good practice of intersectoral cooperation between the state and civil society. Established in 2021 and chaired by the Vice President of the Government, the Council is composed of representatives of the institutions and three members representing human rights organisations. The Council holds regular sessions and discusses topics relevant to its mandate (e.g. implementation of the Ombudsman's recommendations, hate speech and hate crime issues, etc.). Overall, the Council sessions provided an opportunity for a genuine dialogue on current and relevant human rights issues between decision-makers, decision-makers and independent national human rights bodies (NHRIs).

# Recommendations

## Targeted recommendation:

- 🔍 In an inclusive, genuine, and constructive process, develop and adopt without delay a new National Plan for Creating an Enabling Environment for Civil Society Development until 2027.

- 🔍 Adopt key policies to develop the capacities of the sector and protect civic space, in a transparent, inclusive and participatory process engaging civil society: the National Strategy for the Creation of an Enabling Environment for Civil Society Development and National Program for Protection and Promotion of Human Rights;
- 🔍 Address the issue of strategic lawsuits against public participation (SLAPPs) targeted at CSOs' public watchdogs and journalists, including by addressing the abuse of legal provisions on defamation and encouraging awareness, taking into account European standards on the protection of journalists.
- 🔍 Restore the previously functional framework of cooperation between CSOs and public authorities, in particular by reviewing the composition of the Council for Civil Society Development to ensure fair representation of civil society organisations. Even more vital is restoring cooperation standards based on open, critical dialogue and consensus-building;
- 🔍 Improve the existing system of financial support taking into account the different needs of CSOs



# About the author

Human Rights House Zagreb is a human rights organisation established in 2008 as a network of civil society organisations with the goal of protecting and promoting human rights and fundamental freedoms. HRH's vision is to build a democratic, pluralistic and inclusive society founded upon the values of human rights protection, the rule of law, social justice and solidarity. Through research, monitoring, advocacy and education, HRH contributes to the protection, promotion, development and advancement of human rights and fundamental freedoms. By publishing annual overviews of the state of human rights, thematic reports and policy briefs, we help create better laws and public policies.





**Civic Space Report 2024**

# **CZECH REPUBLIC**

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# Key trends

- 🔍 Lack of political leadership to institutionalise civic and stakeholder participation.
- 🔍 Public funding still lacks multi-year funding, consistency in approaches by different public funders and streamlined co-financing and bureaucratic requirements.
- 🔍 Consolidation of public finances led to unforeseen consequences for governance, addressing the needs of vulnerable people, and for the operating environment for CSOs.

# Summary

The civic space is rated as open in the Czech Republic.<sup>247</sup> Public trust in the government is the lowest, mainly due to the dissatisfaction and criticism of domestic policy and social and economic issues. Civil society has called for strengthening of society's trust in public institutions and democracy by all available means, including by ensuring that policies are responsive to the needs of vulnerable groups and the wider centre of society and that they are effectively communicated to citizens by the political representation and public administration.

In its 2023 Rule of Law report, the European Commission recommended that the Czech government take steps to improve media ownership and media independence. The Czech Parliament approved the amendment to the media law which was a major step towards limiting politicians' media ownership. However, ownership of private media is still concentrated, and public media continues to face pressure and political influence.

Public funding for CSOs remains a challenge due to the absence of multi-annual funding, lengthy and bureaucratic grant awarding processes, strict co-financing requirements and diverse grant

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<sup>247</sup> <https://Monitor.civicus.org/country/czech-republic/>

approaches. While funding allocated from the state budget to civil society activities remained the same, thematic fields such as sports associations received more funds while organisations advocating for rights, such as gender equality, faced a decrease in funding. CSOs are also challenged by the lack of funding for digitisation, which puts the sector at a disadvantage compared to other sectors.

There have been some good practices on civic and stakeholder participation across the Czech public administration in past years. However, the existing processes do not have sufficient impact, there is a lack of coordination, and good practices are not shared. A lack of a comprehensive vision of civil society participation remains.

# Institutional, political and socio-economic landscape

On 1 May 2024, the Czech Republic will celebrate 20 years since its accession to the European Union. Throughout 2024, there will be a series of events and activities related to this milestone organised at both government and non-government levels. This provides an opportunity, not only to reflect on 20 years, but also to critically discuss the Czech Republic's role in the EU and the EU's role in the country's transformation, including the challenges and new tasks for improving the rule of law and civic space.

In 2023, defining moments included Russia's ongoing aggression against Ukraine, persistent inflation and weak economic performance and poor political performance of the new government. Just before Christmas 2023, Czech society was most affected by the tragic mass shooting at the Faculty of Philosophy at Charles University in Prague. With 14 people killed, it was the worst incident in the country's history and sparked a nationwide discussion on gun control, access to mental health care and security measures in educational institutions and other public buildings.

Russia's aggression against Ukraine led to an acute humanitarian and human rights crisis and the Czech Republic continued to stand behind Ukraine. At the same time, the resolution of the war has become an important focus of social debate. The integration of 375,590<sup>248</sup> refugees from Ukraine hosted in the Czech Republic have been partially successful. Positively, most refugees who are economically active managed to find employment, albeit in work outside of their qualifications and often in poor working conditions; 60 per cent still live below the income poverty line<sup>249</sup>. With decreasing state support, the Ukrainian refugees have been under increased pressure to find employment. Insufficient knowledge of the Czech language and a lack of language courses are a barrier to qualified work. The cessation of housing allowance payments has forced many refugees to move from solidarity housing to rental housing. Similar to other vulnerable groups in the Czech population, refugees face a shortage of affordable housing. A new phenomenon was the disagreements between some in the Roma and Ukrainian communities, caused by real or imagined situational conflicts which escalated in social networking environments<sup>250</sup>.

Economic stagnation<sup>251</sup> was caused by a combination of the energy crisis, supply chain bottlenecks, and a decrease in consumption due to a rapid increase in prices. The Czech Republic is one of the few countries in Europe that has not yet been able to return to the same economic condition prior to the coronavirus pandemic. The combination of stagnation, or even recession, and inflation, caused by additional factors, particularly affected vulnerable groups of the population.

The performance of the conservative-liberal coalition government of five political parties, led by Prime Minister Petr Fiala, was critically perceived by experts and the media in the area of economic and social policy, but positive in foreign policy and in support of Ukraine and the Western alliance. The government has focused on the political implementation of legislation to consolidate public finances and growing public debt, which effectively increased tax collections despite pre-election promises not to raise taxes. However they were criticised for the unpreparedness of these reforms,

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<sup>248</sup> Data from <https://www.mvcr.cz/clanek/statistika-v-souvislosti-s-vaikov-na-ukrajine-archiv.aspx> and <https://data.unhcr.org/en/situations/ukraine>

<sup>249</sup> PAQ Research: Refugee income and employment have increased. But the loss of free housing has deepened poverty: <https://www.paqresearch.cz/post/prijmy-a-chudoba-uprchliku-podzim2023> and PAQ Research: *Integration of Ukrainian refugees: one year on* - <https://www.paqresearch.cz/post/integrace-ukrajinskych-uprchliku-rok-pote>

<sup>250</sup> See the Reports on extremism, Security Policy Department of the Ministry of the Interior - <https://www.mvcr.cz/clanek/ctvrtletni-zpravy-o-extremismu-odboru-bezpecnostni-politiky-mv.aspx>

<sup>251</sup> There was a year-on-year GDP decrease of 0.7 %. The inflation rate was 11.4 %, while real wages decreased. Unemployment remains low, with the poor economic situation being driven more by inflation. The public debt reached 44.2% of GDP. Czech Statistical Office: <https://www.czso.cz/csu/czso/cr/predbezny-odhad-hdp-3-ctvrtleti-2023>



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their low effectiveness, the failure to take into account the impact on lower income and vulnerable groups of people and the inability to effectively communicate political actions to the public. The public trust in the government is at an all-time low- less than a quarter of citizens trust the government<sup>252</sup>. This is partly reflected both in voting preferences and in the overall attitude towards democracy.

The parliamentary opposition composed of the self-proclaimed ANO “catch-all-party” of the former Prime Minister Andrej Babiš and the nationalist SPD is fundamentally critical of the government, and frequent obstructions have paralysed the Chamber of Deputies and the legislative process.

The new President Petr Pavel was elected in January 2023 amid high voter turnout and in a polarised atmosphere. The president enjoys the confidence of a slim majority of citizens<sup>253</sup> - mainly for the representativeness abroad, the perceived increased dignity of the office, and open communication with the media. His communication with the opposition and the selection of collaborators and advisors are viewed more critically. In foreign and security policy, the President clearly expresses support for Western structures, increased defence investments, and European integration of Ukraine.

During the first three years of his five-year mandate, the current President will replace thirteen of the fifteen seats on the Constitutional Court. All of President's Pavel's nominations presented to the Senate thus far are as a result of the work of a consultative panel convened by him, shortly after he took office to ensure transparency in the process of nominations to the Constitutional Court. Due to several problematic nominations and media pressure, the Senate began to scrutinise nominations much more closely, even more so than for some of controversial candidates proposed by former Presidents. There is a clearly stated concern by some senators, especially conservative ones, about the significant predominance of progressive-oriented constitutional judges and the alleged value imbalance of this institution.<sup>254</sup>

A historic first OECD Public Governance Review of the Czech Republic confirmed that Czech governance needs to increase its efficiency of the quality of public administration and availability of public services and to make informed political decisions that take into account the legitimate needs of citizens. The recommendations include improving the whole-of-government coordination, digitalisation, fostering citizen and stakeholder participation, and evidence-informed decision-

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<sup>252</sup> **CVVM: Trust in constitutional institutions - autumn 2023 -**

<https://cvvm.soc.cas.cz/cz/tiskove-zpravy/politicke/institute-a-politici/5765-duvera-ustavnim-institucim-podzim-2023>

<sup>253</sup> **CVVM: Trust in constitutional institutions - autumn 2023 -**

[https://cvvm.soc.cas.cz/media/com\\_form2content/documents/c2/a5735/f9/pi231214.pdf](https://cvvm.soc.cas.cz/media/com_form2content/documents/c2/a5735/f9/pi231214.pdf)

<sup>254</sup> **See the statement of political scientist Michael Drašar of the Faculty of Social Sciences at Charles University for Deník Referendum -** <https://denikreferendum.cz/clanek/35750-po-fremrovi-opacny-extrem-jak-sezmeni-vyber-ustavnich-soudcu>

making both at the political and civil servant levels. The OECD Review also rightly points to the lack of a strategic approach and the limited ability of the public administration to attract and recruit people with the right skills, including leadership.<sup>255</sup> There are concerns that the investment in the public governance review will not translate into real and necessary changes, as there are limitations not only due to the limited capabilities across the administration, but largely due to the lack of stewardship at the governmental and political level. In addition, there is a widespread political narrative for the need to reduce the number of civil servants, leading to major reorganisation, loss of key expertise and institutional knowledge, and rushed reforms without adequate strategic impact assessments. The situation is further complicated by the outsourcing of core functions and the influence of interest groups on lawmaking. Moreover, the departure of experienced staff, reinforced by the standard post-election changes, undermines the continuity and stability of the public administration.

The Czech Republic has been criticised for the absence of a national human rights institution (NHRI) or an ombudsman for children's rights. The forthcoming amendment to the Ombudsman Act foresees that the Ombudsman would carry out the NHRI mandate and that a children's rights ombudsman would also operate within the Ombudsman's Office.<sup>256</sup>

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<sup>255</sup> **OECD (2023): OECD Public Governance Reviews: Czech Republic: Towards a More Modern and Effective Public Administration - <https://www.oecd.org/governance/oecd-public-governance-reviews-czech-republic-41fd9e5c-en.htm>**

<sup>256</sup> **See more:**

**[https://www.ochrance.cz/aktualne/vznik\\_narodni\\_lidskopravni\\_institute\\_nhri\\_i\\_zrizeni\\_etskeho\\_ombudsmana\\_by\\_ochranu\\_lidskych\\_prav\\_v\\_cesku\\_posilily\\_shoduji\\_se\\_ombudsman\\_i\\_jeho\\_zastupce/](https://www.ochrance.cz/aktualne/vznik_narodni_lidskopravni_institute_nhri_i_zrizeni_etskeho_ombudsmana_by_ochranu_lidskych_prav_v_cesku_posilily_shoduji_se_ombudsman_i_jeho_zastupce/)**

# Civic freedoms: regulatory environment and implementation

## Freedom of association

Article 20 of the Charter of Fundamental Rights and Freedoms, which is part of the Czech constitutional order states, that "The right to freedom of association is guaranteed. Everyone has the right to associate with others in associations, societies and other associations." Article 21 of the Charter also states that "Citizens have the right to participate in the administration of public affairs directly or by freely choosing their representatives." According to the charter, freedom of association applies to any association, regardless of whether it has a legal personality. Therefore, the freedom of association may be invoked even by an association existing only in fact, i.e. without a legally recognised form.

The key legislation for associations is set in the Civil Code which covers the major legal entities of CSOs (associations, subsidiary associations, institutes, foundations, endowment funds) and in the legislation on churches and religious societies<sup>257</sup>. The conditions for registration, merger, or dissolution of legal entities of CSOs have not changed nor deteriorated in 2023.

## Freedom of peaceful assembly

Freedom of peaceful assembly is guaranteed by Article 19 of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic and further elaborated on in the

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<sup>257</sup> **Civil Code No. 89/2012 Coll., and the Act No 3/2002 Coll., on freedom of religion and the position of churches and religious societies and amending certain acts.**

Act on the right of assembly<sup>258</sup>, which has not been changed in 2023 nor have any changes to it come into force. A public assembly, such as meetings, street parades, demonstrations, or happenings open to everyone and held in a public space, does not require a permit from a public authority but is subject to notification within given time limits, free of charge. Authorities can immediately prohibit a declared assembly, but only if the purpose of the assembly was to call for the restriction of citizens' constitutional rights, incite hatred and intolerance, violence or gross indecency, or any other violation of the constitution and laws. The organiser of the assembly can appeal against the prohibition to the administrative court, which will make a decision within three days.

In 2023, the Czech Republic respected freedom of peaceful assembly in practice and there was no serious nor disproportionate interference by the authorities in demonstrations. The General Inspectorate of Security Forces (GIBS) investigated whether police officers had committed a criminal offence in intervening in an anti-government demonstration on 11 March. Several hundred participants in the demonstration attempted to break into the National Museum building and tear down the Ukrainian flag, which had been flown in solidarity with Ukraine. They clashed with riot police, whose calls to leave were not heeded. Police officers arrested 20 people, of which 19 were fined in administrative proceedings. The police dealt with 16 complaints about the intervention, but the GIBS found no wrongdoing.<sup>259</sup>

The CSO Iuridicum Remedium discovered<sup>260</sup> that the Czech police have been using the Digital Personal Image Information System in trial operation for about a year, which is an analytical face recognition tool linking photographs to a citizen database derived from state registers, effectively turning any high-resolution camera into a biometric surveillance tool. The operational basis for this tool comes due to an internal directive from the police president, details of which have largely been kept secret from the public.

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<sup>258</sup> **Act No. 84/1990 Coll., on the right of assembly.**

<sup>259</sup> [https://www.irozhlas.cz/zpravy-domov/zasah-policie-narodni-muzeum-trestni-oznameni-gibs-rakusan-policie\\_2308260500\\_tec](https://www.irozhlas.cz/zpravy-domov/zasah-policie-narodni-muzeum-trestni-oznameni-gibs-rakusan-policie_2308260500_tec)

<sup>260</sup> <https://digitalnisvobody.cz/blog/2023/07/12/tz-policie-jiz-temer-rok-vyuziva-analyticky-nastroj-na-rozpoznavani-tvari-podrobnosti-jeho-fungovani-ale-pred-verejnosti-taji/>

# Freedom of expression

The freedom of expression and right to information is set in the Charter of Fundamental Rights and Freedoms as part of the Constitutional order of the Czech Republic, and in the Freedom of Access to Information Act<sup>261</sup>.

The government has not imposed restrictions or interfered with Internet access, and there is no clear evidence to support claims of government surveillance of private online communications without proper legal justification. In 2022, the government requested to block pro-Russia disinformation websites in connection with the attack on Ukraine resulting in the domain name administrator temporarily blocking eight websites. After three months, the administrator restored access to the sites because there was no legal reason to block them further. In 2023, the Supreme Administrative Court dismissed a cassation appeal by two CSOs against a decision by the Municipal Court in Prague which found that the blocking did not constitute an unlawful interference with the rights of the public. The government had called for the sites to be blocked via regulation but did not enforce it in any way, and internet providers, including domestic mobile operators, voluntarily blocked websites, the court said.<sup>262</sup> The case highlighted the broader problem of how state measures, even without legal backing, can interfere with citizens' fundamental rights such as freedom of expression, especially in situations deemed to be of exceptional gravity, such as Russia's attack on Ukraine. The decision raised important questions about the limits and effectiveness of such measures in a democratic society.

Following the Hamas terrorist attack on October 7, 2023, the escalating violence in Israel/Palestine led to a number of demonstrations including in Western European countries, which in some cases were accompanied by expressions, such as “From the river to the Sea”, alleged to be anti-Israeli and anti-semitic. This sparked public interest in the Czech Republic for a more thorough analysis of the criminal law aspects of these expressions in the context of the Czech legal system and for the constitutionally protected freedoms of expression, peaceful assembly, and of political opinions. In November 2023, the Supreme Public Prosecutor's Office issued an opinion on the “legal assessment of hate speech in connection with the Hamas terrorist attack on Israel and the subsequent Israeli-Palestinian armed conflict”. The document highlighted the need for careful evaluation of individual cases, with consideration of the specific circumstances and the context of each act, to determine whether it constitutes a criminal offence.<sup>263</sup>

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<sup>261</sup> Act No. 106/1999 Coll., Act on Free Access to Information

<sup>262</sup> [https://www.irozhlas.cz/zpravy-domov/zaloba-dezinformace-blokovani-weby-zasah-nss\\_2308101501\\_cib](https://www.irozhlas.cz/zpravy-domov/zaloba-dezinformace-blokovani-weby-zasah-nss_2308101501_cib) <https://www.otevrenaspolecnost.cz/aktuality/8306-nejvyssi-spravni-soud-prehlizive-odmitl-uvazovat-o-svobode-projevu>

<sup>263</sup> <https://verejnazaloba.cz/nsz/nsz-zverejnuje-text-stanoviska-k-projevum-ve-vztahu-ke-konfliktu-v-izraeli/>



In the latest Reporters Without Borders (RSF) World Press Freedom Index on media freedom,<sup>264</sup> the Czech Republic improved its ranking, from twentieth to fourteenth place. In the previous year, it went from fortieth to twentieth place, mostly because then Prime Minister Andrej Babiš, a de-facto owner of a key media house left the government. However, press freedom is threatened by the concentration of private media in the hands of a few billionaires and the pressure on public media. Parliament's approval of the amendment to the media law represents a major step towards limiting media ownership by politicians. It also prohibits public officials and their companies from receiving subsidies and investment incentives. However, it does not address the ownership of online media, which is a significant shortcoming that requires new legislation.<sup>265</sup>

## Safe space

There are no specific formal rules or protective frameworks for CSOs and human rights defenders in the state administration, beyond those set out in civil and criminal legislation. Thus, an affected person or an organisation can only turn to the police in the event of an attack and proceed according to the criminal law. There is no system to monitor attacks, threats, etc. and no comprehensive study has been commissioned to date. Therefore, the assessment can be done only on the available information provided.

Some CSOs report that they are increasingly confronted with false accusations and attacks due to increased disinformation. Therefore, CSOs have less capacity to effectively communicate about their activities, strategically cultivate a network of supporters and fulfil their mission. As a result, disinformation threatens the resources of CSOs and human rights defenders and can lead to the loss of donors.

Organisations and advocates promoting equal rights (esp. marriage equality) and LGBTIQ+ rights report encountering targeted insults, verbal attacks, hate speech, and, at times, hate crimes solely due to their advocacy efforts. Derogatory comments range from questioning their right to engage in

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<sup>264</sup> <https://rsf.org/en/country/czech-republic>

<sup>265</sup> <https://www.rekonstrukcestatu.cz/archiv-novinek/politici-jako-vlastnici-medii-novela-zakona-odkryla-potrebu-hlubokych-reforem-v-medialni-oblasti>

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public discourse to spreading misinformation and unfounded claims about LGBTQI+ individuals. Furthermore, there are instances of inciting social discord and fear by falsely asserting that LGBTQI+ people pose a threat to society. Notably, the Czech Criminal Code provides the least protection to victims of hate crimes motivated by sexual orientation and gender identity compared to hate crimes based on other motives like race or religion. Additionally, there is reluctance to offer financial support for initiatives aimed at enhancing the lives of LGBTQI+ individuals, posing funding security challenges for LGBTQI+ organisations.<sup>266</sup>

The pressure exerted on journalists in recent years has mostly been verbal, with some political actors (especially former president Miloš Zeman) riding the current wave of distrust for the media. Unrestrained attacks on journalists from the highest ranks of government has led to citizens' growing distrust of journalists. An important precedent was set when Pavla Holcová, the editor-in-chief of *investigace.cz*, won in a case brought by former Prime Minister Andrej Babiš. His party ANO previously *de facto* lost the elections, following the publication of Holcová findings in the Pandora Papers case, which exposed Babiš's suspicious property purchases through an offshore scheme. Babiš wrongfully accused the journalist of manipulating the elections in cooperation with George Soros on his social media platforms, which led to a hate campaign against her. The court ordered Babiš to publicly apologise and pay the legal fees. This ruling is significant as it establishes a politician's responsibility for their posts on social media and for moderating subsequent comments under those posts.<sup>267</sup>

The Whistleblower Protection law that came into effect on August 1, 2023, aligning with a European directive and designates the Ministry of Justice as the overseeing authority. However, a notable limitation of the law is its lack of protection for anonymous reporting, a significant concern given the preference of most whistleblowers to remain unidentified to avoid publicity and potential retaliation. This gap in protection raises concerns about the law's effectiveness in practice.

The enforcement of this law falls under the purview of the Ministry of Justice and labour inspectorates, tasked with ensuring compliance and overseeing the operation of employer notification systems under labour law requirements. The capacity of these bodies to manage their roles effectively remains in question.<sup>268</sup> This comes after the Minister of justice Pavel Blažek (ODS) dismissed the director of the insolvency department, Jan Benýšek, after Benýšek filed a complaint

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<sup>266</sup> <https://ct24.ceskatelevize.cz/clanek/domaci/predsudecnych-utoku-proti-lgbt-lidem-bylo-loni-nejvic-od-zacatku-sledovani-343280> and Jsme fér Initiative: <https://www.jsmefer.cz/>

<sup>267</sup> More at: <https://www.investigace.cz/babis-se-musi-omluvit-holcove/>

<sup>268</sup> <https://advokatnidenik.cz/2022/11/25/funkcnost-zakona-o-ochrane-oznamovatelu-ukaze-az-praxe/> <https://www.whistleblowingcenter.cz/blog/schvaleni-zakona-o-whistleblowingu-je-vyznamny-posun>

against Blažek's political deputy pointing out possible abuse in insolvency proceedings. Despite Benýšek's call for protection under the new whistleblower law, the government approved his termination of office on the Ministers recommendation- assumed to be in retaliation for his whistleblowing activities. The incident underscores concern about the law's ability to effectively protect whistleblowers from retaliation. At the end of 2023, the inspector of the Ministry of Justice confirmed Benýšek's corruption complaint and provided him with legal protection against retaliation, although the government already proceeded to terminate his post.<sup>269</sup>

In response to the pandemic, economic changes or foreign conflicts, a favourable climate has emerged for anti-system movements. It is made up of a wide range of disparate groups with limited membership and limited longevity, but increasingly vital. They espouse various conspiracy theories or in some cases try to give them a spiritual or esoteric dimension. Supporters of this movement are generally over 40 years of age, evoke a certain revolt of people who feel existential fears and experience a sense of alienation. The main risk associated with these groups lies in their ambition for the Czech Republic to leave NATO and the European Union. The implementation of these plans would threaten the overall security, sovereignty, defence and, as a result, the functioning of democracy in the Czech Republic. The conflict in the Middle East has brought new impetus to some of these actors, as they did not see the developments in Israel/Palestine and subsequent events as a regional conflict, but rather framed it within their ideological worldview.<sup>270</sup>

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<sup>269</sup> <https://www.seznamzpravy.cz/clanek/domaci-kauzy-duvodne-kontrolor-dava-za-pravdu-muzi-ktery-jde-proti-blazkovi-242455>

<sup>270</sup> See the Reports on extremism, Security Policy Department of the Ministry of the Interior - <https://www.mvcr.cz/clanek/ctvrtletni-zpravy-o-extremismu-odboru-bezpecnostni-politiky-mv.aspx>

# Funding for civil society

While the legal environment for civil society is relatively solid, systemic problems persist in the area of public funding, such as the absence of multi-annual funding, lengthy and bureaucratic grant award processes, strict co-financing requirements, or diverse grant methodologies applied in different public granting schemes. The comprehensive data on the structure and monetary value of funding of CSOs activities from public and private sources (Czech and foreign) does not exist.

The *Strategy for the Cooperation of the Public Administration with NGOs for the years 2021 to 2030*<sup>271</sup> is a key government document for the cooperation of the Czech public administration with the non-profit sector. It sets out a commitment to support the development of conditions under which the CSOs can perform their role with dignity and efficiency from the local to the national level. The strategy addresses the promotion of philanthropy, volunteering, the efficiency of the financing system from public budgets, access to funding from foreign sources (especially the EU), the harmonisation of the state and regional approaches to financing social services, the monitoring of data on state subsidies, and also monitoring of legislation directly related to CSOs. Some measures in the strategy contain important steps for systemic change, which requires long-term effort and interest, necessary capacities on the authorities and CSOs, and financial resources. On the contrary, the strategy mistakenly assumes that "its implementation does not create increased demands on the state budget or other public budgets".

Every year, the Czech government approves the main areas of state subsidy policy towards CSOs to support public benefit activities for the following year, including funding from the state budget. The document actually shows how much the government is actually investing in areas of public benefit that it cannot effectively address on its own, but only through CSOs. These areas may include social care, informal education, gender equality, transformational policies, foreign development cooperation, and more. The total funds from the state budget allocated to public benefit activities has not changed much in recent years, but operating subsidies have lost their real value due to

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<sup>271</sup> **The Strategy for the cooperation of the Public Administration with NGOs for the years 2021 to 2030 was approved by the Czech government on 12 July 2021:**

<https://vlada.gov.cz/cz/ppov/rnno/aktuality/vlada-schvalila-strategii-spoluprace-verejne-spravy-s-nestatnimi-neziskovymi-organizacemi-na-leta-2021-az-2030-189691/> and <https://vlada.gov.cz/assets/ppov/rnno/dokumenty/BROZURA-FINAL-S-PRILOHAMI.pdf>

inflation and a significant drop in the share of GDP.<sup>272</sup> The largest part of subsidies from the state budget goes to sports through the National Sports Agency. For 2024,<sup>273</sup> the government approved a total of 263,3 mil. EUR for 21 thematic areas in April 2023. However, in November 2023, changes were made to the budget allocations for 2024 as part of the government's public finance consolidation package. Most state programs remained at the budgeted levels from April 2023, while some have lower financial allocations (e.g. gender equality or anti-corruption, whose allocations are lower than 0.01% of the total amount). Surprisingly, the overall financial support from the state budget increased due to a significant increase in allocations for sports and related activities (from 150 mil. EUR to 210 mil. EUR)<sup>274</sup>.

The government's consolidation package with tax changes came into force in January 2024 and will impact CSOs in many areas, though the full extent remains to be assessed. As for the cuts in the subsidy programmes of the different ministries, a more careful interpretation of the data is necessary to determine what impact the cuts could have in the medium term on reducing inequalities and promoting social cohesion (e.g. budget cuts in preventive services). CSOs will be affected by the change in the conditions for the use of employment contracts and contracts for the performance of work, which will complicate contractual arrangements with their co-workers. The tax measures enabled individual and corporate donors to take advantage of increased tax deductions from the tax base for the value of free services provided to taxpayers for activities expressly stated in the law. The limit for deducting donations from the tax base was increased from 15 to 30 per cent for natural persons and from 10 to 30 per cent for legal persons. These limits were again extended by changes within the consolidation package of public finances for the year 2023.<sup>275</sup>

The Expert Group on systemic change in funding of public benefit services established in 2022 under the Government Council for NGOs (RVNNO) has been assessing and preparing proposals for systemic change leading to more efficient public funding. Eight thematic working groups addressed several issues, including multi-year funding, allowing partnerships in grant programmes, grants without co-financing (i.e. awarding grants that cover the full cost of projects), co-funding projects with volunteer work and in-kind contributions, grant programmes to ensure mandatory co-financing of projects

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<sup>272</sup> See Kolář, D., Janský, P. (IDEA-CERGE, 2023): Analysis of state budget expenditures in 2024 in the light of the pre-crisis year 2019 - <https://idea.cerge-ei.cz/studies/analyza-vydaju-statniho-rozpocet-2024-ve-svetle-predkrizoveho-roku-2019>

<sup>273</sup> Main areas of state grant policy towards non-governmental non-profit organisations for the year 2024

<https://vlada.gov.cz/cz/ppov/rnno/dokumenty/hlavni-oblasti-statni-dotacni-politiky-vuci-nestatnim-neziskovym-organizacim-pro-rok-2024-206824/>

<sup>274</sup> This figure may still change and is subject to clarification by the National Sports Agency.

<sup>275</sup> The Act No. 586/1992 Coll., on Income Taxes.



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funded from foreign sources, fast-tracking and awarding grants in the event of emergencies, the lump-sum treatment of indirect costs and simpler accounting for grants, sustainable funding and grant programmes for umbrella organisations and CSOs networks so that they do not compete with their member organisations, solutions for *de minimis* rules.<sup>276</sup> The legislative proposals will be presented in 2024.

The Ministry of Interior prepared the amendments to the Act on Public Donations,<sup>277</sup> taking into account the recommendations by the RVNNO and its Working group on Public Donations. The proposal was approved by the government on January 10, 2024. On the other hand, the Ministry of Finance submitted a proposal to change the ESF+ co-financing rate to the one proposed by the previous government in June 2023. The proposal intended to ensure savings in the state budget by reducing the state's share of funding for these subsidies, while the differences in the co-financing amount between the different categories of regions should henceforth be borne exclusively by the beneficiaries of the subsidies - i.e. service providers, schools, municipalities, CSOs. The co-financing rate for calls in the area of social inclusion and social services was to be increased from 5 to 13.2 per cent (an increase of 165 per cent). CSOs raised their concerns via an open letter as this would threaten the provision of publicly beneficial, especially social and educational services.<sup>278</sup> The government finally approved a five per cent co-financing rate, with the provision that it may approve an exception to zero per cent co-financing for a limited type of calls. CSOs in social services have very limited possibilities to secure their own co-financing. At the same time, there is a growing need for social services and counselling in difficult life situations or for prevention, partly due to the economic situation of many vulnerable groups of people.

In 2023, the government failed to reverse the decision of the previous Babiš government and did not transfer 10 per cent of funds (i.e. EUR 270 million) from the Operational Programme Transport to ESF+ for social topics. As a result, there is a shortfall of funding especially in the areas of vocational counselling, work with families, debt issues, dealing with domestic violence, housing, assistance to

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<sup>276</sup> [https://vlada.gov.cz/cz/ppov/rnno/ex\\_skup\\_fin/expertni-skupina-k-systemove-zmene-financovani-verejne-prospesnych-sluzeb-a-cinnosti-ze-statniho-rozpoctu-198755/](https://vlada.gov.cz/cz/ppov/rnno/ex_skup_fin/expertni-skupina-k-systemove-zmene-financovani-verejne-prospesnych-sluzeb-a-cinnosti-ze-statniho-rozpoctu-198755/)

<sup>277</sup> Act No 117/2001 Coll., Act on Public Donations - <https://vlada.gov.cz/cz/media-centrum/aktualne/vysledky-jednani-vlady-10--ledna-2024-211374/>

<https://vlada.gov.cz/cz/media-centrum/aktualne/vlada-navrhuje-zjednodusit-poradani-verejnych-sbirek--upravit-chce-take-vykon-advokacie-211390/>

<sup>278</sup> See the joint letter of CSOs addressed to Minister of Finance, coordinated by Glopolis - <https://glopolis.org/koordinace-neziskoveho-sektoru-neon/otevreny-dopis-nevladnich-neziskovych-organizaci-ministru-financi-zbynku-stanjurovi-k-navrhu-pravidla-spolufinancovani-eu-fondu/>

people from Ukraine and social innovation. Despite advocacy<sup>279</sup> from various stakeholders, a satisfactory resolution has not been achieved.

The lack of funding for digitisation puts CSOs at a serious disadvantage, and in particular affects their sustainability. A survey on the state of digitisation and IT in the Czech non-profit sector in 2023<sup>280</sup> revealed that the long-term underfunding of the sector is also reflected in the state of digitisation and IT: 43 per cent of CSOs do not have enough funds to purchase the necessary equipment, seven per cent exclusively use software owned by employees or CSO members (for volunteer organisations it is 30 to 50%), 22 per cent use shared storage exclusively on physical servers, 19 per cent have no shared storage. Managers of CSOs often lack knowledge and experience with digitisation. CSOs are not protected against cyber-attacks. Outdated computers and other equipment, lack of know-how and skills hinder organisations from using the full potential of modern technologies and their work becomes expensive and inefficient. Organisations are exposed to cyber security risks and the development of the entire sector is slowing down.<sup>281</sup>

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<sup>279</sup> See e.g. the initiative For Housing - <https://www.zabydleni.org/aktuality/penize-z-evropskych-fondu-v-socialni-oblasti-stale-chybi-jednani-o-spolufinancovani-se-ale-posunulo-dobrym-smerem>

<sup>280</sup> Source: Association Via, TechSoup and OSF Foundation (2023): Survey of the state of digitization of the Czech non-profit sector - <https://sdruzenivia.cz/pruzkum-stavu-digitalizace-ceskeho-neziskoveho-sektoru/>

<sup>281</sup> <https://sdruzenivia.cz/pruzkum-stavu-digitalizace-ceskeho-neziskoveho-sektoru/>

# Civil dialogue and the right to participation

As described by the OECD Public Governance Review,<sup>282</sup> there are islands of good practice of citizens and stakeholder (including CSOs) participation across the Czech central administration and at the local level. For example, the good practice of creating advisory and working bodies that include different types of non-public stakeholders. However, the existing processes do not have sufficient impact, there is a lack of coordination, and the good practices are not shared. Czech governance has no overarching national vision of civil society participation. Objectives and initiatives pre-supposing participation in public decision-making are scattered in many political documents, ministerial regulations and methodologies. There are often divergent and confusing definitions between ministries and central authorities and participatory processes and working methods vary greatly, with their functioning depending to a large extent on the political will of the ruling administration and the profile of the people responsible. This does not ensure the same level of access to decision-making for a wider group of stakeholders nor people.

The transition from limited *ad hoc* consultations to a culture of participation as an integral part of all stages of decision-making and legislative processes require the introduction of institutionalised mechanisms, providing centralised methodological support, harmonising procedures across public administration, ensuring transparency and access to information from the state. In addition, it requires developing motivation, capacities and skills for participation across the public administration, politicians, the public and stakeholders.<sup>283</sup>

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<sup>282</sup> OECD (2023): Public Governance Review: Czech Republic: The Czech Republic on the Path to a More Modern and Efficient Public Administration -

<https://www.oecd.org/governance/oecd-public-governance-reviews-czech-republic-41fd9e5c-en.htm>

<sup>283</sup> OECD (2023): Public Governance Review: Czech Republic: The Czech Republic on the Path to a More Modern and Efficient Public Administration -

<https://www.oecd.org/governance/oecd-public-governance-reviews-czech-republic-41fd9e5c-en.htm>

The Government Council for NGOs (RVNNO)<sup>284</sup> has been the key institutional platform for discussing the agenda of civic space and for CSOs to initiate proposals for the government and the ministries, incl. the *Strategy for the Cooperation of the Public Administration with NGOs for 2021 to 2030*.<sup>285</sup> As the permanent advisory body to the government, it is composed of representatives of CSOs and state administration, chaired by the Prime minister, and co-chaired by the Commissioner for Human Rights and a representative of CSOs. It has no legislative or executive power.

The Strategy for Cooperation with NGOs recognises the participatory role of CSOs and aims to support effective partnership between the state and the non profit sector. It also seeks partnerships with CSO umbrella organisations and networks, as they aggregate different field experiences, including those of individual CSOs. The state's partnership with CSOs and their umbrella organisations remains a challenge.<sup>286</sup> The Office of the Government that runs a subsidy program for umbrella organisations capacities will be revised as its eligibility criteria does not correspond to the real number of cross-sectorial networks. It's program is not linked to a specific goal of cooperation with the state and has a limited allocation of 118 000 euro. The expert subgroup under RVNNO is preparing further proposals to support the sustainability of umbrella organisations.

The Strategy also includes the goal of improving public climate and an emphasis on raising awareness of the benefits of projects and activities of CSOs and the results of public administration cooperation with CSOs. The problem, however, lies in the mismatch of these ambitions with reality, i.e. the lack of capacities and financial resources for their implementation, both on the part of the managing or coordinating body at the Office of the Government and on the individual ministries. There is a lack of strategic communication across public sectors with secured funding and greater impact. State officials can make significant value-based declarations supporting the recognition of civil society, but their tangible efforts in this regard are limited. The Government's Commissioner for Human Rights, Klára Šimáčková Laurenčíková, has been doing praiseworthy work in communicating on important human rights topics and the work of CSOs through participating in many events and through active

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<sup>284</sup> <https://vlada.gov.cz/cz/ppov/rnno/zakladni-informace-767/>

<sup>285</sup> <https://vlada.gov.cz/assets/ppov/rnno/dokumenty/BROZURA-FINAL-S-PRILOHAMI.pdf>  
and  
[https://vlada.gov.cz/assets/ppov/rnno/dokumenty/2022\\_Monit\\_zprava\\_Strategie\\_AP\\_fin.pdf](https://vlada.gov.cz/assets/ppov/rnno/dokumenty/2022_Monit_zprava_Strategie_AP_fin.pdf)

<sup>286</sup> **The key being a lack of capacity at CSOs side, lack of access to information, low awareness of the state administration about partners among CSOs and how to engage them, see the research report: <https://www.vlada.cz/cz/ppov/rnno/dokumenty/analiza-spoluprace-statni-spravy-se-stresnimi-organizacemi-a-sitemi-nestatnich-neziskovych-organizaci-198802>**

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contributions via her social media accounts.<sup>287</sup> However, she cannot be solely responsible for improving the societal climate.

During 2023, seven ministries began testing the methodology for the participation of CSOs<sup>288</sup> and the Secretariat of RVNNO widely applied the methodology in the process of nominating CSO representatives to the advisory bodies and EU fund committees.<sup>289</sup> However, the methodology is non-binding and only a recommendation for the public administration. This could change if the government adopts it by resolution.

As a follow-up to the Czech Republic's Presidency of the EU Council 2022, Glopolis ran a survey "Evaluation of the Czech Presidency from the perspective of CSOs".<sup>290</sup> CSO networks, who actively participated in the Czech Presidency, found that there was average fulfilment of expected objectives in European policy. The Czech Presidency also received an average rating in terms of its performance and the degree of its influence on changes in the 12 areas monitored.<sup>291</sup> Above average scores were given for progress in the areas of gender equality, strengthening resilience to Russian influence and cyber threats, managing the refugee crisis and post-war reconstruction in Ukraine, and humanitarian and development aid. It was rated above average for energy security and transition, and the lowest for its implementation of the conclusions of the Conference on the Future of Europe, and the promotion of the rule of law, democracy and civil society in Europe. Developments in the cultural and

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<sup>287</sup> <https://www.facebook.com/laurencikova.zmocnenkyne> and <https://www.linkedin.com/in/klarasimackovalaurencikova/>

<sup>288</sup> **The Methodology for the participation of NGOs in advisory and working bodies and in the creation of public administration documents was approved by the Government Council for NGOs on June 28, 2022.** - <https://vlada.gov.cz/cz/ppov/rnno/dokumenty/metodika-participace-nestatnich-neziskovych-organizaci-v-poradnich-a-pracovnich-organech-a-pri-tvorbe-dokumentu-statni-spravy-197878/>.

<sup>289</sup> <https://vlada.gov.cz/cz/ppov/rnno/aktuality/prubezna-vyzva-k-podavani-prihlasek-na-cleny-a-nahradniky-z-neziskoveho-sektoru-do-pracovnich-teles-fondu-eu--aktualizace--211026/>

<sup>290</sup> **Glopolis (2023): Evaluation of the Czech Presidency from the perspective of CSOs** - <https://glopolis.org/koordinace-neziskoveho-sektoru-neon/hodnoceni-ceske-predsednictvi-v-rade-eu-nestatnimi-neziskovymi-organizacemi/>

<sup>291</sup> **The thematic areas were: 1. Coping with the refugee crisis and Ukraine's post-war reconstruction, 2. Humanitarian and development assistance and promotion of human rights, 3. Safe and carbon-free energy, 4. Resilience to Russian influence and cyber threats, 5. Mitigating the economic and social impact of pandemics and migration waves, 6. Mental health of children and young people and meaningful learning, 7. Cultural and creative industries, 8. Rule of law framework and support for civil society, 9. Protection of civil liberties and media pluralism, 10. Gender equality, 11. Implementation of the conclusions of the Conference on the Future of Europe, 12. Declaring 2025 the European Year of Volunteering.**



creative sectors were rated below average. Based on this evaluation, several recommendations were put forward to the Committee for the EU, including the better involvement of CSOs in EU agendas and preparation of the Czech Republic's framework positions, and financial and personnel support of a "culture of participation" and cooperation between the state and CSOs

A pilot cooperation was run in 2023 between the Ministry of Environment (MoE) and the Green Circle, an umbrella association of 91 environmental CSOs. The outcomes are promising: The MoE has strengthened its capacity and set up a new position of a MoE liaison officer for the participation of CSOs. The MoE has enabled the Green Circle to improve its capacity for participation by concluding a Cooperation Agreement for the period 2023-2025 and enabling CSOs to access the inter-ministerial comment procedure system. The communication between MoE and the Green Circle CSOs has intensified, as the CSOs were actively involved in the inter-ministerial comment procedure of legislative and non-legislative materials in nine cases, and in the preparation of two important policies - the update of the Strategic Framework Czech Republic 2030 and the update of the Climate Protection Policy.<sup>292</sup>

The involvement of CSOs in the National Recovery Plan (NRP) has undergone moderately positive development. The Czech Republic has the opportunity to use over 9,2 billion euros from the European Recovery and Resilience Facility (RRF) for reforms and modernisation in the fields of digitalisation and green transition between 2021 and 2026.<sup>293</sup> From the beginning of the NRP preparations in 2020, it has been challenging to determine how to involve CSOs in the entire process and in proposing reforms and priorities. After two years, it was finally possible to include representatives of CSOs in the Committee of NRP and in 2023 the sub-committees based on the nomination process under RVNNO. However, the Committee of NRP only has an advisory and informative role. Coordination is under the Ministry of Industry and Trade - the Delivery Unit, which gradually became open to discussing the proposals tabled by CSOs representatives. The information level on the NRP website is improving (list of contact persons by component, overview of the largest beneficiaries, overview of expected calls, etc.). An important step was the establishment of a Sub-Committee on Transparency and Civil Society Engagement. However, when it comes to key decisions, CSOs and other stakeholders are absent and do not have access to the sub-committee, which was evident in the NRP update during 2023. Although the topic was on the committee's agenda, in reality, the whole process was conducted at the inter-ministerial level and in the final stage at the Cabinet

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<sup>292</sup> <https://zelenykruh.cz/o-zakonech-ve-prospech-zivotniho-prostredi-ohlednuti-zeleneho-kruhu-za-rokem-2023/>

<sup>293</sup> **implemented under the European Recovery and Resilience Facility (RRF)** More at <https://www.planobnovy.cz/> and [https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility\\_en](https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en)

meeting. CSOs involved learned about the change of the loan amount from the discussed 5,6 billion euros to reduced 818 million only through the media.

CSOs involved in the NRP generally see the experience as a key lesson for improving the design of the new EU financial facilities and the next EU Multi-Annual Financial Framework to ensure stakeholder involvement at least to the extent of the principles of partnership and multi-level governance in the programming of Cohesion Policy.

# Civil society resilience

Civil society plays a key role in addressing fundamental rights in the Czech Republic. There are a number of CSOs that have been advocating in the areas of the rule of law and engaging in the rule of law agenda at the EU level. In addition to Glopolis and NeoN as cross-thematic networks, there is the Reconstruction of the State, the Network for the Defence of Democracy, but also thematic umbrella organisations through their pan-European networks or individual CSOs working in the field of human rights, democracy and EU affairs. CSO networks are also very well-placed to disseminate information to their members and to engage or mobilise wider constituencies. The Czech public is active and responsive to calls to action when the rule of law or democracy is under threat or to promote human rights. They can mobilise and fill squares throughout the country.

In 2023, there were, among others, actions for the promotion of equal marriage, affordable social housing, or desegregation in the Czech educational system. LGBTIQ+ organisations advocated for the legal recognition of marriage equality that would positively affect many couples, individuals, families and children to have equal rights, responsibilities, and recognition. Recent surveys indicate that there is significant support with 65 per cent of the population in favour of marriage equality. The legislative proposal has received support from various actors, including the President, many politicians, professional organisations, businesses, associations, arts groups and academic bodies. Nevertheless, a complex debate continues to take place in the parliament, often to the point of being dishonourable. A vote is expected in 2024 but it is uncertain whether a majority in the parliament will support the proposal. At the same time, a parliamentary counter-proposal appeared with the aim of constitutionally enshrining marriage as a union of a man and a woman by amending the Charter of Fundamental Rights and Freedoms, which is a step that contradicts the intention of the Charter to

protect, not restrict, the rights of citizens. This appears to be a strategic attempt to hinder and complicate the enforcement of marriage equality legislation.<sup>294</sup>

The Czech Republic lacks adequate legal regulation of social housing, and according to the Constitutional Court, it is unsustainable as long-term insecurity regarding housing can threaten public confidence in the democratic rule of law. The state's obligation to provide housing for marginalised and particularly vulnerable persons (e.g. families with children and seniors) is not directly enforceable. However, vulnerable persons cannot be left only in the care of charity, volunteers or non-profit organisations.<sup>295</sup> The CSO Platform for Social Housing, along with the broad civil society initiative "Za bydlení/For Housing," advocates for effective and impactful housing support legislation before the end of the current electoral term. The proposed Act on Support in Housing aims to solve the housing crisis with several procedures proven in practice. It would establish a wide network of accessible contact points in municipal authorities providing people who find themselves in housing need with professional advice and help to prevent the loss of housing. Thanks to a well-thought-out system, people at risk of losing their housing will be able to receive a special benefit to pay the deposit, and assistants will help them with housing arrangements and good living conditions.<sup>296</sup>

The Czech society shows a high degree of solidarity and trust, compared to the EU, it was in 10th place in 2022 and 8th in 2023<sup>297</sup>. While public trust in the government is at an all-time low, 84 per cent of Czechs trust other people in general. Czech society knows how to come together and help in times of crisis, and the willingness to help each other is growing, with 20 per cent of people willingly volunteering. From the long-term time series of CVVM research on public trust in public institutions, the public attitudes towards CSOs is unfavourable - since 2015, mistrust prevails over trust<sup>298</sup>. On the other hand, other studies reveal different perceptions of CSOs among politicians/public administration and the public, with the public having more favourable attitudes towards CSOs in environmental matters.<sup>299</sup> However, data and systematic research on public attitudes towards CSOs

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<sup>294</sup> See Jsme fér Initiative: <https://www.jsmefer.cz/>

<sup>295</sup> <https://www.usoud.cz/aktualNe/v-cr-chybi-zakon-o-socialnim-bydleni-dlouhodobajnejistota-obcanu-tykajici-se-bydleni-muze-ohrozit-duveru-v-demokraticky-pravni-stat>

<sup>296</sup> <https://socialnibydeni.org/> and <https://www.zabydleni.org/>

<sup>297</sup> Prosperity Index of the Czech Republic according to Česká spořitelna - <https://www.indexprosperity.cz/>

<sup>298</sup> CVVM - timelines of selected questions from the Naše společnost (Our society) survey - <https://cvvmapp.soc.cas.cz/#question24>

<sup>299</sup> CVVM - viz výzkumy v rámci Naše společnost - Ekologie - NS\_2209 - [https://cvvm.soc.cas.cz/index.php?option=com\\_finder&view=search&Itemid=250&lang=cz&q=%22NS\\_2209%22](https://cvvm.soc.cas.cz/index.php?option=com_finder&view=search&Itemid=250&lang=cz&q=%22NS_2209%22)

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and broader civil sector topics are scarce, making it impossible to draw a comprehensive interpretation.

In November 2023, 16 years passed since the European Court of Human Rights issued the judgement in the case of *D.H. and others v. the Czech Republic*. It concluded that the Czech Republic violated the prohibition of discrimination against the complainants in the area of their right to education. The complaint was filed by a group of 18 young Roma from Ostrava, who were placed in special schools for pupils with mental disabilities. The Roma were thus excessively enrolled in schools that offered modified educational programs, which subsequently limited their further education and employment. The European Court of Human Rights made it clear to the Czech Republic government that the segregation of Roma children is not in accordance with the human rights convention, which the state signed in 1992. Many civil society actors, such as the local Roma parent organisations and Czech and international human rights CSOs, the European Commission and the Office of the Public Defender of Rights and the Council for CSOs have continued to call on the government to take the necessary steps for improvement. Research and civil society stakeholders acknowledge that Czech Roma face discrimination and identify concrete measures for desegregation in schools.<sup>300</sup>

The joint initiatives and coalition building across the civic sector have been ongoing. Some organisations gradually decreased their activity due to changing urgency (e.g. *Energy to People*<sup>301</sup>), while others have been emerging and grasping new topics (e.g. *Byro* - a platform for leaders in the public administration<sup>302</sup>). *NeoN - Network of Networks*<sup>303</sup> has increased to 20 networks and organisations, associating over 600 CSOs across wide thematic fields ranging from environment, education, youth and informal education, aid, social housing, anti-corruption and volunteering. The networks' common agenda is to strengthen democratic space, civic and stakeholder participation and partnership of the state with the CSO networks. *Partnership for Education 2030+*<sup>304</sup> was established at the end of 2022 as a collective impact initiative of seven important platforms in education and is

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<sup>300</sup> **PAQ Research:** [https://vlada.gov.cz/assets/ppov/rnno/vybor-pro-eu/2008/Priloha\\_1\\_Desegre\\_PAQ.pdf](https://vlada.gov.cz/assets/ppov/rnno/vybor-pro-eu/2008/Priloha_1_Desegre_PAQ.pdf) and the project <https://www.desegregace.cz/> [https://www.irozhlas.cz/zpravy-domov/evropsky-soud-pro-lidska-prava-ceska-republika-diskriminace-romskych-zaku-umluva\\_2305310700\\_ank](https://www.irozhlas.cz/zpravy-domov/evropsky-soud-pro-lidska-prava-ceska-republika-diskriminace-romskych-zaku-umluva_2305310700_ank) <https://www.seznamzpravy.cz/clanek/domaci-romske-deti-tu-nemaji-budoucnost-cesko-porazil-u-soudu-chce-ale-emigrovat-219377>

<sup>301</sup> **An initiative of environmental and social care CSOs aiming at fighting the impact of energy poverty and promoting measures for clean and affordable energy for all -** <https://energielidem.cz/>

<sup>302</sup> <https://www.byro.works/>

<sup>303</sup> <https://neon-cooperation.org/>

<sup>304</sup> <https://partnerstvi2030.cz/>

becoming a leading partner connecting key stakeholders for systemic changes for improving children's learning and reducing educational inequalities. The business-based initiatives such as *The Second Economic Transformation*<sup>305</sup> or *The Change for the Better*<sup>306</sup> have established themselves in the public space, with substantially different resources and access to policy dialogue than CSO-led ones. Cross-sectoral cooperation for comprehensive solutions to the needs of society in the Czech Republic has potential for development, which requires financial and personnel resources, which are still very limited.

# Recommendations

## Targeted recommendation:

- 🔍 Ensure political support and institutional embedding of citizen and stakeholder participation in public decision-making, including the introduction of participatory mechanisms, necessary skills, capacities and communities of practice, and strengthening overall literacy and culture of participation in the Czech administration and wider society.
- 🔍 Promote recognition of the diverse roles of CSOs and encourage partnerships with CSOs and their umbrella organisations and networks within the public administration.
- 🔍 Ensure the necessary political support, administrative capacity and resources for the implementation of the Strategy for the cooperation of the Public Administration with NGOs 2021-2030.

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<sup>305</sup> <https://druhaekonomickatransformace.cz/>

<sup>306</sup> <https://www.klepsimu.cz/>



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- 🔍 Ensure that all CSOs have access to secure funding.
- 🔍 Ensure systemic changes in public funding enabling the multi-year financing, financial transfers in projects in partnerships and between the main and subsidiary associations, and fast-track grant making, grants without co-financing or with volunteer work and in-kind contributions, simpler accounting for grants, and sustainable funding for umbrella organisations.
- 🔍 Support the digitisation of CSOs through grant programmes for the development of digital competencies and digital infrastructure, as well as other capacities and processes necessary for ensuring open and safe digital civic space.
- 🔍 Take immediate steps to protect CSOs working on LGBTQI rights by holding perpetrators of attacks to account.
- 🔍 Immediately amend the Whistleblower Protection law by removing the requirement to sign the reporting by a whistleblower; expand the scope of the law so it applies to at least all misdemeanours; introduce preventive protection against retaliatory measures following the example of Slovakia; entrust the agenda to an independent authority.
- 🔍 Support implementation of the Whistleblower Protection Law by strengthening the relevant capacities in the Ministry of Justice.

# About the author

Glopolis is the Czech-based CSO, established in 2004, connecting the non-profit sector, government and business and facilitating collaboration to create comprehensive solutions for democracy, coherent society and sustainable living. Glopolis has an outstanding experience in research, policy analysis, advocacy and campaigning at the Czech Republic's and EU levels. It serves as the backbone organisation of NeoN - Network of 20 Czech umbrella organisations and networks, associating 600 CSOs and striving for an accountable state that adheres to democratic principles and works with the civil society sector, and for the civil society sector that can work together to solve societal problems across disciplines.

<https://glopolis.org/> <https://neon-cooperation.org>

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# DENMARK

**nyt  
europa**  
bæredygtigt og inkluderende



# Key trends

- 🔍 Some CSOs defending fundamental rights face cuts in public funding while others face challenges with core funding.
- 🔍 Increase in verbal, physical and online attacks on activists and organisations fighting for non-discrimination and the rights of religious, ethnic, gender and sexual minorities.
- 🔍 Strict policies and harsh rhetoric from the highest political levels towards migrants, refugees and asylum seekers remain.

# Summary

Civic space is rated as open in Denmark.<sup>307</sup> Danish civil society is generally resilient and diverse, continuously fighting for the preservation and expansion of fundamental rights. However, many issues related to civil society funding and attacks, harassment and assaults of civic actors, human rights and environmental defenders and marginalised communities remain. There were no recommendations on civic space in the EU Commission's Rule of Law report 2023.

There are some concerns related to peaceful assembly as pro-Palestinian and climate activists experienced harsher measures by the police. Marginalised groups, particularly LGBTIQ+ and racialised communities, as well as CSOs and activists protecting and advocating for the rights of these groups, were increasingly targeted by verbal, physical and online attacks, assaults and harassment. These developments led to further polarisation in Danish society and a higher sense of threat and insecurity within the marginalised groups. Freedom of expression has been a hot topic in the public debate due to the public Qur'an burnings and led to the Parliament drawing up new legislation prohibiting the degradation of religious texts.

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<sup>307</sup> <https://monitor.civicus.org/country/denmark/>

The recent Bill of Finance proposed by the current Danish majority government included unpredictable cuts in public funding for civil society resulting in an increasingly precarious situation for the sector. Civil society organisations working with human rights, minorities and marginalised groups have been specifically targeted by the lack of funding. Self-censorship and depoliticisation have been observed among civic actors, due to fear of funding cuts. The policy-making approach of the new majority government has also led to a decrease in public participation in the political processes as discussions are held and decisions are made internally without meaningful civil dialogue or consultation.

# Institutional, political and socio-economic landscape

Overall, Denmark has a safe and beneficial institutional, political and socio-economic landscape. The justice system is generally well-functioning, there is a pluralistic media landscape, academic freedom, and separation of powers. However, some challenges and worrying trends remain and need to be addressed to ensure continually functioning democracy and the rule of law and the legitimacy of Danish development cooperation and foreign policy at the EU and global levels.

In 2023 a new political deal was presented which included every single party in the Parliament. The deal included new funding to e.g. hire extra judges and other key staff to increase capacity and reduce the time of court case processing. The association of Danish judges concludes that the new deal is both ambitious and provides an opportunity to reduce case processing time.<sup>308</sup>

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<sup>308</sup> Danske Domstole (2023). Bred og ambitiøs aftale om domstolene.

<https://domstol.dk/aktuelt/2023/11/bred-og-ambitioes-aftale-om-domstolene/>



# Civic freedoms: regulatory environment and implementation

Freedom of association in Denmark is protected by Article 78 of the Danish Constitution, with the only limitation that activities must be lawful. While Denmark does not have a law on associations, there are certain formal requirements to e.g. receive grants or employ staff. This includes the requirement for organisations to have more than two members, to have been formally established in a documented founding meeting, and to have official statutes. However, there are no rules on what these statutes must cover. There is a requirement for a management committee as an authorising entity, and that each association has its own defined finances including budget and accounts. One administrative improvement to the functioning of associations was presented in 2023. After it became clear during a public hearing that many associations struggle to open a basic bank account, impeding their ability to function and causing many frustrations for local volunteers and members, the government presented new legislation to ensure easier access to opening a bank account. Banks can only deny associations from opening bank accounts in special cases, such as in cases of suspicion of money laundering.<sup>309</sup>

Freedom of peaceful assembly is regulated by Article 79 of the Danish constitution. Since the end of the COVID-19 pandemic, restrictions on peaceful assembly have been lifted, and presently, the laws regulating this are in line with international standards. Generally, freedom of peaceful assembly was respected. However, some activists at protests on particular themes or methods experienced different treatment compared to others. For instance, pro-Palestine protesters faced less forthcoming police responses compared to pro-Ukraine protests. Police breached the principle of proportionality when responding to climate activists staging peaceful civil disobedience experienced.

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<sup>309</sup> Ballenstedt, Lund-Hansen & Løppenthin (2023, 29 november). Regeringen lancerer model for lettere adgang til foreningskonto. *Altinget*.

<https://www.alinget.dk/civilsamfund/artikel/regeringen-lancerer-model-for-lettere-adgang-til-foreningskonto>

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These are cases that have been reported by individual organisations or activists but have not been systematically covered.

Freedom of expression is protected by Article 77 of the Danish constitution. This right is widely acknowledged and respected. In 2023, however, freedom of expression has been widely debated.

Firstly, the debate on freedom of expression began when right-wing activist and party leader Rasmus Paludan sought to attend the annual Danish democracy festival at Bornholm. This event attracts thousands of politicians, stakeholders, NGOs and citizens annually. Paludan and his party have participated in the event for several years. Paludan is an extremely controversial figure in Danish politics mainly because of his anti-Islamic rhetoric and actions, such as the burning of the Qur'an, and has police protection at all the events he attends. This year, however, local police announced that they would be unable to allocate the necessary resources to ensure his safe participation, which prevented him from participating. The director of the Danish Institute for Human Rights, among others, spoke about how this reflected a partial restriction on Paludan's freedom of expression.<sup>310</sup>

Paludan remained an important character in the political debate on freedom of expression. This comes after he (and several of his followers) led a series of Qur'an burnings in front of mosques, embassies and other public places in Denmark and Sweden which caused a diplomatic crisis, resulting in an increased terror threat level in the summer of 2023. This led the Danish government to propose a new law prohibiting the burning or otherwise degradation of religious objects including books. The proposal sparked great debate, reflecting a sharp turn in the Danish position on freedom of expression, as it would limit (non-verbal) criticism of religions. The proposal was particularly criticised by Amnesty International as being an "unprecise limitation" of freedom of expression, which risks criminalising criticism of beliefs and religions. Similarly, associations of judges and lawyers criticised the proposal for being too far-reaching and lacking precision, leaving too much room for interpretation by both police and judges. The same criticism was repeated by the Danish Police Union. Other critics included a large group of artists, who expressed concern that their works would be criminalised.<sup>311</sup> By December, an amended version of the proposal was passed in the Parliament by a majority of 94 against 77 votes. According to polls, a majority of Danes support the legislation.<sup>312</sup> The amended version is slightly more precise and less broad, although the general scope and content

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<sup>310</sup> Holck (2023, June 11). Paludan-sag rejser spørgsmål om ytringsfrihed. *Dansk Institut for Menneskerettigheder*. <https://menneskeret.dk/nyheder/paludan-sag-rejser-spoergsmaal-ytringsfrihed>

<sup>311</sup> Meesenburg (2023, September 22). OVERBLIK: Kommende koranlov 'indskrænker ytringsfriheden', er 'upræcis' og 'tvetydig'. *Dr.dk*. <https://www.dr.dk/nyheder/politik/overblik-kommende-koranlov-indskraenker-ytringsfriheden-er-upraecis-og-tvetydig>

<sup>312</sup> Mønster (2023, August 8). På i hvert fald ét felt er de fleste danskere enige med regeringen: Få stoppet de koranafbrændinger, gerne ved lov. *Avisen Danmark*. <https://avisendanmark.dk/danmark/paa-i-hvert-fald-et-felt-er-de-fleste-danskere-enige-med-regeringen-faa-stoppet-de-koranafbraendinger-gerne-ved-lov>

is the same. The amendment limits the types of religious objects to only cover religious writings. While this proposal and new legislation do limit freedom of expression and sparked great debate in Denmark, the law is not dissimilar to the legislation in other European democracies. For instance, Paludan was arrested and expelled from France for Qur'an burnings and banned from entering the UK.<sup>313</sup>

Several Danish rights related CSOs lost funding in local or national finance bills. For this reason, several other NGOs confidentially reported that they apply self-censorship and refrain from expressing criticism towards decision-makers during the financial bill negotiations. This is because they do not wish to "provoke" right-wing parties who may attempt to remove them from the bill, create attention around their work, and to prevent risk of public attacks in fear of losing funding. While this is not documented at a large or systematic scale, it is important to pay attention to such reports, as they pose early warnings of shrinking civic space and show how organisations' freedom of expression is restricted by self-censorship.

Regarding freedom of expression online, there have been multiple accounts of the content of online activists being dramatically reduced in views (i.e. shadow banning) when posting about the escalating violence in Israel-Palestine.<sup>314</sup> In one example, the very popular activist account "Deltidsaraber", posted content regarding issues related to racism and discrimination. The account reported that their Instagram stories went from typically receiving over 1,000 views within the first half hour to receiving below 20.<sup>315</sup> Many followers commented that the content of the account did not appear in their feed. This is supported by a recent report from Human Rights Watch, documenting systemic censorship of pro-Palestine content on Instagram and Facebook, which includes cases from Denmark.<sup>316</sup>

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<sup>313</sup> Meesenberg (2023, July 31). Sådan er reglerne om Koranafbrændinger i andre lande. *Dr.dk*. <https://www.dr.dk/nyheder/politik/saadan-er-reglerne-om-koranaefbraendinger-i-andre-lande>

<sup>314</sup> Lorentzen (2023). Cybernormer #19: Palæstina, censur og shadowbans. *Cybernauterne*. <https://cybernauterne.dk/podcast/cybernormer-19/>

<sup>315</sup> Deltidsaraber (2023). Instagram post from November 9<sup>th</sup>. [https://www.instagram.com/p/Czb1T7yM6ru/?utm\\_source=ig\\_web\\_copy\\_link](https://www.instagram.com/p/Czb1T7yM6ru/?utm_source=ig_web_copy_link)

<sup>316</sup> Human Rights Watch (2023). Meta's Broken Promises. *Human Rights Watch*. p. 7. [https://www.hrw.org/sites/default/files/media\\_2023/12/ip\\_meta1223%20web.pdf](https://www.hrw.org/sites/default/files/media_2023/12/ip_meta1223%20web.pdf)

# Safe space

Most groups can exercise their rights and freedoms in offline and online spaces. However, for certain groups, such as the LGBTQI+ persons, verbal, physical and online attacks have increased in 2023. They have experienced self-regulation and self-censorship due to safety and social concerns as a result of an increasingly hateful (mostly online) environment. For instance, the annual pride in Copenhagen saw an increase in physical, verbal, and online assaults of members of the LGBTQI+ community.<sup>317</sup> In addition, a strong anti-transgender campaign was organised towards a group of drag artists who had a children's show at a local library<sup>318</sup>, as well as an online hate campaign towards the group "Normstormerne". In the case of the drag artists, both national and local politicians and other stakeholders publicly expressed their strong support for the artists. Many even came out physically to support the artists outside the library, as a counter demonstration by a small group of individuals took place against the show. In the campaign against the "Normstormerne" group, official responses were limited, and certain elected members of local government participated in harsh criticism of the group.

This was also reported by the Danish LGBTQI+ organisations surveyed for this report. LGBTQI+ organisations reported an increased sense of fear, affecting their work and sense of security. For some organisations, this has led to leaders having secret addresses and for organisations to have direct contact lines to security forces. These incidents and threats showcase an increasingly polarised environment, where the safety and protection from attacks and verbal and online harassment is not guaranteed for members of the LGBTQI+ community or CSOs working for the rights of the communities in Denmark.

Similarly, 2023 has been another year of continuing online, verbal, and physical harassment of people of colour in Denmark. A large study of perceived ethnic discrimination produced by the Danish Institute for Human Rights<sup>319</sup> uncovered massive challenges with discrimination across different

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<sup>317</sup> Broe (2023, november 16). To knytnæveslag i ansigtet indprentede mig behovet for en stærk indsats mod hadforbrydelser. *Information*.

<https://www.information.dk/debat/2023/11/to-knytnaevslag-ansigtet-indprentede-behovet-staerk-indsats-hadforbrydelser>

<sup>318</sup> Højer Rømeling (2023, march 17). Bibliotek holder fast i dragshow for børn trods hidsig debat. *dr.dk*. <https://www.dr.dk/nyheder/regionale/hovedstadsomraadet/bibliotek-holder-fast-i-dragshow-boern-trods-hidsig-debat>

<sup>319</sup> Danish Institute for Human Rights (2023). Oplevet etnisk discrimination I Danmark. <https://menneskeret.dk/files/media/document/Oplevet%20etnisk%20diskrimination%20i%20Danmark.pdf>

societal spheres, from nightlife to job applications to interactions with law enforcement and other authorities. The report follows a recent study from the EU's Fundamental Rights Agency, ranking Denmark as the fourth most racist country in Europe.<sup>320</sup>

Regarding new initiatives on fundamental rights from public officials, one example is a collaboration between the municipality of Copenhagen and the National Institute for Human Rights, who have launched a joint campaign against discrimination and a "Discrimination Hotline", that people can contact in cases of discrimination to receive legal aid and information about their rights free of charge.<sup>321</sup> The campaign is part of the municipality's new action plan on discrimination. This is a stark contrast to the national level, as a large group of NGOs and other stakeholders have been campaigning for years for a national action plan on racism – as also strongly encouraged by the EU Commission.<sup>322</sup> While both the former and current government have committed to delivering the plan, action is yet to be seen.

## Funding for civil society

Danish civil society is, comparatively, well off in economic and financial terms. However, access to public funding is limited, and there is a strong sense that it is dangerous to depend too much on this, as it can easily be cut. As we saw with the most recent Bill of Finance, civil society organisations' funding was cut without warning, leaving organisations, their employees, volunteers, and target

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<sup>320</sup> **European Union Agency for Fundamental Rights (2023). Being Black in the EU – Experiences of People of African Decent.**

[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2023-being-black\\_in\\_the\\_eu\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2023-being-black_in_the_eu_en.pdf)

<sup>321</sup> **Communication from Danish Institute for Human Rights on collaboration with Municipality of Copenhagen.** [https://www.linkedin.com/posts/humanrights\\_diskriminationslinjen-ik%C3%B8benhavn-k%C3%B8benhavns-activity-7142461102298218497-BEoc?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/humanrights_diskriminationslinjen-ik%C3%B8benhavn-k%C3%B8benhavns-activity-7142461102298218497-BEoc?utm_source=share&utm_medium=member_desktop)

<sup>322</sup> **European Commission (2020). EU Anti-racism Action Plan 2020-2025. European Commission.** [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en)



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group in very precarious conditions. Hence, many seek out private national and international funds as well as EU funds.

The year 2023 showcased multiple examples of cuts in public funding for civil society organisations working for fundamental rights and anti-discrimination. The annual Finance Bill demonstrates political and governmental support for restrictions on civil society. The 2023 Bill showed that the funding of at least one LGBTQI+ organisation was cut. Given the increased attacks against the LGBTQI+ communities, the reluctance to support these organisations is striking. Furthermore, in the municipality of Copenhagen, the organisation Normstormerne, offering educational processes on gender identity, norms, and LGBTQI+ rights, did not receive an extension of its grant in next year's municipal budget<sup>323</sup>. This decision follows a major public debate on the role of Normstormerne in education, with accusations of “gender-activist propaganda” and “indoctrination”<sup>324</sup>. The municipal government justifies the decision to end the funding by arguing it is due to low demand for the educational courses from local schools.

In general, public funding is relatively strong for the less political segments of civil society, including local sports clubs, scouts, etc. The more directly political democracy- and rights-promoting segments of civil society, including groups defending the rights of ethnic, religious and sexual minorities, have less access to public funding, and the funding they do have access to is typically project-based.

While there are few regulatory boundaries to applying and receiving funding, the application processes and different application systems are costly, and the work that goes into applying is rarely funded. This reflects a more general barrier, which is the lack of access to core funding. Without (public) core funding, many organisations depend on project funding, which pushes staff in more precarious positions regarding job stability, as well as limits the sector's overall ability to plan and implement long-term strategies. Ultimately, this puts the sector at a disadvantage, particularly compared to other stakeholders competing for the same political influence.

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<sup>323</sup> Ritzau (2023, September 18). Københavns Kommunes bevilling til Normstormerne forlænges ikke. *Kosmopol*. <https://www.tv2kosmopol.dk/koebenhavn/koebenhavns-kommunes-bevilling-til-normstormerne-forlaenges-ikke>

<sup>324</sup> From Lyng (2023, January 24). Trods beskyldninger om “kønsaktivistisk propaganda”: Normstormerne rykker ind i de yngste klasser. *Kristeligt Dagblad*. <https://www.kristeligt-dagblad.dk/danmark/trods-beskyldninger-om-koensaktivistisk-propaganda-normstormerne-rykker-ind-i-de-yngste>

# Civil dialogue and the right to participation

Comparatively, there is good access to dialogue between the sector and governing bodies in Denmark. However, some relevant challenges remain. Firstly, since the end of 2022, a new majority government has been in place in Denmark. Majority governments are extremely rare in Danish politics, which historically has meant that political decisions were made in dialogue with parties outside of government. This dynamic has led to opportunities for stakeholders to make their voices heard. However, with the current majority government, many decisions are made internally in the government, before opening negotiations with other parties. This limits the window for input from stakeholders and reduces access to key decision-makers.

Secondly, the short deadlines for public hearings on policy making remains a challenge for the participation of civil society. While there is not much recent systematic analysis, no improvements have been detected since the debate was raised in 2020, when a very steep increase of short consultation deadlines was noted.<sup>325</sup> The current government has, as late as 2023, been criticised for the use of short consultation deadlines.<sup>326</sup>

Despite the recommendation to advance the process to reform the Access to Public Administrative Documents Act, in order to strengthen the right to access documents, made by the EU Commission to Denmark, the act was not reformed. The Danish Minister of Justice, Peter Hummelgaard, has announced that while the Danish government is open to reforming the act and strengthening the right to access, it will have to wait. Before the summer of 2023, some opposition parties requested a parliamentary committee to review the act and make a proposal for revision, but this was rejected

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<sup>325</sup> Lund (2020, October 30). **Positiv formkurve knækket: Ministerier giver kortere høringsfrister.** *Altinget*.

<https://www.alinget.dk/embedsvaerk/artikel/efter%C2%A0fleraarig%C2%A0positiv-formkurve%C2%A0ministerier%C2%A0udsender-stoerre-andel-hoeringer-med-korte-frister>

<sup>326</sup> Corfixen (2023, January 13). »Det er jo fuldstændig grotesk«: Kort høringsfrist får partier til at anklage regeringen for magtfuldkommenhed. *Politiken*.

<https://politiken.dk/danmark/politik/art9167510/Kort-h%C3%B8ringsfrist-f%C3%A5r-partier-til-at-anklage-regeringen-for-magtfuldkommenhed>

by the Minister of Justice.<sup>327</sup> The same scenario played out recently, leaving other parties and civil society with the sense that the government is deliberately trying to prolong the process. Recommendations for revisions were put forth most recently by the Dybvad Committee which reviewed the dynamics of collaboration between elected officials, public servants, and media.

In 2022, a new Democracy and Power Study was announced. The multi-year research project led by top-tier political scientists analyses the state of Danish democracy. The first (and last) version of this study was published in 2003. In 2023, the involved persons and selected themes were publicised. Civil society is somewhat represented in a following group and is included on the list of themes that the project will cover through questions such as “What political power will actors outside of the formal political system in the 21<sup>st</sup> century, such as unions, civil society organisations, think tanks and lobbyists, have?” and “How does citizens participate in democratic processes and civil society in the 21<sup>st</sup> century?”.

# Civil society resilience

In Denmark, there is a high level of trust in civil society, with relatively strong networks and continuous, although varied levels of coalition building. However, there are significant obstacles as well. Networks and coalitions have great potential to be expanded internally and between civil society and other sectors. Collaboration is often dispersed and on an ad-hoc basis due to funding difficulties and hence no organisation has the resources to take on personnel, organisational or administrative costs for regular meetings, communications etc.

One attempt to address the issue is Nyt Europa’s Fundamental Rights Initiative, funded by the European Union, which both includes a grant to civil society organisations, as well as funding for network and capacity building and external cooperation. From the first year of work on this project, it is evident that there is a great potential and willingness to collaborate, and the need for collaboration with external partners such as academia has also been clear. However, this example also showcases that civil society capacity, network and coalition building is rarely funded nationally. To conclude, Danish civil society is comparatively still very resilient to challenges to democracy, the

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<sup>327</sup> Ritzau (2023, April 21). Regeringen vil vente med udvalg til at lempe offentlighedsloven. *Politiken*. <https://politiken.dk/danmark/politik/art9316506/Regeringen-vil-vente-med-udvalg-til-at-lempe-offentlighedsloven>

rule of law and fundamental rights, but this continued resilience depends on regular capacity and network building, which is increasingly dependent on funding from external donors.

# Recommendations

## Targeted recommendation:

- 🔍 Take urgent steps to protect excluded groups, in particular LGBTQI+ groups and ethnic and religious minorities from discrimination, hate speech, attacks, harassment and assaults online and offline to the highest standard.
- 🔍 Ensure adequate and sustainable public core funding for civil society organisations, especially those working with minorities, marginalised groups and targeted communities, to enable them to plan and implement their work in the long-term.
- 🔍 Safeguard the right to public participation in policy processes by ensuring transparent, meaningful and diverse structured civil dialogue with civil society and by ensuring adequate time for stakeholders to contribute.
- 🔍 Reform the Access to Public Administrative Documents Act, in order to strengthen the right to access documents.
- 🔍 Respect the right to peaceful assembly as per international standards and refrain from discriminatory law enforcement on the basis of the content/issue of the protest .

# About the author

Nyt Europa is a Danish organisation founded in 1998 with the overall objective to promote civic engagement on a Danish and European level. The organisation works for a more sustainable and inclusive Europe, across themes such as green transition, economic transformation, democracy, fundamental rights, and youth empowerment. The work spans across the national and the European level seeking to build networks and alliances across borders.





# Civic Space Report 2024

# ESTONIA



# Key trends

- 🔍 Same-sex marriage legalised but harassment, discrimination and hate speech against LGBTIQ+ remains a worrying trend, as draft hate speech legislation is debated in the parliament.
- 🔍 Many CSOs continue to operate on limited funding relying on voluntary work, participation fees and unsustainable small local government grants.
- 🔍 Structured civil dialogue with civil society throughout the policy making process remains a challenge.

# Summary

Civic space is rated as open in Estonia.<sup>328</sup> In 2023, Estonia continued to prioritise fundamental freedoms, including the right to association, assembly, and expression, they were mostly respected, and the legislation is in line with international standards. In its 2023 Rule of Law report, the European Commission recommended that the government of Estonia advance in ensuring “consistent and effective implementation of the right of access to information taking into account European standards on access to official documents”. The government has taken some steps to implement this recommendation by collecting information between ministries and putting forward proposals which would alleviate the administrative burden for officials and improve data collection. The report also noted that there are concerns about the absence of clear criteria for the allocation of funding to civil society organisations (CSOs) through Parliament. While parliamentary parties no longer distribute money directly to CSOs, funding is dispersed by ministries based on their criteria.

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<sup>328</sup> <https://monitor.civicus.org/country/estonia/>

Although freedom of expression is guaranteed at the legal and political level, journalists face the risk of self-censorship due to anti-defamation legislation and cyber-bullying, and access to information remains insufficient in Estonia.<sup>329</sup> The approval of the marriage equality legislation was an important step for the improvement of LGBTQI+ rights in Estonia. However, many LGBTQI+ people continue to face harassment, discrimination, and hate speech. A notable worrying development involved a ban on one pro-Palestinian demonstration.

Most CSOs operate with limited funding, relying on voluntary work, participation fees and unsustainable small local government grants.<sup>330</sup> Larger, national-level organisations get more state funding which is becoming longer term and partnership-based. As a result, their financial security is improving. Some political institutions are implementing the strategic partnership model<sup>331</sup>, aimed at increasing civil dialogue and stakeholder participation in decision-making processes. However, in reality, civil society participation is not guaranteed and is often inadequate or completely lacking.

# Institutional, political and socio-economic landscape

In 2023, elections were held in the Riigikogu (Parliament of Estonia). In the pre-election campaign, civil society actively took part by initiating debates, analysing election promises, while organisations in different fields assessed the promises of political parties from their own perspective. NENO

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<sup>329</sup> Reporters without borders, Estonia country report - <https://rsf.org/en/country/estonia>

<sup>330</sup> 2021 civil society organization sustainability index - <https://heakodanik.ee/en/wp-content/uploads/sites/2/2022/10/Estonia.pdf>

<sup>331</sup> <https://heakodanik.ee/wp-content/uploads/2021/10/Strateegiline-partnerlus-vabau%CC%88hendustega.pdf>

## Civic Space Report 2024

initiated an election watchdog project, where nine volunteers monitored the extent to which political parties' campaigns corresponded to good election practices.<sup>332</sup> The elected Parliament presented a new political party which had not previously participated in the work of the Parliament.<sup>333</sup> A coalition was formed by liberal parties. The social tension and the strife between the parliamentary parties led to the largest obstruction of the parliament since independence in Estonia.<sup>334</sup> As a result the Riigikogu was only able to deal with the adoption of the most indispensable laws, because its work stalled for a large part of the time. While the coalition used confidence votes to prevent obstruction, this continued until the end of the year and will continue partly in 2024.

The obstruction resulted in less consideration and involvement of different stakeholders, including civil society. In some cases, the deadlines for feedback of draft laws were a few days long, and due to rapid procedures as a result of the vote of confidence, legislative proposals of interest groups were not taken into account. In addition to civil society, the Auditor General and the Chancellor of Justice drew attention to this situation.<sup>335</sup> In the second half of the year, the situation improved as the deadlines for feedback on drafts were longer, and associations had more opportunities to be heard and involved.

In 2023, Estonia implemented a lobby register which imposes an obligation on every ministry and all higher public officials and state representatives to report their advocacy related contacts and their meetings with lobbyists.<sup>336</sup>

In June 2023, after long-standing advocacy by civil society and LGBTQI+ activists, the Estonian parliament passed the Registered Partnership Act which legalises same-sex marriage.<sup>337</sup> Youth climate organisation Fridays for Future were victorious in court, which led to the suspension of the construction of the shale oil plant.<sup>338</sup> The Ministry of Climate Affairs initiated the development of the

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<sup>332</sup> <https://epl.delfi.ee/artikkel/120152274/valimiste-valvurid-kampaaniat-ette-valmistades-ei-peaks-lahtuma-ainult-tainapeadest>

<sup>333</sup> <https://news.err.ee/1608905309/reform-party-takes-landslide-win-in-2023-riigikogu-elections>

<sup>334</sup> <https://news.err.ee/1608979442/opposition-plans-to-continue-blocking-the-riigikogu-and-government>, <https://news.err.ee/1609096949/riigikogu-heads-prepared-to-violate-time-limits-to-curb-obstruction>

<sup>335</sup> <https://www.oiguskantsler.ee/annual-report-2023/the-rule-of-law>

<sup>336</sup> <https://www.korruptsioon.ee/et/lobistidega-suhtlemine/kohtumiste-andmed>

<sup>337</sup> <https://www.riigiteataja.ee/en/eli/527112014001/consolide>

<sup>338</sup> <https://fridaysforfuture.ee/en/climate-lawsuit/>

Climate Act, which will be the biggest legal change in Estonia in the near future, as it lays down plans to achieve climate neutrality targets and will have implications including for civil society.<sup>339</sup>

# Civic freedoms: regulatory environment and implementation

## Freedom of Association

Freedom of association is guaranteed in the Estonian Constitution which states that everyone has the right to belong to associations and stand up for their views. In particular, the right to association is regulated by the Non-profit Associations Act and the Foundations Act<sup>340</sup>, which adheres to international human rights standards.

The government has not interfered with the activities of civil society. However, there has been a debate about CSOs who operate close to political parties, although they are not directly part of the sub-organisations of a political party, and whose activities and views support these parties' positions and are aimed at their success. While, no draft laws have been initiated, discussions and debates are ongoing, and politicians themselves acknowledge that it is very difficult to regulate organisations in a way that does not infringe on their constitutional rights.<sup>341</sup> For the moment, the debate does not pose a major threat to civic freedoms in Estonia.

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<sup>339</sup> <https://www.euronews.com/green/2023/09/30/baltic-sea-wind-and-a-brand-new-climate-law-heres-why-estonia-is-our-green-country-of-the->

<sup>340</sup> <https://www.riigiteataja.ee/en/eli/501022023003/consolide>

<sup>341</sup> <https://valitsus.ee/en/coalition-agreement-2023-2027>



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Civil society has not been restricted by administrative means either. Last year, Moneyval's anti-money laundering and terrorism prevention report proposed more effective measures to assess the risk of money laundering and terrorism prevention for Estonian civil society.<sup>342</sup> Thus, while a handful of Estonian CSOs may in the future face additional requirements in preparation for their annual audit reporting the exact content required is unknown at this stage.

Freedom of peaceful assembly and freedom of expression are also guaranteed in the Constitution. Although freedom of expression is guaranteed on legal and political levels, journalists face the risk of self-censorship due to anti-defamation legislation and cyber-bullying<sup>343</sup>, and access to information remains insufficient in Estonia.<sup>344</sup> The law on hate speech is being debated in Parliament, which was welcomed by most CSOs.<sup>345</sup> According to the draft law, public incitement to hatred, violence or discrimination against a group or member of a group of people on the basis of nationality, race, colour, gender, disability, language, origin, religion, sexual orientation, political belief or property or social status will be punishable as a criminal offence if there is reasonable belief that incitement will be followed by violence or pose a significant threat to the safety of society. In the case of other offences, hostility becomes an aggravating circumstance for punishment.

The law does not intend to make the publication of critical or shocking positions punishable, nor does the law prevent the expression of positions that may offend a group of society. In such cases, civil law can still be invoked if necessary.

At the end of 2023, teachers and other educational staff around Estonia organised strike actions and protests against their low wages. In November and December, protests in solidarity with Palestinian people took place in cities such as Tallinn and Tartu. On 5 November, a demonstration was held in Tallinn, where protesters called for a ceasefire and for the Estonian government to condemn Israel's actions. Although the protest was mainly peaceful, the Police and Border Guard Board removed five protesters from the demonstration for chanting slogans that were allegedly antisemitic. The protesters were fined, and misdemeanour proceedings were taken against them. The protesters were fined between €120 and €160 but are requesting that the Supreme court annul the fines and assess whether the Penal Code is constitutional.<sup>346</sup> As a result of this, a "silent rally in support of Palestine and Palestinians" that was planned in Tartu, was initially refused but later registered by the

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<sup>342</sup> <https://rm.coe.int/moneyval-2022-11-mer-estonia/1680a9dd96>

<sup>343</sup> <https://rsf.org/en/index>

<sup>344</sup> <https://rsf.org/en/access-information-baltics-rsf-asks-authorities-address-weak-spot-press-freedom>

<sup>345</sup> <https://news.err.ee/1609001696/government-approves-hate-speech-draft-bill>

<sup>346</sup> <https://humanrights.ee/en/2023/12/meeleavaldusel-osalened-leore-laksin-naitama-solidaarsust-kumme-minutit-hiljem-tosteti-mind-politseibussi/>

police after discussions with the organisers. The organisers had to agree that the rally is peaceful and does not incite hateful messages or mention the pro-Palestinian chant “From the river to the sea”.

## Safe space

The approval of the marriage equality legislation was a great accomplishment for the progression of LGBTIQ+ rights in Estonia. However, many LGBTIQ+ people continue to face harassment, discrimination, and hate speech.<sup>347</sup> For example, during Baltic Pride Solidarity Week, a Finnish pastor was stabbed due to their sexual orientation and/or religious affiliation while participating in an open prayer organised by the Association of Gay Christians. Three other people were injured during the attack.<sup>348</sup>

## Funding for civil society

In 2023, there were no significant changes in the financial stability of civil society. One of the concerns regarding civil society funding was that the funding allocated for CSOs from the state budget was not transparent because of the absence of objective criteria. In the 2024 state budget, money is not directly allocated by the Parliament to CSOs.

The majority of CSOs operate with limited resources in their local community. Many of these associations are active in the fields of education, sport and culture, and their main support and

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<sup>347</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/lgbti-survey-country-data\\_estonia.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_estonia.pdf)

<sup>348</sup> <https://humanrights.ee/en/materials/inimoigused-eestis-2024/lgbt-inimeste-olukord/>

finances come from participation fees, local government grants and contributions through voluntary work by the local community. While the long-term viability of these organisations is certainly challenged, a large proportion can cope with the resources available.<sup>349</sup>

National CSOs in Estonia have very different financial stability and capacity. Most organisations in the sector rely on project funding. Although there is a trend where a growing number of professional CSOs have paid employees, the majority of organisations operate through voluntary work and a sense of mission to serve their constituencies' needs. The state is increasingly funding civil society, and support has shifted from individual projects to longer-term strategic cooperation. This means that ministries are running less calls for project proposals and more calls for long term proposals for civil society. As a result of this form of partnership, the financial security of civil society has also improved.

# Civil dialogue and the right to participation

According to Rules for Good Legislative Practice and Legislative Drafting regulation<sup>350</sup>, the interest groups affected by amendments to a law must be involved in the legislative process. Usually, this means that draft laws are sent to interest groups for feedback, and in rare cases the content of the draft is also discussed with interest groups before drafting the draft. Three ministries<sup>351</sup> in Estonia is currently implementing the strategic partnership model, which aims to ensure that the strategic partner of the ministry participates in the policy-making process. The strategic partner could be a civil society organisation that works on advocacy and that has expertise in the field.

There is a policy-making model in Estonia, which describes the role of civil society, and it is customary to request civil society feedback at every stage of the legislative process, although it is not mandatory

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<sup>349</sup> <https://heakodanik.ee/en/wp-content/uploads/sites/2/2022/10/Estonia.pdf>

<sup>350</sup> <https://www.riigiteataja.ee/en/eli/508012015003/consolide>

<sup>351</sup> Ministry of the Interior, Ministry of Education and Research, Ministry of Social Affairs

to comply with the procedure. There is a difference in practice regarding longer-term strategies and laws. When it comes to legislation that has a major impact or a longer-term view, it is customary for consultations, working groups, discussions, etc. to be carried out with different interest groups, including civil society. It is not guaranteed that these groups' opinions will be taken into account in the final position, and in practice the input provided has been taken into account in the framework of the consultations rather than translating into changes in legislation.

Access to information is guaranteed by the Public Information Act.<sup>352</sup> In practice, the processing of requests for access to information and other data is a challenge as these requests are usually answered after the deadline<sup>353</sup> (five working days for request for information) because officials are overburdened by such requests. However, there are some positive examples, e.g. the annual reports of all Estonian companies are available free of charge in the commercial register (a register also involves NPOs).

One recent example of civil society exclusion in the policy-making processes is during the process of the Climate Act. The process involved an extensive working group, which attempted to include viewpoints of different stakeholders. However, the working group was not optimal for civil society, as it consisted mainly of umbrella organisations, and individual companies who participated as representatives of the business sector, with only a few CSOs. Furthermore, there was no explanation provided to stakeholders on how much weight their contributions carried and whether their positions would be included in the legislation. It was therefore a participatory process only in theory and not in practice.

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<sup>352</sup> <https://www.riigiteataja.ee/en/eli/ee/514112013001/consolide/current>

<sup>353</sup> <https://www.riigiteataja.ee/en/eli/ee/503052023003/consolide/current>

# Civil society resilience

The most recent example of the impact of civil society was the successful case brought by Fridays for Future, a youth climate group, against Estonia's largest energy company. As a result of the court battle, the construction of the oil shale plant was suspended by a court order.<sup>354</sup> In addition to the environmental aspect, this sets an important precedent as a small organisation was able to win a case against a larger energy group in court. The capacity of advocacy organisations has increased over time, which opens up opportunities and instruments for civil society organisations that have not used this avenue before in Estonia.<sup>355</sup>

On the contrary, there is a concerning trend where civic actors prefer to do things alone rather than in cooperation. As a result of this, there is a risk that civil society organisations will work less together.<sup>356</sup> To some extent this is already seen in some sectors, such as education, as more teacher advocacy organisations have been established in the last five years than in decades. On the other hand, organisations are increasingly interested in building their own capacities, and cooperation and networking between organisations is one of the hallmarks of this (NENO itself has launched two new nationwide networks within a year based on feedback from CSOs).

Society's trust in civil society remains rather high in Estonia. Although part of society does not value the existence of a civil society, on average people are interested in social processes and want to contribute to them.<sup>357</sup> For example, one of Estonia's animal protection associations initiated a national petition to ban the caging of chickens, which was signed by 21,000 people.<sup>358</sup> There are challenges with people's awareness of civil society, as a considerable part of the public are not aware that CSOs are engaged in societal impact and leisure activities.<sup>359</sup>

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<sup>354</sup> <https://fridaysforfuture.ee/en/climate-lawsuit/>

<sup>355</sup> <https://heakodanik.ee/en/wp-content/uploads/sites/2/2022/10/Estonia.pdf>

<sup>356</sup> <https://heakodanik.ee/en/wp-content/uploads/sites/2/2022/10/Estonia.pdf>

<sup>357</sup> <https://heakodanik.ee/wp-content/uploads/2021/10/USAID-2020-Estonia.pdf>

<sup>358</sup> <https://news.err.ee/1609225806/gallery-riigikogu-speaker-handed-petition-to-ban-cage-rearing-of-chickens>

<sup>359</sup> <https://heakodanik.ee/wp-content/uploads/2021/10/USAID-2020-Estonia.pdf>



# Recommendations

## Targeted recommendation:

- 🔍 Ensure that there is a structured dialogue with civil society throughout the policy process in an ongoing, comprehensive and transparent manner.
- 🔍 Enable more long-term core state funding and business and private donation opportunities for both institutional and grass-roots civil society organisations.
- 🔍 Further develop the model of strategic partnership through a structured dialogue framework so that the system is implemented by all ministries.
- 🔍 Ensure that civil servants in all the institutional bodies are trained on the principles of civil dialogue.
- 🔍 Ensure that there is a structured dialogue with throughout the policy process in an ongoing, comprehensive and transparent manner.
- 🔍 Refrain from restrictions of the right to peaceful assembly, in line with international standards.
- 🔍 Take further steps to consistently and effectively implement Public Information Act which protects the right of access to information, taking into account European standards on access to official documents”.

# About the author

NENO is the single and largest Estonian organisation uniting public benefit civil society and non-profit organisations. NENO is an advocacy organisation focusing on an open and sustainable civic space, civil society capacity building and raising civic awareness. NENO's goals are to foster development trends and provide support services to Estonian civil society organisations, increase public awareness, advocate for the interests of its members and other public interest NGOs, and improve working relationships with the public and business sectors. The organisation implements activities to strengthen the role and identity of the civil society sector as a whole and maintains networks of advocacy organisations, voluntary contributors, and fundraisers in order to facilitate cooperation between associations.





## Civic Space Report 2024

# FRANCE



# Summary

The contribution we are presenting this year for France takes account of a significant number of facts which, taken together, indicate a situation that can be described as deleterious in terms of the commitment of the French authorities to ensuring a high level of compliance with best practice in terms of the Rule of Law.

In 2023, the number and nature of breaches to the rule of law in France intensified, bringing it on a path to systemic failure. The European Civic Forum (ECF) and its member Ligue des droits de l'Homme (LDH) have expressed serious concerns about the French government's ongoing disregard for the rule of law and civic space. We have highlighted that when concerns are not addressed at an early stage, the situation often further deteriorates. In the French case, the accumulation of multiple and repeated specific attacks over time has resulted in a worrying deterioration. The repeated violations of the right to peaceful assembly, expression, police violence, and the adoption of legal provisions in the migration bill- openly contrary to Constitutional order- are having a serious impact on society. It feeds public demoralisation and doubts in the role of functional institutions in upholding values and principles.

On several occasions, we have raised these concerns in real time, including with the European Parliament (LIBE Committee), the European Commission. We jointly requested a hearing with European Commissioner for Justice, Didier Reynders, in order to compare the respective approaches of the Commission and our civil society organisations, both in terms of assessing the seriousness resulting from the accumulation of breaches and the means of exerting pressure to halt what can be considered a steadily ongoing deterioration, that brings France close to a systemic failure.

Throughout the year checks and balances overly have relied upon the judicial system to hold political and administrative authorities to account and to protect fundamental rights, more so than through the doing of elected decision makers.

It has been particularly visible during adoption of the migration law in Parliament in the very last weeks of 2023 by the parties supporting the government ("Renaissance" and junior partners), "Les Républicains" and the "Rassemblement National". After adoption, both the President of the Republic and the Prime Minister said that a significant number of its provisions are not in conformity to the French Constitution and the European Convention for Human Rights, and they then asked the Constitution Council to check all its provisions. This process marks a crucial breach to the proper functioning of the rule of law in a mature democracy. It is concerning that the French President and Prime minister set aside their institutional responsibilities that includes acting in conformity with the Constitution and called for their duty to be addressed by the Constitutional judges. This is the more

worrying when the far-right is attacking a so-called “power of the judges” that would hamper the capacity of the elected decision-makers to act, who are joined by right-wing politicians calling for France to withdraw from the ECHR.

Civil society groups continued to be challenged by the law “on the respect of the republican principles,” with the dissolution and undue withdrawal of public funding of several associations and groups. On a positive note, misdoing by authorities was repeatedly and successfully challenged in front of the judiciary. The Council of State, the highest court, ruled against the dissolution of the environmental group, Soulèvements de la Terre. On a number of occasions, the judiciary annulled decisions taken by administrative authorities to ban demonstrations.

Conversely, associations have had to censor activities even when in accordance with law in order to continue to receive public funds. Politicians have acted to discredit non-for-profit civil sector associations who have scrutinised their decision, or have acted to make institutions accountable for their behaviour.

Additionally, civic actors have staged protests on issues including on pension and retirement reforms, environmental rights, solidarity with the Palestinian people, killings by police officers. These protests have repeatedly and consistently been met with undue and disproportionate police violence, and prefects’ bans including by means of decisions that were published or notified at very short notice before, or even during the demonstrations.

Global index by the Civicus Monitor reflects a deterioration in civic space in France, rating it as “narrowed.”<sup>360</sup>

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<sup>360</sup> <https://monitor.civicus.org/country/france/>



# The role played by government actors in the respect of the Rule of Law

## Disregard for the rule of law in the application of migration policy: an ongoing practice

The Minister of the Interior, Gérard Darmanin, regularly communicates his claimed non-compliance with international conventions, particularly the Convention for the Protection of Human Rights and Fundamental Freedoms.

The case of Imam Hassan Iquioussen<sup>361</sup> was an opportunity to blur the message conveyed by human rights defenders, as this person had made anti-feminist and anti-LGBT comments, thereby allowing the creation of a climate hostile to his presence on French territory.

Shortly after the terrorist attack in Arras on 14 November 2023, the Minister of Interior deported an Uzbek national (subject to an administrative decision prohibiting his stay since April 2021) on suspicion of proximity to the jihadist movement.<sup>362</sup> This expulsion was carried out despite a decision by the European Court of Human Rights ordering the French government not to take such a measure, pending a judgement on the risks involved. Although the Council of States interim relief judge suspended the order, it had already been executed, the person being placed in detention on arrival in Uzbekistan.

The President of the French National Consultative Commission on Human Rights wrote to the Prime

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<sup>361</sup> <https://www.ldh-france.org/arrete-dexpulsion-de-m-hassan-iquioussen-la-ldh-appelle-au-respect-du-droit/>

<sup>362</sup> [https://www.lemonde.fr/societe%20/article/2023/12/12/gerald-darmanin-epingle-pour-avoir-expulse-un-ouzbek-en-violation-d-une-mesure-prescrite-par-la-cedh\\_6205349\\_3224.html](https://www.lemonde.fr/societe%20/article/2023/12/12/gerald-darmanin-epingle-pour-avoir-expulse-un-ouzbek-en-violation-d-une-mesure-prescrite-par-la-cedh_6205349_3224.html)

Minister, to express his concern that the Interior Minister's claims violated the ECHR decision.<sup>363</sup> He added concern about the "growing criticism in the public debate on migration issues of the primacy of international law, and more particularly of fundamental rights."

An unaccompanied minor was kept in a waiting zone at Orly airport, despite a decision to suspend, on a provisional basis, her return to her country of origin, even though she should have been entrusted to the child welfare services (aide sociale à l'enfance - ASE) as she could not be expelled.

## **Highest political state authorities claim they put to Parliament vote unconventional and unconstitutional provisions, passing off their political responsibility for compliance to the Constitutional Council**

Following the early December vote in the Assemblée Nationale (one of the chambers of the Parliament) that rejected considering the immigration bill<sup>364</sup>, Mr Darmanin tendered his resignation (which was refused by the President of the Republic) and the immigration law was anew put forward by the Prime Minister.

During the adoption of the immigration law in December, the Minister of Interior, Gerald Darmanin, stated that provisions put to the vote were contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (CSDH), but that he intended to maintain them.<sup>365</sup> Concerns included that the law violates article 8 of the Convention on respect for private and family life.

Fully aware of this non-compliance, the leader of the Les Républicains (LR) party in the French Senate, Bruno Retailleau, tabled a constitutional bill to escape the French and European legal frameworks on migration. He called for the amendment of Article 55 of the French Constitution, which stipulates that treaties take precedence over laws, and Article 88-1 on the primacy of European Union laws over national laws. Mr. Darmanin expressed support to debate the issues without mentioning any opposition to the proposal. It was only due to the defection of the LR's centrist allies in the Senate that the proposal was finally withdrawn.

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<sup>363</sup> <https://www.cncdh.fr/publications/lettre-de-la-presidence-la-premiere-ministre-la-suite-de-lexpulsion-dun-ressortissant>

<sup>364</sup> <https://civicspacewatch.eu/france-draft-immigration-bill-threatens-human-rights/>

<sup>365</sup> <https://www.publicsenat.fr/actualites/politique/la-cedh-empeche-t-elle-lexpulsion-des-etrangers-qui-menacent-gravement-lordre-public>

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After the law was adopted, Mr. Darmanin stated again that some provisions included in the law were "manifestly and clearly contrary to the Constitution", while pointing out that "politics is not about being a lawyer before lawyers" and referring to the role the Constitutional Council had to play.<sup>366</sup>

For the time being, it remains that provisions contrary to the CSDH have been defended by the government and passed into law. This led to the transferring the responsibility of deciding which measures to reject according to what is not applicable under the Convention to the courts. The government's failure to acknowledge its responsibilities in conformity with the law is a major blow for the rule of law.

It has to be noted that the politicisation of applicable legal provisions has also been reflected in decisions by several "Departments" run by left-wing majorities.<sup>367</sup> They claimed not to apply the new requirements for payment of the Personalized Autonomy Allowance (APA - Allocation personnalisée d'autonomie), which the law now makes conditional on five years' regular presence on French territory for people who are not working and two and a half years for those who are working.

The submission of the voted law for the opinion of the Constitutional Council by both the Prime Minister and the President of the Republic, has already been denounced by parliamentarians from the far-right and the right who voted for the law as a political manoeuvre with a reinforced rhetoric against the rule of law, particularly the narratives against "a government of judges" and against European treaties, and more generally against human rights fed by the process followed by the Prime Minister and President.

In summary, for the time being, it remains that with full knowledge, provisions contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms have been defended by the government and put into law. This has led to transferring the responsibility of deciding to judges which measures to reject according to what is not applicable under the European Convention and the French Constitution. The government's failure to acknowledge its responsibilities for conforming with the law has to be understood as a major blow to what the rule of law stands for.

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<sup>366</sup> [https://www.lemonde.fr/politique/article/2023/12/21/le-conseil-constitutionnel-charge-par-l-executif-de-corriger-la-loi-immigration\\_6207061\\_823448.html](https://www.lemonde.fr/politique/article/2023/12/21/le-conseil-constitutionnel-charge-par-l-executif-de-corriger-la-loi-immigration_6207061_823448.html)

<sup>367</sup> <https://www.publicsenat.fr/actualites/projet-de-loi-immigration/loi-immigration-plusieurs-departements-de-gauche-refusent-dappliquer-la-preference-nationale>

# Attacks on freedom of expression and assembly

## Administrative orders banning demonstrations

### As part of the pension mobilisation in Paris

During the spring of 2023, prefects banned demonstrations against pension reform by means of decisions that were published or notified at very short notice before or even during the demonstrations.

In Paris, for example, bans on demonstrations issued by the Prefect of Police, almost daily for several weeks, were regularly published a few hours before the planned demonstration was due to start.

In fact, no less than eight prefectorial decrees banning demonstrators between 23 and 28 March were published the evening before they came into force, and civic actors (as LDH) were unable to challenge them effectively because the judge of appeal did not have time to rule before the ban came into force.

Delayed publication of such a ban nullifies any possibility of lodging an appeal against it in good time, thereby undermining the exercise of the right to peaceful assembly and the right to effective remedy.

Following these end of March decrees, at the request of the LDH and several other organisations, the Paris Administrative Court ordered the *Préfecture de Police* to publish orders banning gatherings in certain areas within a timeframe that allows them to be contested (*TA Paris, Association de défense des libertés constitutionnelles et autres, 4 avril 2023, no. 2307385/9*).

On 16 May 2023, the LDH asked the Prime Minister to repeal legal provisions that allow for the late publication of decrees and disproportionately infringe on the right to effective legal remedy and to collective expression of ideas and opinions. In the absence of a response, which was tantamount to an implicit refusal, the LDH lodged an appeal for annulment of this de facto refusal, together with a request that a priority question of constitutionality be referred.

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In a decision handed down on 4 December, the Council of State rejected the appeal, its merits and the request for the priority constitutionality issue to be referred to it, while attaching safeguards to its decision. Thus, while the High Administrative Court notes that the possibility of public order disturbances may only become apparent shortly before the demonstration takes place, the administrative authority must, before taking a decision to ban the demonstration, assess whether other measures that are less intrusive, such as adapting the planned route or limiting the duration of the demonstration, would likely prevent these risks. In addition, the Council of State mentioned the obligation to inform the public by any useful means of the ban imposed and, as far as possible, to carry out these various information measures within a timeframe that allows the matter to be brought before the administrative court. Lastly, the court was careful to emphasise that there can be no question of imposing a ban on demonstrations - and therefore imposing a penalty in the form of a fine - before the ban has been adequately publicised.

However, it is important to note that these case law clarifications have not prevented some prefectures from repeating their previous practices for the demonstrations in protest of Israel's operations in Gaza since 7 October.

### **Banning of protests when the President of the Republic travels in France**

In a decree dated 24 April 2023, the Prefect of the Loir-et-Cher department set up a protective perimeter for the presidential visit scheduled for 25 April, prohibiting protest rallies and sound amplifying devices within this perimeter.

The LDH and the SAF (*syndicat des avocats de France*) brought an application for interim relief in front of the Orléans Administrative Court. In an order dated 25 April, the administrative court issued a stay of execution of the disputed order, noting in particular that a protective perimeter under these provisions can only be set up by the prefect to ensure the security of a place or event exposed to a risk of acts of terrorism due to its nature and the scale of its attendance.

In the absence of special circumstances, a visit by the President of the Republic cannot be considered to justify, by its very nature, the establishment of a security perimeter. The interim proceedings judge also ruled that the current social climate and, in particular, the mobilisation linked to the protest against the pension reform were not sufficient, even though several demonstrations had given rise to violence and damage by rioters, to characterise the existence in this case of a risk of acts of terrorism within the meaning of article L. 226-1 of the Internal Security Code.

In an order dated 26 April 2023, the Prefect of the Doubs department set up a protective perimeter prohibiting demonstrations and imposed various administrative police measures in the towns of La Cluse and Mijoux as part of the visit by the President of the Republic on 27 April. The LDH and the SAF lodged an application for interim relief. The Doubs Prefect withdrew the contested order before



the hearing, leading the judge at the Besançon Administrative Court to rule that there was no need to continue with the interim proceedings.

In an order dated 19 April, the Prefect of the Hérault issued a decree establishing a protection perimeter within which the use of "portable sound devices" was prohibited, in the light of a visit by the President to the commune of Ganges on 20 April.

As the order was issued too late, it would have been futile to file an application for interim relief, since the judge was unable to rule before the start of the presidential visit.

However, the LDH and ADELICO lodged an appeal to have the administrative court rule on the legality of this order. The case is pending.

## **Banning of protests in support of the Palestinian people**

The Minister of the Interior has been curtailing the freedom of peaceful assembly and expression by issuing a new round of orders banning demonstrations denouncing Israel's operations in Gaza.

On 12 October 2023, in an administrative letter issued to all departmental prefects, the minister asked for a systematic ban on all demonstrations in support of the Palestinian people, explaining that each of them was to be seen as inviting support for Hamas, at the very moment when many in the international community were stressing the importance of putting forward a political solution and at the same time the Israeli government was announcing the imminence of a ground offensive that would result in a considerable number of casualties, mainly in Gaza, but also in the West Bank.

The prefects followed the Minister's order and most systematically banned many gatherings throughout the country, which called for a ceasefire, for a just and lasting peace<sup>368</sup>.

In an interim order dated 18 October 2023, the judges of the Council of State hearing an appeal against the Minister's letter, recalled that it was up to the prefects alone to assess, on a case-by-case basis and under the supervision of the administrative judge, whether there were grounds for banning a demonstration with a direct link to the Israeli-Palestinian conflict. The prefects could not legally decide to ban a demonstration solely by referring to the letter issued by the Minister or solely on the grounds that the demonstration in question was intended to support the Palestinian people<sup>369</sup>.

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<sup>368</sup> **Darmanin ordonne l'interdiction des manifestations pro-palestiniennes et l'interpellation des organisateurs et « fauteurs de troubles » | Mediapart; Ban on protests supporting Palestinians is disproportionate attack on the right to protest in France - Amnesty International**

<sup>369</sup> **Pro-Palestinian demonstrations: prefects will assess "on a case-by-case basis, whether the risk of disturbances to public order justifies a ban", says the Council of State (francetvinfo.fr)**

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Since then, even if not in systematic way, a number of prefectures have issued orders banning demonstrations declared by the Association France Palestine Solidarité (AFPS) in support of peace and a ceasefire in Gaza.

Against these bans, the LDH lodged several applications for interim relief on the grounds that the freedom of peaceful assembly was clearly being infringed, which enabled the courts to suspend the bans in Auxerre, Dijon, Laval, Nancy, Nîmes, Nice and Rennes.

In Nice, the Prefect of Police issued no less than ten successive orders banning gatherings organised by the "*Collectif 06 pour une Paix juste et durable entre Palestiniens et Israéliens*" (06 Collective for a just and lasting peace between Palestinians and Israelis (translated from French)). All were suspended by the administrative court on the grounds of serious and manifestly illegal infringement of the fundamental freedoms of expression and assembly, and in one of its decisions (of 18 November 2023), the interim judge pointed out the prefect's obstinacy in an approach that had already been judged illegal.

Despite the systematisation of the bans on gatherings, the Council of State ruled that even with this repetition of bans there was no evidence to show that an administrative decision instituted a general and absolute ban contrary to fundamental freedoms, merely a general guideline for maintaining public order for which the Prefect is responsible. This ruling by the highest court is most surprising given that the Prefect Hugues Moutouh in an interview with France Bleu Azur on 7 November endorsed the ban on protests, stating: "For the past few weeks, I have decided to systematically ban demonstrations which, under the guise of defending peace and the Palestinian people, are incitement to hatred of Jews. This is part of an attack on intangible public order. There is no need for demonstrations to descend into violence"<sup>370</sup>

Since then, the Prefect of the Alpes Maritimes has tirelessly continued to ban the Collective's gathering every week, despite weekly censures by the administrative court.

### Ban on Salah Hamouri's conferences

Since Salah Hamouri's expulsion by Israel and his arrival in France in December 2022, the French Palestinian activist has had to contend with regular orders against him issued by the Ministry of Interior, in the name of an alleged risk of disturbing public order, prior to speaking engagements.

For example, on the eve of an event due to take place on 15 March 2023, the Prefect of Meurthe-et-Moselle banned the conference entitled "Son of Jerusalem, expelled from his native land by Israel", to be held at the Pichon youth and cultural centre in Nancy. The LDH challenged this decision by a legal freedom petition filed in parallel with the one presented by the Association France Palestine

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<sup>370</sup> <https://www.marianne.net/societe/manifestation-pour-gaza-a-nice-la-justice-suspend-l-interdiction-la-prefecture-oublie-de-retirer-son-tweet>

Solidarité Lorraine Sud, Amnesty International France and Hamouri himself, citing in particular the clear infringement of constitutional freedoms such as freedom of peaceful assembly and expression. In an order dated 16 March, the Nancy Administrative Court suspended the contested order, recognising that right to peaceful assembly had been seriously, manifestly and unlawfully infringed and found that the risk of public order disturbance was not sufficiently serious<sup>371</sup>.

## Police intimidation, obstruction to the freedom to demonstrate

### Monitoring demonstrators

The strong social mobilisations linked to pension reform and those linked to climate and environmental concerns have led to an increase in the use of abusive means of surveillance and to significant repressions by the public authorities.

The newspaper Mediapart revealed the decision to set up a personal data processing system on behalf of the State, by the magistrates of the public prosecutor's office of the Lille judicial court. The purpose of the system is to collect the surname, first name and date of birth of the participants of demonstrations held in police custody, even when no criminal proceedings are subsequently instituted.

The Chancellery did not deny the reality of the implementation of such data processing since it stated that "local initiatives may have led to the implementation of dedicated tools for monitoring and processing procedures brought to the attention of the judicial authorities. There are no existing applications that are covering this need".

LDH, along with other civic organisations, decided to lodge an application for interim relief with the Lille Administrative Court in order to stop this decision, which infringes on fundamental freedoms, in particular the right to privacy, freedom of expression and freedom to peacefully assemble.

On 19 May 2023, the court agreed to this request and ordered the deletion of personal data files of the people placed in police custody when demonstrating against the pension reform. It stated that the file constitutes processing of personal data covered by the provisions of the Act of 6 January 1978 relating to data processing, files and freedoms, and that its implementation without the prior intervention of a regulatory text authorising its creation, terms of use and the safeguards, constitutes

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<sup>371</sup> <https://www.ldh-france.org/le-muselement-de-salah-hamouri-censure-par-le-tribunal-administratif/>

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a serious and manifestly unlawful infringement of the right to respect for private life, which includes the right to protection of personal data.

### Briefcam software

On 14 November 2023, the “Disclose” website published an investigation revealing that a large number of government departments and local authorities had acquired Briefcam's artificial intelligence software<sup>372</sup> without any legal authorisation and, above all, in a context in which municipal police forces are not allowed to use it, given their legal prerogatives, while national police forces could only use it in cases of absolute necessity<sup>373</sup>.

According to the online magazine NextImpact, Briefcam is used daily by the services of at least 34 local authorities, including Roubaix, Vannes, Vitrolles, Nice, Vienne, La Baule, Vaulx-en-Velin, Deauville, Nîmes and Aix-les Bains.

In response, on 15 November 2023, on the X (formerly known as Twitter), the CNIL (Commission Nationale Informatique et Libertés) announced that it was initiating a control procedure following the publication of the investigation into the use of video surveillance software published by Briefcam.

The LDH, the Syndicat de la Magistrature and “Solidaires” (a TU) have decided to challenge the use of this software by local authorities outside any legal framework with the administrative court. The case is still pending.

## Drones to support administrative policing and increased surveillance of demonstrators

On 19 April 2023, the government adopted the decree on the use of image processing devices installed on drones for administrative police purposes, the provisions of which infringe the right to privacy and the protection of personal data.

LDH lodged an action for annulment with the Council of State. It argued that the provisions of the decree disregarded conventional and constitutional requirements related to the respect for private life by interfering in an unjustified and disproportionate manner with the right to private life and to

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<sup>372</sup> **Briefcam, an Israeli company and subsidiary of the Canon group, devotes a large part of its business to the development of algorithmic video surveillance technology tools which, through the use of using the so-called artificial intelligence applications, can analyse images captured by cameras or drones and is able to detect situations qualified by the user of the software as abnormal by along the processing algorithms. Briefcam is also touted by distributors as "the best facial recognition technology".**

<sup>373</sup> <https://www.ldh-france.org/briefcam-souriez-vous-etes-filmes/>

the protection of personal data, constitutional and conventional requirements for the protection of personal data. The Court's decision is pending.

The use of drones as a tool to repress protest movements followed, most notably during the social movement against pension reform. Then, numerous prefectorial orders authorising the use of drones during demonstrations were issued throughout France between May and September 2023.

In its decision validating the use of drones, the Council of State entered two reservations of interpretation: In a first reservation of interpretation, it ruled that "the prefect's authorisation determining this purpose and the perimeter strictly necessary to achieve it, as well as the maximum number of cameras that may be used simultaneously within the same geographical perimeter, cannot, without infringing the right to respect for private life, be granted until the prefect has ensured that the service cannot use other less intrusive means with regard to this right or that the use of these other means would be likely to result in serious threats to the physical integrity of the officers".

In a second reservation of interpretation, it ruled that "the renewal of such authorisation cannot, without disregarding the right to respect for private life, be decided by the prefect without it being established that the use of these airborne devices remains the only means of achieving the objective pursued" (press release on CC 2021-834 DC 20 January 2022, law on criminal liability and internal security). However, it has to be said that administrative judges are inclined to validate orders providing for the use of drones without really investigating whether they are subsidiary<sup>374</sup>.

## The introduction of AI to detect suspicious behaviour via cameras in the context of the Paris Olympic games

The Olympic Games Act was considered as an opportunity by French authorities to introduce AI into video protection cameras and drones with the aim to detect "suspicious behaviour". It is introduced on "an experimental basis" but the provision of the law (n° 2023-380 of 19 May 2023) could be extended beyond the Olympic Games, to 2025.

The government has asserted that AI-based applications are to detect situations including 'suspicious' behaviour. However, at this stage, there is no guarantee of how the implemented algorithms will work, in particular but not only, to avoid discriminatory bias notably on the basis of ethnic characterisation.

Already, some towns and cities seem to be seizing on the possibility of using these surveillance tools in public spaces on a very wide scale, even though the law only allows algorithms to be used to

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<sup>374</sup> <https://www.conseil-etat.fr/actualites/emploi-de-drones-a-des-fins-de-maintien-de-l-ordre-le-conseil-d-etat-rejette-la-demande-de-suspension-du-decret-du-gouvernement>



"secure sporting or cultural events".<sup>375</sup> There is no real control over whether or not facial recognition is implemented with the AI applications, a use which is not permitted by law. For the time being, the administrative judge has refused to halt the use of such applications, as requested by LDH, as long as it could not demonstrate that facial recognition was actually being used<sup>376</sup>.

### Preventive arrests, a gagging procedure against the right to expression

In 2010, the so-called "Estrosi" law created an offence for "obstruction" or "prevention" and criminalises a person that "knowingly takes part in a group, even one formed on a temporary basis, with a view to preparing, as evidenced by one or more material acts, deliberate violence against persons or destruction or damage to property", punishable by one year's imprisonment and a €15,000 fine" (article 222-14-2 of the Criminal Code).

Although the Council of State validated this text, the National Consultative Commission for Human Rights expressed concern about "the excessive use of judicial police procedures diverted from their purpose in order to maintain law and order, both in terms of the large-scale use of police custody prior to certain demonstrations and the conditions under which [potential] "rioters" or "troublemakers" are questioned".

On 26 February 2019, the Council of Europe's Commissioner for Human Rights condemned the numerous arrests including for holding objects considered suspicious by the police, sometimes in a questionable manner (a diving mask or a yellow waistcoat, for example), under article 222-14-2 of the Criminal Code, to the extent that she wondered "whether the objective pursued in this way is not more to prevent participation in a demonstration than to punish the an effective offence" (§39).<sup>377</sup>

The "*Défenseure des droits*" mentions a protest in Paris on 18 March 2023, where 283 of the 292 people questioned were released without any charge, demonstrating that there was no evidence of an offence, and that the assessment of "potential risk" was left to police officers' subjective discretion. The "*Contrôleuse générale des lieux de privation de liberté*" issued a report on police custody related to two pension reform protests held in March 2023, expressing concern about the possible misuse

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<sup>375</sup> [https://www.lemonde.fr/societe/article/2024/01/02/pourquoi-la-promesse-de-videoagerer-les-villes-avec-des-cameras-couplees-a-une-intelligence-artificielle-seduit-et-inquiete\\_6208686\\_3224.html](https://www.lemonde.fr/societe/article/2024/01/02/pourquoi-la-promesse-de-videoagerer-les-villes-avec-des-cameras-couplees-a-une-intelligence-artificielle-seduit-et-inquiete_6208686_3224.html)

<sup>376</sup> <https://www.ldh-france.org/projet-de-loi-jeux-olympiques-et-paralympiques-2024-limportant-cest-de-surveiller/>

<sup>377</sup> Draft memo GJ (coe.int)

of a judicial measure of deprivation of freedom to move (police custody) under a pretext of maintaining public order, to prevent demonstrations<sup>378</sup>.

LDH, Amnesty International, the Syndicat des Avocats de France and the Syndicat de la Magistrature have called for this “Estrosi Law” provision to be repealed, as it constitutes an infringement of the peaceful assembly through abusive and unfounded detention in police custody and the undue abuse of the judicial system under the guise of maintaining law and order.

LDH intervened in support of the application for an interim freedom measure (un référé-liberté) brought by the Association for the Defence of Constitutional Freedoms (ADELICO) to put an immediate end to the use of the so-called “preventive arrest technique” in the policy the Paris Police Prefect, as witnessed during organised protests against the government's use of Article 49.3 of the Constitution for adopting the Social Security Amendment Bill 2023.

In the overwhelming majority of cases, these methods of arrest - which increased sharply from March 2023 mobilisations – resulted in several hours in police custody after which the detainees were released without any decision being taken on criminal proceedings, and sometimes without being interviewed. The particularly widespread use of this method, and the fact that no criminal proceedings are brought, do little to disguise the fact that these arrests are in fact made for purposes other than identifying offences.

In a legal order dated 24 March 2023, the Tribunal Administratif de Paris ruled that the administrative court had no grounds to hear the case, insofar as it had not been established that the Prefect of Police had resorted to preventive arrests as part of his law enforcement policy, as alleged by the claimants. It stated that the arrest of persons was justified as there were one or more plausible grounds for suspecting that they had committed or attempted to commit an offence. This TA statement is disappointing, even if not surprising for its juridical approach.

## Lack of recognition of observer status: the case of Sainte-Soline

A 10 June 2021 decision by the Council of State extended protections granted to journalists during a demonstration to independent observers.

With this in mind, the *Observatoire Poitou-Charentes des Libertés Publiques et des Pratiques Policières* (Poitou-Charentes Observatory of Public Freedoms and Police Practices) sent a letter to the

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<sup>378</sup> **Enquête sur les mesures de garde à vue prises dans le contexte des manifestations contre la réforme des retraites « Site du Contrôleur Général des Lieux de Privation de Liberté (cglpl.fr)**

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prefects of the Vienne and Deux-Sèvres departments to warn them of their presence at the major demonstrations planned for 24, 25 and 26 March 2023.

In letters dated 22 March 2023, the Prefect of Vienne and the Préfet of Deux-Sèvres indicated that, for the purposes of maintaining law and order, LDH observers intending to be present at the Sainte-Soline demonstration would be assimilated to demonstrators, thus denying their specificity and legitimacy.

LDH lodged an application for interim relief against each of these decisions. In two orders dated 24 March 2023, the judge of the Poitiers administrative court rejected the application, while recognising the illegality of the failure to recognise a specific status for independent observers.

As it was practice that the Toulouse observatory notifies the Prefect of Haute-Garonne before each observation, the Prefect indicated that he considered that the observers would be subject to the same legal rules as the demonstrators themselves and could therefore be prosecuted for the same offences. In an order dated 14 November 2023, a judge of the Toulouse administrative court dismissed the application for an interim relief seeking suspension of this decision, on grounds similar to those given by the Poitiers judge: "In the absence of any evidence produced in support of the application, particularly as regards the number of observers likely to be mobilised and the practical conditions of such mobilisation, the decision in question cannot be considered, in the light of the investigation, as seriously and manifestly unlawful interference with the freedom of expression and communication, the exercise of which may be guaranteed, where appropriate, after the dispersal of gatherings, by journalists", specifying that the number of observers present is not a permissible obligation under international law.

In his defence of the national policing plan, the Minister of the Interior argued that LDH observers were not independent because they belonged to an association that called for the demonstrations. This is a denial of the specific mission of observers, who are identifiable as such and present themselves as "observing" police practices. This denial is also present in a report submitted on 7 November 2023 by Florent Boudié, the rapporteur for the Commission of Inquiry into violent groups (set up by the National Assembly), where he proposes to create a status of observers who are not connected to association's observers to observe violence committed against the police.

On 29 December 2023, the Council of State annulled points 2.2.3.2 and 2.2.3.3 of the *Schéma national du maintien de l'ordre* (SNMO) insofar as they did not allow independent observers to remain after a dispersal order, in the same way as journalists. Unfortunately, it refused to go any further, ruling in particular that independent observers are not to "benefit from guarantees identical to those provided for journalists" (CE 29 December 2023, no. 461513 and 461598 §5 and 6). The pending risk is that the government may decide in its next version of the SNMO to require official accreditation in order to be considered an observer.

As a general remark, it should be noted that since Sainte-Soline observatories are under heavy attack as a result of the report published on how policing was implemented there, a factual report which

contradicted the version of the gendarmes and the national gendarmerie inspectorate (IGGN). On 29 December 2023, the *Conseil d'Etat* annulled points 2.2.3.2 and 2.2.3.3 of the *Schéma national du maintien de l'ordre* (SNMO) insofar as they did not allow independent observers to remain after a dispersal order, in the same way as journalists. Unfortunately, it refused to go any further, ruling in particular that independent observers are not to "benefit from guarantees identical to those provided for journalists" (CE 29 December 2023, no. 461513 and 461598 §5 and 6)<sup>379</sup>. The pending risk now is that the government will decide in a next version of the SNMO to require official accreditation in order to be considered an observer.

As a general remark, it should be noted that the observatories are since Sainte Soline under heavy attack as a result of the report published on how policing was implemented there, a report which contradicted with many factual elements the version of the gendarmes and the national gendarmerie inspectorate (IGGN).

## Police violence

### National policing plan (SNMO)

Since Laurent Nuñez took up the post of Prefect of Paris in July 2022, there has been a reduction in the level of violence perpetrated by the forces of law and order in the capital city. The decision to make law and order personnel less visible from demonstrators by movement more through the adjacent streets, has helped to reduce the tension previously created by the close mobile encirclement of demonstrators.

This shows the margin of manoeuvre for applying the provisions set out in the SNMO of December 2018 when implementing the operational modalities of the maintenance of order by all internal security forces in the context of public demonstrations. It is concerning that policy makers have not called into questions the provisions that resulted in implementation. The ministerial instruction is still the primary handbook for managing protesting crowds, rather than provisions aimed at the protection of the freedom of peaceful assembly.

Thus, charges or "offensive moves" that we regularly witness on the ground repeatedly do not correspond with the need to maintain order, target peaceful protesters as was seen during January and February 2023 trade unions' first demonstrations against the law on pensions. These demonstrations were subjected to harassment, abusive arrests and violence, with the police entering the processions of demonstrators without legitimate need.

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<sup>379</sup> <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-12-29/461513>

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In addition, the SNMO is to be implemented by police forces who are not trained to maintain law and order during demonstrations, such as the *Compagnies d'intervention* (CI), the BRAV-M (*brigades de répression de l'action violente*) intervening with motorcycles, which report to the Préfecture of police in Paris, the BAC ("Anticrime brigade"). These non-specialised units are responsible for the majority of serious injuries.

Despite several calls to disband the BRAV-M, the new Paris Prefect has not done so. This comes as the BRAV-M has been the source of much violence.

Journalists and observers have documented the highest level of violence by police on the ground, including unnecessary orders to charge, intentionally physically target journalists (such as Commissioner "P", whose actions were documented by the Paris Observatory, whose videos were reconstructed by a journalist from Le Monde, Arthur Carpentier). Even in well documented cases of police violence, the police officers have continued their responsibilities.

A new trend is emerging that has been documented by the Paris Observatory: the dispersal of demonstrators by private agents intervening directly (staff of the transport operator (RATP) and security guards), pushing protesters into the metro on the grounds of "maintaining order".

In addition to these elements, the use of extremely dangerous "reduced lethality" weapons such as the LBD 40 or dis-encirclement grenades, or pyrotechnic grenades (GM2L or ASSL) has to be noted, even if less so than in comparison to the Yellow Vests protests. The press revealed that the instructions given to police officers on how to use the launchers did not comply with the manufacturer's recommendations on the safe firing angle (unlike the instructions given to the gendarmes).

Many police officers and gendarmes carry assault rifles when not in action, which can serve as a deterrent for demonstrators.

In November 2023, the French Minister of the Interior placed his biggest order to date for grenades, including tear gas, explosive and stun grenades amounting to 78 million euros. This was done, without calling into question the proportionality of using certain grenades given that France is the only country in Europe to use grenades for law enforcement operations. It also placed an order for a new 40x46 calibre multi-shot grenade launcher (valued at 5.3 million euros).

Furthermore, while 10 June 2021, the Council of State overruled the provision of the SNMO related to the use of the encirclement technique on 10th June 2021, the most recent version of the SNMO retains the controversial kettling technique ("nasse"), justifying its use on the grounds of that it would be needed under certain circumstances. Thus, the kettling provision for encircling demonstrators even acting peacefully, along the provision 3.1.4 of the SNMO, is likely to dissuade and discourage people from participating in demonstrations. Given that the freedom of peaceful assembly is guaranteed, as set out in the European Court of Human Rights (ECHR), such a deterrent makes this measure contrary to the positive obligation incumbent on the French authorities.



Lastly, while the new version of the SNMO recognises that journalists can remain on the scene of protest after summons has been issued, it still denies the extension of this right to independent observers. However, as seen in the example of the observation in Sainte-Soline on 25 March 2023, independent observers' continued presence is necessary in order to inform the public and, in this case, the courts (see above).

In light of these developments, the LDH has referred the matter to the Council of State as it considers that the implementation of the new version of the SNMO infringes and discourages the right to peaceful assembly, and infringes on the freedom of movement.<sup>380</sup> In its 29 December 2023 judgement, the court approved the wording used in the SNMO on this issue (no. 461513 and 461598), ruling that the establishment of a controlled exit point is a sufficient guarantee. It pointed out that identity checks done in such circumstances could only be carried out in accordance with the Criminal Code. However, it should be noted that the Minister of Justice's Circulars on offences that may be committed during demonstrations set that public prosecutors' issued orders can allow police officers to carry out identity checks at any time, which contravenes both the freedom of movement and the right to peaceful assembly.

## The mis-regulation for weapons' use by police officers and gendarmes outside law enforcement situations

In recent years, France has by far the highest number of people killed or injured by shootings by police officers in the EU under a "refusal to comply" charge. Evidence suggests that the increase in numbers is linked to a change in regulations introduced in 2017.

On 5 July 2023, LDH asked the Minister of the Interior, the Director General of the National Police (DGPN) and the Director General of the National Gendarmerie (DGGN) to repeal two instructions issued by the DGPN and the DGGN in March 2017 concerning the new legal framework for the use of weapons by members of the police and the use of weapons by members of the gendarmerie.

The two instructions are based on Article L.435-1 of the French Internal Security Code, which states that:

*"In the performance of their duties and wearing their uniform or the external and visible insignia of their status, national police officers and members of the national gendarmerie may, in addition to the cases mentioned in article L. 211-9, use their weapons if absolutely necessary and in a strictly proportionate manner:*

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<sup>380</sup> <https://www.ldh-france.org/la-ldh-a-saisi-la-justice-pour-protoger-lobservation-du-maintien-de-lordre/>

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1° *When their life or physical integrity is threatened or when armed persons threaten their life or physical integrity or that of others;*

2° *When, after two loud summonses, they cannot otherwise defend the premises they occupy or the persons entrusted to their care;*

3° *When, immediately after two loud warnings, they are unable to compel the arrest, other than by the use of weapons, of persons who are attempting to escape their custody or their investigations and who are likely, in their flight, to cause injury to themselves or to others;*

4° *When they are unable to immobilise, other than by the use of weapons, vehicles, boats or other means of transport, the drivers of which do not comply with the order to stop and the occupants which are likely, in their flight, to cause injury to themselves or to others;*

5° *For the sole purpose of preventing the recurrence, in the near future, of one or more murders or attempted murders that have just been committed, when they have real and objective reasons for believing that such a recurrence is likely in the light of the information available to them at the time they use their weapons".*

With regards to shooting cases, these instructions, like the provision on which they are based, do not provide a sufficient framework for the use of weapons by gendarmes and police officers. The concepts of strict proportionality and absolute necessity are not defined or clarified.

A study by sociologists Sebastian Roché, Paul Le Derff and Simon Varaine ("*Refusal to obey and police killings. Has the law made the police irresponsible?*", *Esprit* 2022 Halshs-03930552) demonstrated the link between the 2017 law and fatal shootings of young black or Arab men. In territories where it is the gendarmes who intervene, they carry out few of the shootings and even fewer of the fatal shootings.

In this respect, the instructions and article L.435-1 of the Internal Security Code seriously infringe the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights, in particular the constitutional principle of safeguarding human dignity and the right to life. A request for repeal is yet to be examined, while lethal use continues at an unprecedented rate in comparison with other European countries. The LDH has also asked members of Parliament to repeal this law.

## Police impunity favoured by unsuitable ways of wearing personal identification number

For several years now, there has been an increase in violence in the policing strategy used at demonstrations in France. While these cases of disproportionate violence have been multiplying, investigations carried out have often been unable to identify the officer involved. Unsuitable ways of wearing the "RIO" (the identity and organisation reference number that police officers and

gendarmes must wear when in service) make it impossible to identify the perpetrators, who may escape punishment as a result.

Testimonies, images and reports demonstrate a lack of rigour in the wearing of the "RIO". Despite the fact that it has been compulsory since 2013, it is often barely visible or even masked, contrary to the requirements of the ECHR, and officers are sometimes even hooded, as documented in particular by observatories monitoring police practices. This failure contributes to police officers' feeling of impunity when they use violence abusively and illegally. This situation is incompatible with the rule of law and damages the relationship of trust that should prevail between the public and the police.

For all these reasons, on 15 July 2022, the LDH and ACAT submitted a request to the Minister of the Interior asking him to take all necessary measures to ensure that the law and order agents comply with the obligation to visibly wear individual identifiers. In the absence of any response, the organisations appealed to the Council of State on 26 September 2022 to overturn this implicit refusal.

On 11 October 2023, an unequivocal decision was handed down by the highest court, rejecting the Minister of the Interior's implicit decision on the grounds that the Ministry of the Interior had "failed" to "ensure compliance by its officials". The court ordered the Ministry to guarantee this obligation and to take appropriate measures to ensure that the RIO is visible and legible in all circumstances, including when maintaining law and order and wearing a tactical waistcoat. No progress has been noted since.

# Violations of freedom of association

## Repeated public attacks by the political authorities on civic organisations (associations)

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

It is in this context that for some time now, and particularly throughout 2023, politicians have attempted to discredit non-for-profit civil sector associations.

The latest case at the time of writing (mid-December) is linked to the killing of Dominique Bernard on 13 October 2023, a French teacher at the Gambetta school in Arras by a young adult with a foreign origin. Several politicians decided to place the blame for this tragedy on associations that had intervened in 2014 against the perpetrator's parents' expulsion from France, when he was only nine years old.

It should be noted that the Minister of the Interior himself has vilified associations that fight for the rights of foreign nationals and distilled the idea in public opinion that the action of associations, which is contrary to his immigration policy, could have led to the terrorist act that took place a decade later.

A case of attack on civic actors has also raised much attention. On 5 April 2023 during a Senate hearing, the Minister of Interior, questioned LDH's criticism of the police force's actions in Sainte Soline and called for the State subsidies to the LDH to be carefully scrutinised by local authorities. The Prime Minister followed-up during questions to the government in the Senate on 12 April, by questioning certain positions taken by the LDH, which she described as "ambiguous in the face of radical Islam", an odious and not at all founded statement. To date these calls have not concretised, and the LDH has been reassured that its subsidies will continue.

Additionally, environmental associations have been repeatedly attacked by highest state political authorities and accused of staging terrorist actions or actions that seriously endanger 'public order'.

The multiplication of such undue statements come at a time when laws adopted in the recent years call into question the freedom and independence of associations. Such laws aim to control civil society organisations, which marks a shift in a country that has historically had a very liberal approach to the freedom of association (with the exception of the Vichy regime period during WW2).

The 2022 law “on the respect of the republican principles” (Law No. 2021-1109 of 24 August 2021) and its provisions relating to the so-called "Republican Commitment Contract" (hereafter “the contract”) have considerably broadened the grounds for dissolving associations and tightened up funding control measures. This concretely marks a turning point in relations between administrations and associations, dictated by the will of political power. The “Contract” distorts relationship of trust that should prevail between public authorities and associations by introducing a form of prior certification of "republican conformity" contrary to the very liberal spirit of the 1901 law. Even when the provisions of this Contract are not directly used, the "Contract" increasingly constitutes threat for associations whose militant activities may not meet the views of public authorities.

The opening of this Pandora's box has now led local authorities to ask the associations to apply a so-called “neutrality” to their activities, regarding for instance religious preferences, that by law only apply to public services. As a result of the law provisions, administrative authorities can penalise associations for the individual actions of their members, without any intervention of the judiciary. Some authorities require associations to censor practices even when done in accordance with law in order to continue to receive public funds.

Whether it's a question of new administrative constraints, new legislation or public statements, associations find themselves restricted in their ability to take action, and are even attacked for challenging the public authorities, even though they do so peacefully, responsibly, using the activists' toolbox.

## **Repeated dissolution of associations by administrative decisions**

In previous years only violent acts against individuals could lead to the dissolution of an association. However, since 2021, the Separatism law has made it possible to dissolve an association or de facto group that deem any acts against public property as violent.

Between 2021 and 2023, the government ordered the dissolution of several associations and groups, including *Les Soulèvements de la Terre*, the *Groupe Antifasciste Lyon et Environs* (known as "GALE"), the *Bloc Lorrain* and the *Coordination Contre le Racisme et l'Islamophobie*. Each of these organisations applied to the Council of State to have its decision of dissolution annulled, with some successful applications but not all.



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In its judgments, the Council of State recalls that a dissolution measure seriously undermines the freedom of association, a fundamental principle recognised by the laws of the Republic. It can therefore only be implemented to prevent serious disturbances to public order. The court rules that dissolution is only justified when an association or grouping of associations incites people to commit violent acts against people or property (explicitly or implicitly, through words or deeds), publicly legitimises particularly serious acts or refrains from moderating explicit incitements to commit acts of violence published in particular on its social networks.

In the cases of *Groupe Antifasciste Lyon et Environs*, *Bloc Lorrain* and the *Coordination Contre le Racisme et l'Islamophobie*, the Council ruled that the dissolutions were appropriate, necessary and proportionate to the seriousness of the disturbances to public order.

On 21 June 2023, the government ordered the dissolution of environmental group *Soulèvement de la Terre* on the basis of article L.212-1 of the French Internal Security Code, which states that "All associations or de facto groupings [...]: that provoke armed demonstrations or violent acts against people or property shall be dissolved by decree in the Council of Ministers<sup>381</sup>".

On 28 July 2023, *Soulèvements de la Terre* appealed to the Council of State and requested a suspension and annulment of the decree dissolving the grouping. Given the seriousness of the infringement of freedom of association, the LDH, Mrap, Utopia 56 and Anafé intervened voluntarily in support of their applications.

On 9 November 2023, following its suspension order, the Council of State also annulled the decree dissolving the group ruling that the somewhat complacent reliance on images of demonstrators clashing with the police, in particular against the construction of water reservoirs in Sainte-Soline, did not constitute a claim, promotion or justification of such acts. On the other hand, it ruled that *Soulèvements de la Terre* had indeed engaged in incitement to violent acts against property (to be understood as damage to property) which fall within the scope of 1° of article L. 212-1 of the Internal Security Code. However, it considered that the dissolution did not constitute a measure that was appropriate, necessary and proportionate to the seriousness of the disturbances to public order in view of the real effects that their incitement to violence against property may have had on the date during which the contested decree was issued<sup>382</sup>.

While the ruling by the Council of State is a positive development for the freedom of association, it is expected that the public authorities will not cease their undue attacks in 2024.

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<sup>381</sup> <https://twitter.com/franceinfo/status/1640704009077157891?s=46&t=smPLI-7VdMRxGmyX3XkOHQ>; <https://civicspacewatch.eu/france-interior-minister-dissolves-environmental-movement/>

<sup>382</sup> [Le Conseil d'État suspend en référé la dissolution des Soulèvements de la Terre \(conseil-etat.fr\)](https://www.ledroit.fr/actualites/le-conseil-d-etat-suspend-en-referé-la-dissolution-des-soulevements-de-la-terre-conseil-etat.fr)

# Recommendations

## Targeted recommendation:

🔍 Urgently amend law “on the respect of the republican principles and withdraw the contract in line with the international standards on freedom of association.

- 🔍 Take appropriate measures to ensure that the RIO is effectively visible and legible in all circumstances.
- 🔍 Protect the rights of independent observers to ensure that they are able to freely monitor protests without obstructions.

# About the author

Ligue des droits de l'Homme is an association founded in 1898. It is a highly recognised civic actor, acting in total independence of political parties, and public authorities. It claims to be a political actor in the sense of dealing with all issues of public interest for the effective access to all rights for all. It is therefore an actor of the public debates. It acts against injustice, racism, sexism, anti-Semitism and discrimination of all kinds. It acts for the development of an active citizenship which relies on a strong and vibrant democracy and extended solidarity. It defends a secularism of the State that favours inclusion for all faith and belief. It fights against any xenophobic instrumentalisation, freedoms, equal rights and fraternity as the basis of a fraternal society and, therefore, of solidarity.





# Civic Space Report 2024

# GERMANY

MAECENATA STIFTUNG



# Key trends

- 🔍 Freedom of peaceful assembly under pressure: through new laws, decisions by assembly authorities and police action.
- 🔍 Interference in journalists' work, far-right intimidation tactics, excessive surveillance, and threats targeting marginalised groups challenge the work of civil society.
- 🔍 Continued lack of specific forums for dialogue between the state and civil society at federal or state level.

# Summary

In the 2023 Rule of Law Report the European Commission recommended Germany to “Advance with the plan to create a legal basis for a right to information of the press as regards federal authorities, taking into account European standards on access to official documents.” No progress has been made and challenges in this regard remain. The federal Freedom of Information Act of 2006, which is supposed to give citizens access to documents issued by federal authorities (and thereby guarantee transparency), contains too many exceptions (repeatedly used to reject inconvenient requests); the provision of information is sometimes refused or subject to a fee. Although the current federal government has promised to update the law and rectify its shortcomings, it has not yet begun to take action. Some federal states have their own laws of varying quality (others have none). There is a need to step up efforts.<sup>383</sup>

The Commission also recommended Germany to reform the law on non-profit organisations in such a way that organisations have legal certainty as to which purposes are recognised as charitable and

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<sup>383</sup> <https://transparenzranking.de/>



enable them to obtain tax-exempt status.<sup>384</sup> There has been no further progress to date, and it is unclear when the legislators will deal with it.

In some areas, the work of CSOs has become more difficult (particularly in sea rescue in the Mediterranean). Freedom of peaceful assembly has come under pressure in a number of ways: through new legislation, decisions by assembly authorities and police action. Other obstacles to civil society activities include interference in journalists' work, far-right intimidation tactics, excessive surveillance, and threats targeting marginalised groups. However, civil society is also (legally) defending itself against these constraints. The absence of clear legal guidelines on what qualifies as charitable continues to be a burden for CSOs – particularly in connection with political activity. On the one hand, they lack financial planning security; on the other, they may be forced to limit themselves in their political activities. Funding has also presented challenges in other aspects: due to cuts in state budgets and the decline in donations, civil society has to rely on less funding. Regarding civil society's political participation, the establishment of new formats for dialogue between civil society and the state, which would improve cooperation and the quality of decision-making, is still pending.

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<sup>384</sup> [https://commission.europa.eu/system/files/2023-07/16\\_1\\_52572\\_coun\\_chap\\_germany\\_en.pdf](https://commission.europa.eu/system/files/2023-07/16_1_52572_coun_chap_germany_en.pdf)

# Institutional, political and socio-economic landscape

According to the GSoD Index, democracy in Germany is generally in a good to very good and solid condition when it comes to the parameters of representation, fundamental rights, the rule of law and participation.<sup>385</sup> 656,888 registered civil society organisations existed in 2022, 94 per cent of which were registered associations; the number of organisations rose across all types of organisations.<sup>386</sup> (In addition, there is also an unknown number of unregistered associations and foundations.) 73 per cent of the organisations work only with volunteers and have no paid employees.<sup>387</sup> In principle, civil society finds very good framework conditions for its activities, but some limitations exist, as described below.

Due to the general overload of the courts, there are sometimes long delays in processing online offences. The sluggish legal processing and the resulting perceived lack of punishment and consequences encourage the spread of hate speech and other attacks online, which have a negative impact on the mental health, productivity and safety of those involved.

A register of donation recipients, opened by the tax authorities on 1 January 2024, is expected to enable the automatic transfer of donation information to the tax authorities and make written receipts superfluous in the future. This will simplify the work processes of non-profit organisations.

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<sup>385</sup> <https://www.idea.int/gsod/2023/>

<sup>386</sup> [https://www.ziviz.de/sites/ziv/files/ziviz-survey\\_2023\\_hauptbericht.pdf](https://www.ziviz.de/sites/ziv/files/ziviz-survey_2023_hauptbericht.pdf)

<sup>387</sup> [https://stifterverband.shinyapps.io/ZiviZ\\_Survey/](https://stifterverband.shinyapps.io/ZiviZ_Survey/)

# Civic freedoms: regulatory environment and implementation

## Freedom of association

Freedom of association is well established, although conflicts regarding the compatibility of non-profit status and political activity remain. There are still no clear legal provisions on the purposes recognised as charitable – nor are there clear rules on their uniform interpretation by the tax authorities. (Over 80 different purposes are listed in the Federal Tax Code.) The revocation of the non-profit status – and in particular the (long) waiting times for a decision from the tax authorities – limit CSOs' ability to plan or may even put them in a financially threatening situation (due to falling donation revenues, subsequent tax payments and the exclusion from state funding). Many associations and foundations do not have the means to get involved in lawsuits over their charitable status. In 2023, five per cent of organisations stated they were reluctant to voice political views due to concerns about their non-profit status.<sup>388</sup> However, these figures do not mean that 95 per cent of organisations are politically active, regardless of any negative consequences for their non-profit status. Rather, it can be assumed that the proportion of those who seek to engage in political activities is much lower – and therefore the proportion of those who limit themselves in doing so is proportionally much higher than five per cent. Legislators continue to fail to provide a legally secure revision of the law on non-profit organisations.

Some entities were banned for violating the law on associations: *Hamas* and *Samidoun* in connection to Hamas' attacks on Israel from 7 October (i.e. for activities against the idea of international

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<sup>388</sup> [https://www.ziviz.de/sites/ziv/files/ziviz-survey\\_2023\\_trendbericht.pdf](https://www.ziviz.de/sites/ziv/files/ziviz-survey_2023_trendbericht.pdf)

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understanding).<sup>389</sup> The far-right associations *Die Artgemeinschaft* and *Hammerskins Deutschland* were banned on the same grounds and for activities against the constitutional order.<sup>390</sup>

Activists of the climate protection movement Last Generation were raided on suspicion of forming a criminal organisation, the press telephone was tapped (which affected the communication with journalists), and donation accounts were confiscated. The web site was also confiscated, and a warning notice was briefly posted on it by authorities stating that Last Generation was a criminal organisation and that donations to the group would be considered support for a criminal organisation – the latter is equivalent to a prior conviction.<sup>391</sup> These measures have a deterrent effect in terms of commitment to Last Generation, but also to climate protection itself.<sup>392</sup>

The so-called “Repatriation Improvement Act,” which will come into force in 2024 and is primarily intended to facilitate the deportation of refugees, contains serious infringements of refugees’ fundamental rights as well as the provision that humanitarian aid for refugees (such as sea rescue) will be treated the same as the criminal offence of smuggling and is thus criminalised. The threat of serious criminal prosecution is likely to restrict the work of humanitarian organisations.<sup>393</sup>

## Freedom of peaceful assembly

Some police laws and assembly laws have been amended and restrict fundamental rights. Planned updates to the Federal Police Law provide for the introduction of written reporting requirements to the police, but criteria remain vague and lack proportionality.<sup>394</sup> The new Passport Law maintains a provision regarding the freedom to leave the country that is not defined sufficiently and therefore

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[https://www.bundesanzeiger.de/pub/publication/M0JVrk5Qop55DhqscjE/content/M0JVrk5Qop55DhqscjE/BAanz per cent20AT per cent2002.11.2023 per cent20B10.pdf](https://www.bundesanzeiger.de/pub/publication/M0JVrk5Qop55DhqscjE/content/M0JVrk5Qop55DhqscjE/BAanz%20per%20cent20AT%20per%20cent2002.11.2023%20per%20cent20B10.pdf),

<https://www.bundesanzeiger.de/pub/de/amtlicher-teil?0&edition=BAanz+AT+02.11.2023>

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<https://www.bmi.bund.de/DE/themen/sicherheit/extremismus/vereinsverbote/vereinsverbote-artikel.html>

<sup>391</sup> <https://www.ito.de/recht/hintergruende/h/letzte-generation-webseite-beschlagnahmt-gekapert-warnung-polizei-staatsanwaltschaft-muenchen-razzia/>

<sup>392</sup> <https://verfassungsblog.de/wie-man-eine-kriminelle-vereinigung-macht/>,

[https://verfassungsblog.de/manovrieren-an-den-grenzen-des- per centc2 per centa7-129-stgb/](https://verfassungsblog.de/manovrieren-an-den-grenzen-des-per-centc2-per-centa7-129-stgb/)

<sup>393</sup> <https://www.proasyl.de/pressemitteilung/zivilgesellschaftliches-buendnis-warnt-vor-kriminalisierung-von-seenotretterinnen/>,

<https://www.ito.de/recht/hintergruende/h/entwurf-aufenthalts-gesetz-seenotrettung-straftbarkeit-rechtsgutachten/>

<sup>394</sup> [https://freiheitsrechte.org/uploads/publications/Demokratie/2023-07-03-](https://freiheitsrechte.org/uploads/publications/Demokratie/2023-07-03-Stellungnahme-zum-Pass-Ausweis-und-Dokumentenwesen.pdf)

[Stellungnahme-zum-Pass-Ausweis-und-Dokumentenwesen.pdf](https://freiheitsrechte.org/uploads/publications/Demokratie/2023-07-03-Stellungnahme-zum-Pass-Ausweis-und-Dokumentenwesen.pdf),

<https://freiheitsrechte.org/themen/demokratie/ausreiseverbot>

susceptible to interpretation and introduces criteria that violate fundamental rights (like the aim to prevent participation in extremist events).<sup>395</sup> Both laws interfere with freedom of action and allow the right to freedom of assembly to be violated. The assembly law in North Rhine-Westphalia, for example, determines a number of restrictions on the freedom of peaceful assembly (including a ban on counter-demonstrations, a ban on joint preparations for demonstrations, a ban on demonstrations on motorways and the authorisation of general – including secret – video surveillance of assemblies and unlimited storage of this data), which contradict the Constitution.<sup>396</sup>

Increasingly, preventive detention has been imposed on climate activists to prevent them from protesting (up to 30 days in Bavaria).<sup>397</sup> These measures are disproportionate, and misuse a legal provision intended to prevent serious crime such as terrorist attacks.<sup>398</sup> After 7 October (the Hamas attack on Israel and the subsequent war between Hamas and Israel), 10 per cent of protests in solidarity with the Palestinian people and against Israel had been banned by 13 November<sup>399</sup> on the assumption that legal rules would not be complied with (such as refraining from incitement). Several of the bans were not upheld in court; sometimes banned demonstrations took place independently of court decisions. Several cities have issued a general ban specifically for unannounced street blockades in relation to climate protests, but the lawfulness of these bans is in question.<sup>400</sup>

During the eviction of the village of Lützerath (for lignite mining) which was occupied by climate activists, the police used excessive force.<sup>401</sup> In the course of police use of force in general, there has been an (uncontrolled) increase in the use of pain grips (e.g. against demonstrators during sit-in blockades), even when milder means are available.<sup>402</sup> Investigations into police misconduct are inadequate and the rate of indictments is far below the average for preliminary proceedings.<sup>403</sup>

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<sup>395</sup> <https://freiheitsrechte.org/uploads/publications/Demokratie/2023-07-03-Stellungnahme-zum-Pass-Ausweis-und-Dokumentenwesen.pdf>,  
<https://freiheitsrechte.org/themen/demokratie/ausreiseverbot>

<sup>396</sup> <https://freiheitsrechte.org/themen/demokratie/vb-versammlungsrecht-nrw>

<sup>397</sup> <https://www.spiegel.de/politik/muenchen-vor-der-iaa-immer-mehr-klimaaktivisten-in-bayerischer-praeventivhaft-a-88743eda-2066-4df4-b949-bae7ebdb5e11>

<sup>398</sup> <https://www.morgenpost.de/politik/article239382747/bayern-muenchen-letzte-generation-polizei-iaa.html>

<sup>399</sup> <https://www.tagesspiegel.de/berlin/innensenatorin-spranger-gibt-zahlen-bekannt-berlin-ist-die-hauptstadt-der-palastina-demos-10770844.html>

<sup>400</sup> [https://www.greenlegal.eu/wp/wp-content/uploads/2023/12/GLI\\_Green\\_Legal\\_Spaces\\_Report\\_2023\\_20231201.pdf](https://www.greenlegal.eu/wp/wp-content/uploads/2023/12/GLI_Green_Legal_Spaces_Report_2023_20231201.pdf)  
<sup>401</sup>

[https://www.grundrechtekomitee.de/fileadmin/user\\_upload/Entscheidung\\_fuer\\_Gewalt.\\_Bericht\\_Demobeobachtung\\_Luetzerath\\_2023.pdf](https://www.grundrechtekomitee.de/fileadmin/user_upload/Entscheidung_fuer_Gewalt._Bericht_Demobeobachtung_Luetzerath_2023.pdf)

<sup>402</sup> <https://verfassungsblog.de/schmerzgriffe-als-technik-in-der-polizeilichen-praxis/>

<sup>403</sup> [https://content-select.com/de/portal/media/download\\_oa/9783593454382/?client\\_id=407](https://content-select.com/de/portal/media/download_oa/9783593454382/?client_id=407)



# Safe space

Civil society activities are hampered above all by interference with the work of journalists, intimidation attempts by the far-right, disproportionate surveillance measures and threats against marginalised groups.

Journalists are increasingly confronted with attacks (in the context of conspiracy theories, antisemitism and the far right, particularly at demonstrations), insults and threats in the course of their work. They do not receive adequate protection from the police and judiciary; in some cases, they have even been attacked by the police, criminalised (in one case by a raid) or prevented from reporting.<sup>404</sup> Several of these restrictions occurred during the eviction of Lützerath (see above).<sup>405</sup> In one case, a customs officer forwarded the blocked address of a journalist researching right-wing extremism to a right-wing extremist; this had only minor consequences for the officer.<sup>406</sup> In Thuringia, the police investigated a photographer who has been documenting the activities of the far right for many years for making use of the symbols of unconstitutional organisations, as these can be seen in some of his photos due to the chosen subject area.<sup>407</sup> The police had previously expressed their displeasure towards the photographer because his photos were used on an internet platform that also criticised the police's negligent handling of the militant right. Against this backdrop, the fabricated accusations must be seen as an obstruction of journalistic work and therefore an attack on the freedom of the press.

From the ranks of the far-right AfD party, attempts are being made to prevent civil society engagement against right-wing extremism through intimidation or appeals for the withdrawal of funding.<sup>408</sup> The cultural sector is also the target of such attacks from the far-right, as it is identified as

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<sup>404</sup> <https://www.reporter-ohne-grenzen.de/nahaufnahme/2023>

<sup>405</sup> <https://dju.verdi.de/presse/pressemitteilungen/++co++ddf0cf54-94e3-11ed-bb07-001a4a160116>

<sup>406</sup> <https://www.zeit.de/gesellschaft/zeitgeschehen/2023-09/verstoss-gegen-datenschutz-timo-buechner-journalismus-neonazi-rechtsextremismus>

<sup>407</sup> <https://www.spiegel.de/panorama/justiz/eisenach-wie-die-polizei-einen-fotografen-bedraengt-der-bilder-von-neonazis-machte-a-0ab91a4b-f124-4eb1-bf47-1482dd90610c>

<sup>408</sup> Hummel, S. (2023). Civil Society in Germany: Contested spaces in times of rapid change. In S. Hummel & R. G. Strachwitz (Eds.), *Contested Civic Spaces: A European Perspective*. Maecenata Schriften: Vol. 22. (pp. 115–132). De Gruyter Oldenbourg, pp. 120–126, <https://www.tagesspiegel.de/politik/eine-starke-zivilgesellschaft-fehlt-hier-das-ehepaar-eckstein-und-der-rechte-hass-im-erzgebirge-9541751.html>,

an opponent in the endeavour to achieve far-right hegemony.<sup>409</sup> Legal attempts to intimidate civil society actors mainly originate with right-wing extremist circles, which seek to undermine commitment to democracy and fundamental rights i.a. by demanding injunctions and warning costs.<sup>410</sup> Intimidation is also attempted especially from the far-right spectrum through doxing<sup>411</sup>, widely used online insults and (death) threats<sup>412</sup> or physical violence<sup>413</sup> against civic actors. Climate activists were often attacked by motorists and passers-by during road blockades.<sup>414</sup>

Police surveillance restricted fundamental rights in individual cases and in some places systematically. After a far-right politician reported a journalist for defamation, the police collected the journalist's data and stored it in a nationwide database of politically motivated offences.<sup>415</sup> The journalist was thus criminalised beyond the original accusation. A court ruled that this data storage was illegal. The Last Generation movement in particular was the target of police surveillance measures.

The commitment to women's rights was met with rejection also on a meta-level: a reporting centre for antifeminism is widely opposed (with false claims) by the conservative to right-wing spectrum.<sup>416</sup> With reference to the recent events in the Middle East, Jewish organisations are being threatened, so that sports clubs, for example, are considering suspending their activities.<sup>417</sup> In general, activists for women's, LGBTQI+, or minority rights are repeatedly targeted by hate speech, discrimination, threats and attacks, and in some regions face particularly strong hostility. This sometimes leads to activists

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<https://www.nrwz.de/rottweil/die-afd-will-unserer-demokratie-an-den-kragen/418006>,  
<https://www.pad-berlin.de/aktuelles/1147-2023-11-08-erklaerung-berliner-sozialer-organisationen.html>

<sup>409</sup> <https://www.demokratie-leben-aachen.de/de/aktuelles/detail/volkstheater>

<sup>410</sup> [https://www.idz-](https://www.idz-jena.de/fileadmin/user_upload/Publikationen/Dunkelfeldstudie_GegenRechtsSchutz..pdf)

[jena.de/fileadmin/user\\_upload/Publikationen/Dunkelfeldstudie\\_GegenRechtsSchutz..pdf](https://www.idz-jena.de/fileadmin/user_upload/Publikationen/Dunkelfeldstudie_GegenRechtsSchutz..pdf),  
<https://fragdenstaat.de/blog/2023/06/20/im-ersten-moment-war-ich-einfach-nur-uberfordert/>

<sup>411</sup> [https://www.idz-](https://www.idz-jena.de/fileadmin/user_upload/Publikationen/Dunkelfeldstudie_GegenRechtsSchutz..pdf)

[jena.de/fileadmin/user\\_upload/Publikationen/Dunkelfeldstudie\\_GegenRechtsSchutz..pdf](https://www.idz-jena.de/fileadmin/user_upload/Publikationen/Dunkelfeldstudie_GegenRechtsSchutz..pdf)

<sup>412</sup> <https://hateaid.org/rechtsextremismus-und-klima/>,

<https://www.tagesschau.de/inland/regional/berlin/rbb-umwelthilfe-wehrt-sich-mit-musterklage-gegen-hass-auf-facebook-100.html>

<sup>413</sup> <https://www.ndr.de/nachrichten/mecklenburg-vorpommern/Protest-gegen-Fluechtlingsunterkunft-in-Greifswald-eskaliert,greifswald462.html>,

<https://www.faz.net/aktuell/gesellschaft/kriminalitaet/halle-angriff-auf-mehrere-csd-teilnehmer-19164656.html>

<sup>414</sup> <https://www.stern.de/panorama/verbrechen/letzte-generation--zahlen-zur-gewaltbereitschaft-gegenueber-klimaaktivisten-33806952.html>

<sup>415</sup> <https://www.reporter-ohne-grenzen.de/nahaufnahme/2023>

<sup>416</sup> <https://www.cducsu.de/presse/pressemitteilungen/denunzieren-und-diffamieren-auf-staatskosten>,

[https://www.achgut.com/artikel/meldestelle\\_antifeminismus\\_toxische\\_weiblichkeit](https://www.achgut.com/artikel/meldestelle_antifeminismus_toxische_weiblichkeit)

<sup>417</sup> <https://www.deutschlandfunk.de/krieg-naher-osten-juedische-sportvereine-umgang-bedrohung-100.html>

retreating or even changing location.<sup>418</sup> Mostly, such harassment is not reported, especially if occurred online, as reporting means a large expenditure of organisational or emotional resources for those affected. A planned law on the prosecution of “digital violence” is intended to make it easier or possible in the first place for those affected to defend themselves – however, the draft still shows various gaps as well as shortcomings with regard to the protection of fundamental rights.<sup>419</sup>

# Funding for civil society

The substantial savings targets for the 2024 federal budget led to cuts in funding, a reduction or cancellation of programmes and the departure of experienced staff. This is particularly relevant as state funding is by far the largest source of civil society funding in Germany.

The prevailing inflation and recession also contributed to a decline in donations. Unfortunately, no authoritative data exists. The *Deutscher Spendenrat* found that €5 billion had been donated in 2023<sup>420</sup>, approx. 700 million less than in 2022. The *Deutscher Spendenmonitor* calculated a decline in total donations from €6.3 billion to €5.8 billion for the twelve months from December 2022 to November 2023 (a drop of 8 per cent compared to the previous survey period).<sup>421</sup> *DZI* and *DIW* calculated a donation volume for 2022 that is around twice as high using a more comprehensive survey design<sup>422</sup> and expect a comparable figure for 2023.

The aforementioned withdrawal of the non-profit status can cause financial difficulties for organisations, as they receive fewer donations and can no longer receive public or philanthropic funding.

Since 2022, the Federal Government compiled a federal engagement strategy, in which civil society was involved to a minimal extent in the drafting process. The aim of this comprehensive strategy is to organise and coordinate political measures in such a way as to strengthen voluntary engagement and thus civil society's capacities to act.

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<sup>418</sup> <https://www.tagesspiegel.de/berlin/63-jahriger-gesteht-anschlagsserie-berlins-burgermeister-evers-fordert-solidaritat-gegen-angriffe-auf-queere-einrichtungen-10316245.html>, <https://www.belltower.news/csd-zwickau-sichtbar-queer-prekaer-in-sachsen-152711/>

<sup>419</sup> <https://www.bho-legal.com/gesetz-gegen-digitale-gewalt-bundesjustizministerium-veroeffentlicht-eckpunktepapier/>, <https://netzpolitik.org/2023/digitale-gewalt-bundesregierung-im-blindflug/>

<sup>420</sup> <https://www.spendenrat.de/wp-content/uploads/Downloads/Bilanz-des-Helfens/bilanz-des-helfens-2023-deutscher-spendenrat.pdf>

<sup>421</sup> <https://www.dfrv.de/blog/2023/11/29/pressemitteilung-deutscher-spendenmonitor-2023-6-weniger-spendeneinnahmen-in-deutschland/>

<sup>422</sup> <https://www.dzi.de/wp-content/uploads/2023/12/DZI-Spenden-Almanach-2023.pdf>

The planned Democracy Promotion Act – primarily a large funding programme for CSOs working to promote democracy, human rights and the rule of law – has been on hold for several months due to disagreements within the governing coalition over details.

# Civil dialogue and the right to participation

As reported in our previous submission, there are still no explicit fora for dialogue between the state and civil society at federal or state level in Germany, while they do occasionally exist at local level. Dialogue with governments is traditionally maintained by umbrella organisations, which represent different areas of civil society, e.g. for sport or humanitarian organisations. CSOs not aligned with such umbrella organisations usually have very limited access to decision-makers. While some overarching structures like the *Bundesnetzwerk Bürgerschaftliches Engagement (BBE)*, the federal civic engagement network) exist, there is no network or organisational frame that encompasses all areas of civil society activity. A network of umbrella organisations, *Bündnis für Gemeinnützigkeit*, exists, but is weak, having no financial resources and requiring unanimous decisions for any move put forward.

A governmental body, *Deutsche Stiftung für Engagement und Ehrenamt (DSEE)*, established by an act of the federal parliament in 2020, strives to be an interface between CSOs and local, state, and federal governments and has established some forms of dialogue, but remains heavily government controlled.

An institutionalised and comprehensive strategy for the integration of the civic space into the public sphere beyond the very traditional mechanisms of hearings is lacking. Dialogue between government and civil society, as announced in the 2021 coalition agreement, has not yet materialised. This is underpinned by the fact that the political parties and the traditional media for that matter – have to date failed to adopt a modern state-of-the-art concept of civil society and the civic space. E.g., while politicians on official visits abroad now regularly hold meetings with “civil society,” they neither disclose whom they are actually meeting nor involve German CSOs or civic space experts in these talks. With few exceptions, they show little interest in such meetings at home.

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On the other hand, there is an increasing interest from politicians in organising citizens' councils, town hall meetings, and assemblies as meaningful extensions of representative democracy. However, little attention is paid to choosing the right format. Habitually, they include a randomly composed group of citizens who discuss major political issues and propose (non-binding) policy recommendations. No effort is made to integrate such one-off projects into a comprehensive strategy of rendering democracy more resilient. Also, a tendency to crowd out organised civil society by such activities may be observed.

The participation of civil society in the run-up to legislative procedures or other decisions is often weakened or made virtually impossible by the fact that the deadlines for consultation are set too short (one to two weeks or just 24 hours) to submit relevant statements.<sup>423</sup> Smaller CSOs in particular find it difficult to organise participation.

As described above, freedom of information laws provide different conditions for access to information and sometimes withhold access to information that should be available. In addition, such access can be made more difficult if exemptions are wrongly used by authorities as a pretext to not provide information.

# Civil society resilience

In several instances civil society has turned to the legal system for recourse when fundamental rights are being violated. The *Gesellschaft für Freiheitsrechte* (GFF) sued the Federal Office for Migration and Refugees (BAMF) over its practice of retrieving of asylum seekers' mobile phone data to establish their identity and nationality, and this practice has been declared unlawful.<sup>424</sup> The GFF was also successful with a constitutional complaint against changes to police law in Mecklenburg-Vorpommern: the new surveillance powers were declared unconstitutional.<sup>425</sup> Reporters Without Borders and the GFF have filed a second constitutional complaint against the revised Federal Intelligence Service Act which enables the service to obtain metadata on journalists' confidential

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<sup>423</sup> <https://www.proasyl.de/pressemitteilung/immer-brutalere-abschiebungen-pro-asyl-lehnt-das-sogenannte-rueckfuehrungsverbesserungsgesetz-ab/>, <https://netzpolitik.org/2023/bnd-gesetz-bundeskanzleramt-simuliert-verbaendebeteiligung-mit-24-stunden-frist/>

<sup>424</sup> <https://freiheitsrechte.org/themen/freiheit-im-digitalen/refugee-daten>

<sup>425</sup> <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm-erfolg-sog-mv>



communication and fully monitor non-EU citizen journalists abroad – which exposes their sources and potentially affects their work.<sup>426</sup> The GFF also filed a lawsuit against the unlawful use of pain grips against peaceful protesters, as this violates fundamental rights<sup>427</sup> – and another lawsuit against Meta for automatically scanning messenger chats which violates privacy.<sup>428</sup>

The importance of civil society for the promotion and preservation of democracy is widely recognised: a majority of citizens are in favour of long-term financial support for civil society for this task.<sup>429</sup> When it comes to the ability of organised civil society to create a positive future, young adults in Germany are slightly less confident than in other European countries; however, they see more potential in grassroots actors.<sup>430</sup> Civil society is not generally accepted as a partner by the state and the extent of cooperation varies depending on the organisation, field of action and the authority involved.

CSOs join to form associations in order to represent their interests and maintain a more efficient exchange, but they also cooperate in networks that do not involve their core activities, e.g. to campaign for fundamental rights, the promotion of volunteering or legal provisions for better framework conditions for civil society.

The planned federal engagement strategy would enable the state to harmonise its measures in such a way that CSOs would receive more effective support. The Democracy Promotion Act, if passed, might also form an important part of an enabling framework for civil society. There are an immense number of government agencies that in some way liaise with civil society. However, relations are commonly restricted to regulation and grant procedures. Therefore, the establishment of the DSEE (see above) by the state as an exchange and support format is an offer with potential – as long as the state does not seek to control civil society in the process.

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<sup>426</sup> <https://rsf.org/en/second-constitutional-complaint-against-germanys-federal-intelligence-service-act>

<sup>427</sup> <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/gff-erhebt-klage-gegen-rechtswidrigen-einsatz-von-schmerzgriffen-bei-friedlichen-demonstrationen>

<sup>428</sup> [https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm\\_chatkontrolle\\_facebook](https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm_chatkontrolle_facebook)

<sup>429</sup> [https://www.dezim-institut.de/fileadmin/user\\_upload/DeZIM/Grafiken/Publikationen/DeZIM-Briefing-Note-Demokratie-05-2023/Kleist-Weiberg-Sch per centC3 per centB6ll\\_Mehr-Demokratie-f per centC3 per centB6rdern\\_DeZIM-Briefing-Note.pdf](https://www.dezim-institut.de/fileadmin/user_upload/DeZIM/Grafiken/Publikationen/DeZIM-Briefing-Note-Demokratie-05-2023/Kleist-Weiberg-Sch per centC3 per centB6ll_Mehr-Demokratie-f per centC3 per centB6rdern_DeZIM-Briefing-Note.pdf)

<sup>430</sup> <https://allianzfoundation.org/study/movers-of-tomorrow/>

# Recommendations

## Targeted recommendation:

🔍 Fundamentally update the fiscal framework for non-profit organisations

- 🔍 Reform police laws and assembly laws at federal and state level in line with fundamental rights; ensure strict compliance – also in the case of demonstration bans.
- 🔍 Create independent complaint bodies that enable effective monitoring of police practice and exercise investigative powers.
- 🔍 Define the offence of resistance against law enforcement officers more precisely and provide a threshold of seriousness.
- 🔍 Provide a copy of any video recordings made by the police during demonstrations or arrests to an independent body immediately afterwards.
- 🔍 Prevent police officers who give evidence in court from inspecting the relevant file beforehand (so that their status as witnesses is not invalidated).
- 🔍 Create a suitable legal basis to prevent SLAPPs.
- 🔍 Improve and supplement the laws that apply to the deletion and prosecution of attacks and hate speech online, ensure their compliance with fundamental rights, implement existing laws more effectively and simplify procedures for those affected.
- 🔍 Co-create participatory platforms such as councils, town hall meetings and assemblies with CSOs, and establish these formats for the long term.
- 🔍 Update freedom of information regulation at federal and state levels.

# About the author

The Maecenata Foundation is an independent not for profit think tank, focussing on the civic space, civil society, civic engagement, and philanthropy. The foundation acts as an impartial watch dog and provides research designed to enhance an open society in Europe and beyond. It carries out its mission by means of four programmes: the Maecenata Institute, a research centre, the Tocqueville Forum, a dissemination and dialogue programme, the MENA Study Centre, and the Transnational Giving programme for cross-border donations.





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**GREECE**



# Key trends

- 🔍 Criminalisation of solidarity against those working with refugees and asylum seekers remains a concern.
- 🔍 Strict registration rules and the existence of multiple registries for CSOs continues to hinder their work.
- 🔍 Surveillance and arbitrary lawsuits against independent journalists a major concern as press freedom is ranked worst in the EU.

# Summary

Civic space in Greece has further deteriorated resulting in a ratings downgrade from “narrowed” to “obstructed by the CIVICUS Monitor.”<sup>431</sup> In 2023 this trend continued with limited efforts by the government to reverse the development, despite international condemnations and recommendations from European and international institutions.

In its 2023 Rule of Law report on Greece, the European Commission recommended that the government takes forward the process of adopting non-legislative safeguards and starts the legislative process to protect journalists. No progress has been made in this regard as attacks, weak legal protection, surveillance, abusive strategic lawsuits against journalists and civic actors and government interference in the media landscape continued. While an investigation for the use of Pegasus spyware against journalists, activists and opposition politicians has been initiated by the National Intelligence Service (EYP), progress has been slow, and no charges have been brought. Instead, the government hindered investigations.

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<sup>431</sup> <https://monitor.civicus.org/country/greece/>; <https://monitor.civicus.org/country-rating-changes/greece/>



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Migrants, refugees, Roma communities and LGBTIQ+ people continued to face discrimination and abuse by law enforcement authorities and push backs of asylum seekers and human rights violations on the Greek borders continued. CSOs working to support migrants and refugees faced intimidation, criminalisation and vilifying rhetoric from the government.

While the Commission recommended that the government adopts effective and timely public consultations on draft legislation, the government has failed to implement this recommendation. Instead, the lack of effective and timely consultation of stakeholders persisted.

It also recommended that the government takes steps to evaluate the current registration system for civil society organisations (CSOs). While there were some efforts to evaluate the current registration system, no progress has been made on this recommendation as neither the relevant legislation nor any registration procedures have changed. On the contrary, a new central registry was created, which does not replace the various pre-existing registries, adding one more layer of bureaucracy and burdensome procedures for CSOs. The lack of implementation of civil dialogue and the realisation of the right to participate remains a challenge.

# Institutional, political and socio-economic landscape

Parliamentary elections were held in Greece in 2023. The conservative New Democracy party that has been in power since 2019, was victorious again and it is expected that the party will follow a similar agenda for the next four years. New far-right parties made it to the parliament while left-wing parties lost significant votes, increasing the risk of shifting the political agenda further right and as a consequence eroding the rule of law and fundamental rights in the country.

The economic situation remains stable, with economic activity expected to grow in the coming years.<sup>432</sup> However, high prices have affected many more households and people in Greece, who only recently managed to recover from a 10-year-long financial crisis. Despite promises for reform, the justice system remains the slowest in the EU and impacts on the work of civic actors.

In the 2023 Rule of Law Index the country ranks 29<sup>th</sup> out of 31 countries in the EU, European Free Trade Association and North America.<sup>433</sup> Greece also had the lowest score for press freedom in 2023 in the EU according to the Reporters without Borders (RSF) Index.<sup>434</sup> The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) mission concluded that the rule of law situation in Greece is on the edge as it faces very serious threats,<sup>435</sup> following a visit to Greece in March during which officials refused to meet the delegation.<sup>436</sup>

For more than 18 months, investigations regarding use of surveillance spyware by Greek authorities against at least 40 targets, including journalists (known as the 'PredatorGate' scandal) have been slow and obstructed. This raises concerns about the functioning of the justice system and the independence of independent authorities involved in the investigations. Furthermore, the Governor of the National Transparency Authority (NAT), who investigated the wiretapping case in 2022 and found no breaches of Greek or EU legislation, resigned in July 2022. No new Governor has been selected to date, disregarding legislation that governs the watchdog.<sup>437</sup> As raised in our previous submission, NAT's competency and independence have been questioned on several occasions including in 2022 when it investigated pushbacks of migrants and refugees and found no misconduct.<sup>438</sup>

In February 2023, two trains collided in Tempe, killing 57 people. This was the deadliest train disaster in Greek history. Millions of people participated in rallies for the lack of safety measures, some of which were met with police violence. A letter sent by the Prime Minister to the Prosecutor of the Supreme Court regarding the case, was characterised as a 'direct violation' of the principle of

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<sup>432</sup> [https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/greece/economic-forecast-greece\\_en](https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/greece/economic-forecast-greece_en)

<sup>433</sup> <https://govwatch.gr/en/reports/world-justice-project-rule-of-law-index-2023/#:~:text=This%20year%20alone%2C%20the%20rule,incluing%20Greece>

<sup>434</sup> <https://rsf.org/en/country/greece>

<sup>435</sup> <https://www.euractiv.com/section/politics/news/eu-parliament-mission-rule-of-law-in-greece-faces-very-serious-threats/>

<sup>436</sup>

[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/745609/IPOL\\_STU\(2023\)745609\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/745609/IPOL_STU(2023)745609_EN.pdf)

<sup>437</sup> <https://govwatch.gr/en/finds/i-mi-prokirixi-diagonismoy-gia-tin-plirosi-tis-thesis-toy-dioikiti-tis-ead/>

<sup>438</sup> <https://www.gcr.gr/en/news/press-releases-announcements/item/1940-national-transparency-authority-should-publish-the-full-investigation-regarding-pushbacks-in-accordance-with-the-principle-of-transparency>

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separation of powers by members of the Board of Directors of the Athens Bar Association.<sup>439</sup> A year later investigations remain incomplete while families of victims, opposition parties and the public blame the government for attempting to cover up state responsibilities.<sup>440</sup>

In June 2023, a fishing vessel carrying approximately 750 refugees capsized near Pylos in the Greek Search and Rescue (SAR) zone. According to evidence gathered by CSOs, the media and other actors, the vessel was in distress. However, the Hellenic coast guard did not immediately launch a SAR operation,<sup>441</sup> an omission that led to the death of more than 600 people. Despite credible evidence, official investigations into the Coast Guards actions have not made any meaningful progress, raising concerns about the investigation procedures and the prospect of accountability. As a result, the Greek Ombudsman opened an inquiry into the Coast Guard's actions in November.<sup>442</sup> Despite the tragic incident, shipwrecks and pushbacks continue to take place.

Refugees and migrants, Roma people and LGBTQI+ groups continue to face discrimination and abuses by law enforcement authorities and are often not able to exercise their rights and freedoms. In November, a 17-year-old Roma boy was shot dead by the police after a chase.<sup>443</sup> He was the third Roma teenager shot dead by the police in three years. Other types of abuses by authorities against Roma people are also common. Indicatively, in July, a 25-year-old Roma woman took legal action against a police officer for the abuse of power and unlawful violence, following an assault against her while she was pregnant.<sup>444</sup>

Refugees and migrants continue to face discrimination. Major incidents include the death of a Syrian man by a police officer, who allegedly used his weapon unlawfully<sup>445</sup> as well as other instances of verbal and physical violence against this group. Pushbacks of asylum seekers remains a serious issue<sup>446</sup> that has allegedly led Frontex's human rights chief to call for the suspension of the agency's operations in the country.<sup>447</sup> Migrants are also systematically criminalised for smuggling despite lack of evidence.<sup>448</sup>

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<sup>439</sup> <https://govwatch.gr/en/finds/zitima-paraviasis-tis-diakrisis-ton-exoysion-apo-epistolitoi-toy-prothypoyrgoy-pros-ton-eisaggelea-toy-areiyo-pagoy/>

<sup>440</sup> <https://www.keeptalkinggreece.com/2024/02/27/tempi-train-tragedy-victims-families-justice/>

<sup>441</sup> <https://rsaegean.org/en/pylos-timeline-archive/>

<sup>442</sup> <https://www.hrw.org/news/2023/12/13/greece-6-months-no-justice-pylos-shipwreck>

<sup>443</sup> <http://www.errc.org/news/another-romani-teen-shot-dead-by-greek-police>

<sup>444</sup> <https://www.news247.gr/ellada/kaminia-katangelia-gia-epithesi-astinomikou-se-egkio-roma-koumanto-kano-ego/>

<sup>445</sup> <https://govwatch.gr/en/finds/thanatifora-via-apo-astynomiko-kata-paravasi-tis-nomothesias/>

<sup>446</sup> <https://govwatch.gr/en/finds/epanaproothiseis-kai-afairesi-antikeimenon-se-varos-prosfygon-apo-tis-ellinikes-arches/>

<sup>447</sup> <https://govwatch.gr/en/finds/stelechos-frontex-anafores-gia-epanaproothiseis-prosfygon-apo-tin-ellada/>

<sup>448</sup> <https://extranet.greens-efa-service.eu/public/media/file/1/8433>

The European Commissioner for Home Affairs Ylva Johansson sent two letters to the Greek government expressing concerns about the country's non-compliance with EU migration legislation in relation to social protection and detention measures for refugees.<sup>449</sup> Moreover the European Court of Human Rights (ECtHR) has in at least two instances in 2023 yet again condemned Greece for violations due to the living conditions of migrants<sup>450</sup> and for the failure of the state to conduct an effective investigation into allegations of torture of a migrant<sup>451</sup> respectively. Numerous other cases are pending, while gaps remain in the execution of several ECtHR judgements. Greece is one of the top countries for interim measures by the ECtHR concerning pushbacks which authorities continue to ignore.<sup>452</sup>

Hate speech and harmful narratives are often used by authorities to encourage xenophobic and intolerant attitudes. In August, during the Evros wildfire, one of the largest in the EU that killed 20 migrants, government representatives as well as representatives from other political parties suggested without evidence that migrants were responsible for the fire. These statements amplified anti-migrant sentiments, led to racist reactions on social media and attacks during which people threatened and detained migrants inside a trailer.<sup>453</sup> Another example is the harmful term 'illegal immigrant', which was used by the Hellenic police in their communications until April, despite the Supreme Court Prosecutor's Office calling for its removal since 2018.<sup>454</sup>

In March, a new 'Migration Code' raised concerns,<sup>455</sup> and despite strong criticism by CSOs, the legislation was only partly improved.<sup>456</sup> In December, the Parliament approved amendments facilitating legal employment for migrants and asylum seekers in Greece, a move welcomed by international organisations<sup>457</sup> and NGOs, albeit some of them were criticised for its limited scope.<sup>458</sup>

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<sup>449</sup> <https://govwatch.gr/en/finds/epitropos-giochanson-paraviaseis-tis-enosiakis-nomothesis-gia-toys-prosfyges-apo-tin-ellada/>

<sup>450</sup> <https://ihaverights.eu/the-european-court-of-human-rights-again-condemns-the-living-conditions-of-asylum-seekers-on-samos/>

<sup>451</sup> <https://govwatch.gr/en/finds/yprothesi-b-y-kata-elladas-katadiki-tis-elladas-gia-paraviasi-toy-arthroy-3-tis-esda/>

<sup>452</sup> <https://www.gcr.gr/en/news/press-releases-announcements/item/1984-information-note>

<sup>453</sup> <https://rvrn.org/en/racist-violence-recording-network-expresses-serious-concern-over-escalating-targeting-of-refugees-and-migrants/>

<sup>454</sup> <https://govwatch.gr/en/finds/anakoinosi-eleda-gia-ti-chrisi-meiotikon-gia-tin-prosopikotita-oron-apo-tin-el-as/>

<sup>455</sup> <https://rsaegean.org/en/immigration-code/#:~:text=On%207%20March%202023%2C%20the,until%20last%20Tuesday%2C%20March%2014.>

<sup>456</sup> [https://www.efsyn.gr/ellada/dikaiomata/382896\\_beltioseis-ston-kodika-metanasteysis-meta-tin-kritiki](https://www.efsyn.gr/ellada/dikaiomata/382896_beltioseis-ston-kodika-metanasteysis-meta-tin-kritiki)

<sup>457</sup> <https://www.unhcr.org/gr/en/56269-unhcr-and-iom-welcome-new-amendment.html>

<sup>458</sup> [https://www.efsyn.gr/ellada/dikaiomata/416173\\_eleda-gia-tropologia-kairidi-nai-nomimopoiisi-alla-poly-ligi-kai-poly-arga](https://www.efsyn.gr/ellada/dikaiomata/416173_eleda-gia-tropologia-kairidi-nai-nomimopoiisi-alla-poly-ligi-kai-poly-arga) and <https://parallaximag.gr/parallax-view/mia-tropologia-sti-sosti-kateythynsi-plin-omos-domika-aneparkis>

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Despite no major incidents taking place in 2023, LGBTIQ+ groups also face discrimination by religious authorities, in education, by the media, politicians and more. Attacks against them are not uncommon. In May, the LIBE Committee encouraged the European Parliament's Committee on Petitions (PETI Committee) to keep open a petition on the killing of the LGBTIQ+ activist, Zacharias Kostopoulos, and impunity for police violence in Greece. It also expressed concerns about the way the trial was conducted in 2018 and the acquittal of police officers.<sup>459</sup> On a positive note, steps have been taken in recent years by the government to ensure greater equality. In 2023, the government announced the legalisation of same-sex marriages which was met with a lot of criticism by conservative groups. The relevant bill was adopted in February 2024 despite dozens of MPs from the ruling party opposing it.<sup>460</sup> The country also moved up four places in the 2023 Rainbow Europe Map and Index by ILGA Europe due to its ban on intersex genital mutilation (IGM).<sup>461</sup>

Following an increase in domestic violence and femicide (Greece had the highest increase in femicides among 20 countries in 2021 according to the Mediterranean Institute for Investigative Reporting),<sup>462</sup> the government came under pressure to combat it. A new bill by the Ministry of Justice which aimed to amend the Criminal Code and improve the legislative framework on preventing and combating domestic violence was met with concerns. The bill not only contradicts the provisions of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) but also does not take into consideration the recommendations of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) evaluation report for Greece.<sup>463</sup> In the recommendations, the need for the active participation of feminist and women's organisations in public consultations was highlighted, nevertheless these organisations were not involved in the drafting of the bill and were only able to provide written comments in the final consultation that took place in December. The law was adopted in February 2024 without considering important comments and recommendations that were provided during the consultation.

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<sup>459</sup> [https://www.efsyn.gr/ellada/dikaiomata/389397\\_hastoyki-libe-stin-ellada-gia-tin-ypothesi-toy-zak](https://www.efsyn.gr/ellada/dikaiomata/389397_hastoyki-libe-stin-ellada-gia-tin-ypothesi-toy-zak)

<sup>460</sup> <https://www.bbc.com/news/world-europe-68310126>

<sup>461</sup> <https://www.ilga-europe.org/report/rainbow-europe-2023/>

<sup>462</sup> <https://miir.gr/en/the-undeclared-war-on-women-in-europe-part-1/>

<sup>463</sup> <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>



# Civic freedoms: regulatory environment and implementation

## Freedom of association

As reported in previous submissions, since 2020 a series of legislative measures have hampered the exercise of freedom of association in Greece, especially for CSOs and individuals working on migration-related issues. National, European, and international human rights bodies have raised concerns about the Registries of the Ministry of Migration and Asylum.<sup>464</sup> NGOs have either been able to register after the competent authorities have intervened<sup>465</sup> or have been refused registration altogether, forcing them to cease their activities.<sup>466</sup> Following pressure, in 2023 the Ministry of Migration and Asylum unofficially communicated that the registration requirements would be reviewed and amended, but no such actions have been taken to date. Public information regarding how many CSOs were accepted or rejected in 2023 is not available and the selection criteria remains unclear.

According to the EU Commission's 2023 Rule of Law report, there are nine registries in the country and their parallel existence remains an issue. In October, the Ministry of Interior launched two more digital databases, a Public Database and a Special Registry that will collect information about CSOs, their operations and the state funding they receive (Joint Ministerial Decision 6216/2023).<sup>467</sup> While the registries are important to ensure transparency and NGO regulations, over 300 NGOs expressed concerns about the legislation when it was proposed in 2021, in particular over the databases<sup>468</sup> which introduce many registration requirements. This could weaken and hinder CSOs' work and create bureaucratic burdens for smaller organisations. Furthermore, the databases do not replace

<sup>464</sup> <https://rsaegean.org/en/registry-of-ngos-working-with-refugees-and-migrants-in-greece-under-scrutiny/>

<sup>465</sup> <https://rsaegean.org/en/rsa-completes-registration-ngo-registry/>

<sup>466</sup> [https://www.efsyn.gr/ellada/koinonia/388450\\_apohorisi-rapisma-tis-mko-mare-liberum](https://www.efsyn.gr/ellada/koinonia/388450_apohorisi-rapisma-tis-mko-mare-liberum)

<sup>467</sup> <https://www.ypes.gr/diefthynsi-organoseon-koinonias-ton-politon-o-koi-p-kai-koinofelon-foreon/>

<sup>468</sup> <https://higgs3.org/koini-dilosi-287-organoseon-gia-to-neo-nomoschedio-tis-ktp/>

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other registries and organisations registered in one of the other mentioned registries will not be automatically registered in the new one. CSOs will have to follow all registration procedures and resubmit an electronic application every year to remain registered, which is necessary to access national funding.

In private communication, the Ministry of Civil Protection and Climate Crisis mentioned that it is in the process of creating its own registry which will increase the number of registries in the country and the administrative burden for CSOs.

## Freedom of peaceful assembly

The 2021 Law 4703/2020 regulating peaceful assemblies remained in force despite concerns by civil society, the opposition and other actors.<sup>469</sup> Systematic police violence and impunity of law enforcement officers during demonstrations and protests also remained a serious concern.

Incidents of police violence during demonstrations and protests include but are not limited to:

- 🔍 Police violence during a communist party rally in March 2023.<sup>470</sup>
- 🔍 Two police violence incidents in March during a demonstration for a fatal train crash that killed dozens of people.<sup>471</sup>
- 🔍 Attacks on journalists covering protest marches, one in September in Larissa<sup>472</sup> and one in December in Athens.<sup>473</sup>

Furthermore, in Athens, protests in support of Palestine are frequent and predominantly peaceful. On October 18<sup>th</sup>, 10,000 people took part in a demonstration organised by left-wing groups.<sup>474</sup> However, the riot police fired tear gas to disperse demonstrators that were marching towards the

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<sup>469</sup> <https://ecnl.org/news/greece-new-law-public-assemblies-restricting-civic-space>

<sup>470</sup> <https://govwatch.gr/en/finds/kataggelia-aproklitis-epithesis-tis-astynomias-kata-melon-kai-stelechon-toy-kke-sti-thessaloniki/>

<sup>471</sup> <https://www.news247.gr/gnomes/mazepste-tous-prin-thrinisoume-thimata/>

<sup>472</sup> <https://govwatch.gr/en/finds/kataggellomeno-peristatiko-astynomikis-vias-kata-toy-dimosiografoy-giorgoy-faki/>

<sup>473</sup> <https://thepressproject.gr/poreia-gia-grigoropoulo-agria-kai-anaitia-epithesi-ton-matse-fotoreporter-sta-exarcheia-psekase-tous-rich%CE%84tous/>

<sup>474</sup> <https://www.ekathimerini.com/news/1222870/riot-police-quell-pro-palestinian-protest-in-athens/>

Israeli Embassy in Athens.<sup>475</sup> No arrests or injuries were reported, and the protest ended quickly afterwards.

In November, the police arrested a Palestinian man for raising the Palestinian flag during a protest against Israel's escalating violence in Gaza. The police brought criminal charges against him, even though the grounds for the charges were unclear. It was later reported that the man was exposing the Greek state to the risk of reprisals or disruptions of friendly relations with an ally (article 141 of the Criminal Code).<sup>476</sup>

## Freedom of expression

Steps taken in previous years to enhance transparency in media through new legislation have not yielded concrete results, and the challenges highlighted in last year's EC Rule of Law report, such as the need to improve the working environment for journalists, were not addressed. As a result, press freedom continues to decline and trust in the media is among the lowest in Europe.<sup>477</sup> The arbitrary surveillance of journalists, government interference, abusive lawsuits and weak legal protections are some of the main reasons that Greece had the lowest score for press freedom in the EU. Moreover, the murder of crime reporter Giorgos Karaivaz in 2021 remains unsolved, despite the arrest of two suspects in 2023. This impunity sends a worrying signal and as a result attacks against journalists are continuing.<sup>478</sup>

Despite numerous complaints, the wiretapping of journalists by the National Intelligence Service (EYP) and their use of the Predator spyware between 2020 and 2022 has been poorly investigated and there have been no convictions. Instead the government has attempted to hinder investigations. Since his election in 2019, the EYP has been under the oversight of the Prime Minister. Recommendations to amend the content of the legislation regulating surveillance (Law 5002/2022) have not been taken into account.<sup>479</sup>

A December 2022 new media Law that established an ethics committee and two registries, for Print Media (MET) and for Electronic Press (MHT), are seen by some as controversial as they could exclude critical media. There are also concerns about the independence of the ethics committee.<sup>480</sup> Similar concerns have been raised about the Hellenic Broadcasting Corporation (ERT) and the Athens-

<sup>475</sup> <https://www.youtube.com/watch?v=xLjwaGXAmPw>

<sup>476</sup> <https://www.keeptalkinggreece.com/2023/11/07/plestinian-man-flag-arrest-reprisals/>

<sup>477</sup> <https://rsf.org/en/country/greece>

<sup>478</sup> **Attacks against journalists in 2023:** <https://www.mapmf.org/alert/30611> and <https://www.mapmf.org/alert/30608>

<sup>479</sup> <https://rsf.org/en/greece-s-predatorgate-draft-law-surveillance-falling-short-european-standards-must-be-amended>

<sup>480</sup> <https://www.mapmf.org/alert/25509>

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Macedonian News Agency which since 2019 are directly overseen by the Prime Minister, as well as the independence of the National Council for Radio and Television (NCRTV) whose composition changed in September following unconstitutional procedures which raised concerns.<sup>481</sup>

According to Mapping Media Freedom<sup>482</sup> over 20 attacks took place in 2023 against journalists and the media. As demonstrated in the examples of police violence during rallies and protests, journalists are frequently victims of police violence when covering such events. Often, they are also faced with Strategic Lawsuits Against Public Participation (SLAPPs) by politicians or powerful businessmen when reporting critically on them. An indicative SLAPP started in 2022 and continued in 2023, when lawyer Alexis Kougiaris filed a lawsuit against journalist Dimitris Angelidis for 30,000 euros compensation from the journalist and equally from the newspaper the journalist works for. The lawyer claimed that an article that Angelidis wrote regarding the Lignadis trial, whom Kougiaris is representing, is abusive, defamatory and slanderous.<sup>483</sup> In 2023, former government official Grigorios Dimitriadis, allegedly involved in the Greek wiretapping scandal, took a series of legal actions against media and journalists over reports for his involvement in the scandal.<sup>484</sup>

A similar incident concerns writer and former MP Petros Tatsopoulos who was arrested after expressing a critical opinion about TV presenter and parliamentarian Filippos Kampouris, for defamation and slander. In this instance, the arrest for defamation was characterised as anachronist and against freedom of expression and the press.<sup>485</sup>

Overall, media pluralism in Greece is weak and the current government has strong links with the media. The government's control over the media affects public opinion and pluralism. Media owners are often strong business people with political connections and as a result, self-censorship among journalists is common. In addition, the economic context remains challenging, following a 10-year long financial crisis, despite the new legislation that aims to enhance transparency.

On a positive note, the amendment to the criminal code, which made spreading 'fake news' punishable and could lead to disproportionate restrictions on press freedom, was repealed.<sup>486</sup>

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<sup>481</sup> <https://govwatch.gr/en/finds/allegations-and-doubts-around-the-objectivity-and-independence-of-the-national-council-for-radio-and-television-ncrtv/> and

<https://www.dsa.gr/νέα/ανακοινώσεις/προσφυγή-δσα-στο-στε-για-αδαε-και-εσρ>

<sup>482</sup> <https://www.mappingmediafreedom.org>

<sup>483</sup> <https://www.mapmf.org/alert/25511>

<sup>484</sup> <https://balkaninsight.com/2023/12/08/greek-union-condemns-former-govt-officials-mass-slapps-against-media/>

<sup>485</sup> <https://govwatch.gr/en/finds/syllipsi-toy-syggrafea-petroy-tatsopoyloy-meta-apo-minysi-gia-sykofantiki-dysfimisi/>

<sup>486</sup> <https://www.dikastiko.gr/eidhsh/apokalypsi-aposyrthike-i-aystiri-diataxi-peri-fake-news-191-pk-mikroteres-poines-kai-pio-periorismeni-chrisi-provlepei-i-nea-diataxi/>

# Safe space

The space in which civil society operates remains challenging. The Commission expressed concerns regarding the situation of civil society in last year's Rule of Law report. Both verbal and physical attacks against CSOs and human rights defenders, especially those working on migration, have continued in recent years. While in 2023 no new major cases have been reported, similar attacks are likely to occur in the future, as the authorities' hostile rhetoric against CSOs and migrants has not stopped. New challenges brought by climate change (floods, wildfires etc) and the inability of the government to effectively deal with them, may lead to new racist and xenophobic attacks against migrants (like the one in Evros described above) and other vulnerable groups and those who support them.

Climate actors are also increasingly at risk, including the National Observatory of Athens (NOA) which launched a petition in November against the government's decision to transfer oversight of the institute from the Development Ministry's General Secretariat of Research and Innovation (GSRI) to the Climate Crisis and Civil Protection Ministry. The decision was taken following the wildfires in the Evros region in the summer of 2023 which were the worst in the country's history. The actions and poor preparedness by the government drew criticism from experts, including NOA. The government claimed that this reform would assist the ministry's preparedness, however, the scientific community questioned the motives behind the reform and are concerned that it could jeopardise NOA's autonomy and integrity.<sup>487</sup>

Cases of criminalisation of solidarity from previous years are still pending. These include the case against 24 activists, who since 2018 have been accused of charges including espionage and the establishment of a criminal organisation, and against whom legal proceedings have been launched. The court has not issued a final decision yet, prolonging their ordeal.<sup>488</sup> In January 2024, the trial for the misdemeanour charges for 16 of the 24 activists was initiated after six years. Due to this case and the ongoing case against Greek Helsinki Monitor Director Panayote Dimitras, who was charged with restrictive measures linked to his work on migration, the Council of Europe Commissioner for Human Rights Dunja Mijatovic has appealed to Greece to show respect for the work of human rights

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<sup>487</sup> <https://bnnbreaking.com/world/greece/greek-scientists-rally-against-governments-attempt-to-seize-control-of-national-observatory/>

<sup>488</sup> <https://www.amnesty.org/en/latest/news/2023/05/greece-prosecution-appeal-prolongs-ordeal-of-rescue-workers/>



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defenders and journalists.<sup>489</sup> Similarly the UN human rights office has also called for the charges against the 24 activists to be dismissed, stressing that the chilling effect of the criminalisation of solidarity in Greece is worrying.<sup>490</sup>

In a new case in June 2023, officers arrested a lawyer and an interpreter at the port of Thessaloniki for allegedly facilitating the unlawful entry of third-country nationals in Greece.<sup>491</sup> Furthermore, during the summer the police announced that it had in collaboration with the National Intelligence Service (EYP) filed a criminal case against two NGOs that had set up a network facilitating the illegal entry of migrants from Turkey to Greece.<sup>492</sup> While it is unclear whether further actions have been or will be taken, such announcements are not uncommon and are used to intimidate organisations and human rights defenders.

As described in the previous section, SLAPPs against civic actors and especially journalists are becoming increasingly common. Police violence did not only take place during demonstrations and protests but in several other instances including:

- 🔍 Police arbitrarily arrested students and employees and used violence against bystanders at a university campus in August.<sup>493</sup>
- 🔍 Police used violence against football fans before a match in January, without justification.<sup>494</sup>
- 🔍 Police officers used chemicals and violence against people who wanted to attend a criminal trial, including the father of the victim who was beaten by the police in 2020.<sup>495</sup>

According to the Ombudsman, overall reports of arbitrariness of law enforcement officers in 2022 decreased by 30 per cent compared to the previous year which is in principle a good development. However, one of the reasons for the decrease is the gradual lifting of the COVID-19 related restrictive measures that had significantly increased complaints about police violence and arbitrariness in previous years (by 41 per cent in 2021). Another reason could be the tendency to circumvent the National Mechanism for the Investigation of Arbitrary incidents. The lack of adequate investigation and impunity for enforcement officers who are involved in incidents persists despite the

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<sup>489</sup> <https://www.coe.int/en/web/commissioner/-/greek-authorities-should-reverse-the-trend-undermining-the-work-of-human-rights-defenders-and-journalists?redirect=%2Fen%2Fweb%2Fcommissioner%2Fhuman-rights-defenders>

<sup>490</sup> <https://www.ohchr.org/en/press-releases/2023/01/trial-human-rights-defenders-greece-helping-migrants>

<sup>491</sup> <https://govwatch.gr/en/finds/syllipsi-dikigoroy-kata-tin-askisi-ton-kathikonton-toy/>

<sup>492</sup> <https://www.tanea.gr/2023/07/29/greece/eksarthrosi-diktyou-diakinisis-metanaston-apo-tin-tourkia-sti-lesvo-me-tin-emploki-mko-se-8-mines-eferan-4-000-anthropous/>

<sup>493</sup> <https://govwatch.gr/en/finds/kataggelies-gia-aprokliti-epithesi-kai-anaities-prosagoges-sto-e-m-p/>

<sup>494</sup> <https://govwatch.gr/en/finds/chrisi-chimikon-kata-filathlon-tis-aek/>

<sup>495</sup> <https://govwatch.gr/en/finds/kataggelia-peristatikoy-astynomikis-vias-sta-dikastiria-toy-voloy/>

Ombudsman's recommendations for the improvement of investigations and prevention of similar behaviour by law enforcement officers in the future.<sup>496</sup>

On a positive note, two police officers accused of assaulting a citizen in March 2021 were found guilty and were given suspended sentences of one and two years respectively.<sup>497</sup>

The illegal surveillance and use of spyware against journalists, politicians and other public figures by EYP was confirmed in a report by the EU Parliament's Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware (PEGA Committee) in May. The PEGA Committee highlights in the report that the current government's legal amendments have weakened crucial safeguards, and political appointments to key positions are an obstacle to scrutiny and accountability. *Ex ante* and *ex post* scrutiny mechanisms have been deliberately weakened, and transparency and accountability are evaded. Critical journalists or officials fighting corruption and fraud face intimidation and obstruction.<sup>498</sup> It concluded that Greece violated EU law and made ten recommendations to the Government, including to urgently restore and strengthen the institutional and legal safeguards, restore full independence of the judiciary and all relevant oversight bodies, and ensure that the authorities can freely and unhindered investigate all allegations of the use of spyware.<sup>499</sup>

No progress regarding the recommendations has been reported so far and no charges have been brought for the use of spyware. The work of the independent authority ADAE (Hellenic Authority for Communication Security and Privacy), that investigates these cases, has been continuously obstructed. In January, experts and civil society condemned the statement by Supreme Court prosecutor Isidoros Doyakos that the ADAE does not have the competence to investigate surveillance cases.<sup>500</sup> In addition, in September the government with the support of the far-right Greek Solution party abruptly changed the independent authority's leadership, hindering investigations.<sup>501</sup> Members of ADAE have been summoned as suspects for leaking classified information, while its President Christos Rammos has been threatened by parliamentarians and the government. In October 2023, two prosecutors who asked ADAE to cross-check whether 90 targets of the Predator spyware have also been surveilled by EYP, were removed from the case and the investigation was moved from the first-instance prosecutor's office to the Supreme Court.<sup>502</sup> In January 2024, the

<sup>496</sup> [https://issuu.com/efsyn/docs/171023-emidhpa\\_ekthesh\\_web\\_1\\_](https://issuu.com/efsyn/docs/171023-emidhpa_ekthesh_web_1_)

<sup>497</sup> [https://www.ethnos.gr/greece/article/269330/neasmynrhomofonaenoxoioidyostynomik\\_oigiatonxylodarmopolithto2021athoothhkeotritos](https://www.ethnos.gr/greece/article/269330/neasmynrhomofonaenoxoioidyostynomik_oigiatonxylodarmopolithto2021athoothhkeotritos)

<sup>498</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2023-0189\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.html)

<sup>499</sup> [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/PEGA/RD/2\\_023/01-24/1269773EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/PEGA/RD/2_023/01-24/1269773EN.pdf)

<sup>500</sup> <https://govwatch.gr/en/finds/antidraseis-15-syntagmatologon-kata-tis-gnomodotisis-ntogiakoy-gia-tin-adae/>

<sup>501</sup> <https://govwatch.gr/en/skepseis-me-aformi-tin-prosfati-epilogi-ton-melon-tis-adae-kai-toy-esr/>

<sup>502</sup> <https://www.politico.eu/article/greek-government-spying-regulators-wiretapping-predatorgate-scandal/>

disciplinary investigation against Vasiliki Vlachou, the former prosecutor for EYP who had allegedly signed a series of surveillance orders, was archived.<sup>503</sup>

# Funding for civil society

Limited measures were taken to include CSOs in the planning, monitoring and implementation of funds, especially of EU funds, disregarding the European Commission's guidelines. As a result, access to state funding opportunities is limited and information is fragmented. Delays in the continuation of programmes, in the renewals of contracts and the payment from the government's side is common, leaving organisations and people in need in limbo for months. Indicatively, in 2023 Metadراسi, an organisation providing interpretation services for migrants and refugees, announced that it had to reduce its interpretation services by 80 per cent for these reasons.<sup>504</sup> A positive development is the creation of a Monitoring Committee for migration-related programmes funded by EU funds which will include four NGO representatives.<sup>505</sup>

Strict registration requirements for NGOs, a prerequisite to accessing national funds, make access to these funds even more difficult, especially for smaller organisations. Other sources of funding are usually project-based, preventing long-term planning and affecting growth and viability. At the same time, due to the multiple crises happening in other places and regions, donors' interest in Europe is declining with Open Society Foundations, which announced the termination of a large part of its work in Europe starting from 2024 onwards, being one such example.<sup>506</sup> The small group of independent and investigative media in the country also lacks financial support.

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<sup>503</sup> <https://left.gr/news/sto-arheio-i-peitharhiki-ereyna-se-varos-tis-vasilikis-vlahoy-gia-tis-parakolythiseis>

<sup>504</sup> <https://www.rosa.gr/prosfygiko/metadراسi-i-kivernisi-kovei-tous-diermineis-sta-kentra-metanaston-prosfigon/>

<sup>505</sup> <https://tamey.gov.gr/mc2021-2027/>

<sup>506</sup> <https://www.theguardian.com/business/2023/aug/19/george-soross-retreat-from-europe-could-turn-off-the-lights-for-human-rights>

# Civil dialogue and the right to participation

A meaningful dialogue framework and cooperation between the Greek government and CSOs is still missing. The Commission's observation in last year's Rule of Law report that *'While draft bills are consistently subject to public consultation and follow-up reports address the comments submitted, concerns regarding the lack of effective and timely consultation of stakeholders persists'* is still a challenge as adoption of omnibus legislation, last-minute amendments and frequent amendments of recently adopted legislation (including to the provisions of the Criminal Code entered into force in 2019) was a common practice in 2023. Examples where ministries shortened the public consultation processes without justification include the Ministry of Interior,<sup>507</sup> the Ministry of Migration and Asylum,<sup>508</sup> the Ministry of Health in three instances,<sup>509</sup> the Ministry of Environment,<sup>510</sup> the Ministry of Education and Religious Affairs,<sup>511</sup> and the Ministry of Culture and Sports.<sup>512</sup> The country has also received over 1,7 million euros in EU funds to codify its legislation into a National Coding portal, a project that should have been concluded by now but remains a work in progress.<sup>513</sup>

Moreover, the government often does not seek the assistance or input of competent bodies or civil society with relevant expertise for the drafting of bills. One such example is the drafting of a bill related to the rights of conscientious objectors where the Ministry of National Defence did not seek the advice of the National Human Rights Commission despite this being recommended by the Council

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<sup>507</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-esoterikon-ioyliios-2023/>

<sup>508</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-gia-ton-kodika-metanasteysis/>

<sup>509</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-ygeias-martios-2023/>, <https://govwatch.gr/en/finds/mi-epitrepti-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-ygeias-martios-2023/> and <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-ygeias-fevroyarios-2023/>

<sup>510</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-perivallontos-kai-energeias-fevroyarios-2023/>

<sup>511</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-paideias-kai-thriskeymaton-fevroyarios-2023/>

<sup>512</sup> <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-yпойrgeio-politismoy-kai-athlitsmoy/>

<sup>513</sup> <https://www.digitalplan.gov.gr/ergo-2014-2020/56/ethniki-pyli-gia-tin-kodikopoiisi-kai-anamorfosi-tis-ellinikis-nomothesias>

of Europe.<sup>514</sup> Similarly, in its evaluation report on Greece, GREVIO stressed that the authorities should, as a matter of priority, consult various women's rights organisations to ensure full compliance with the provisions of the Istanbul Convention, a recommendation that is not being followed.<sup>515</sup>

Challenges with access to information persist as the information available is often insufficient or fragmented, hindering the work of CSOs and the people they support and failing to ensure transparency. Requests for access to information by civil society frequently do not receive replies, even though both the Constitution and legislation guarantee the right of access to information (article 5A of the Constitution, Law 2690/1999 that ratifies the Administrative Procedure Code, Law 4727/2020 that regulates digital rights issues in the public sector).

# Civil society resilience

Despite barriers, challenges and low levels of trust, partly due to the government's hostile stance towards CSOs and civic actors, civil society remained active in 2023 trying to defend democracy, the rule of law and fundamental rights.

CSOs and investigative media continued to report on pushbacks and shed light on the Pylos shipwreck and numerous other human rights violations against migrants and other vulnerable groups. CSO networks, such as the Racist Violence Recording Network<sup>516</sup> and the Recording Mechanism of Incidents of Informal Forced Returns,<sup>517</sup> have been systematically recording and reporting incidents of racist violence and forced returns while also working with European and international networks and bodies to amplify their voices and put pressure at various levels. The Hellenic League for Human Rights' intervention denouncing the use of the term 'illegal migrant' by

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<sup>514</sup> <https://govwatch.gr/en/finds/paraleipsi-tis-kyvernisis-na-zitisei-ti-syndromi-tis-eeda-kata-tin-epexergasia-nomoschedioly-gia-ta-anthropina-dikaionomata/>

<sup>515</sup> <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>

<sup>516</sup> <https://rvrn.org/en/>

<sup>517</sup> <https://www.nchr.gr/en/news/1544-press-release-presentation-of-the-recording-mechanism-of-incidents-of-informal-forced-returns-and-its-first-interim-report.html#:~:text=The%20Recording%20Mechanism%20aims%20to,transparent%2C%20and%20scientific%20recording%20methodology.>



the Hellenic Police led to the removal and replacement of the term<sup>518</sup> while the participation of CSOs in the public consultation, for a new Immigration Code, led to the improvement of the bill, despite the consultation period being very short.<sup>519</sup>

For years, civil society has been demanding participation in the monitoring of EU funds and the amendment of registration procedures required for the registries at the Ministry of Migration and Asylum. Both demands have been taken into consideration by the government in 2023, following pressure from various actors, even though it remains to be seen how they will be implemented in practice.

More systematic cross-sectoral collaboration across thematic fields of work (such as climate change and migration) but also between CSOs and other sectors, such as trade unions and universities, would make civil society stronger and more resilient.

# Recommendations

## Targeted recommendation:

- 🔍 Refrain from criminalising humanitarian actors and human rights defenders solely for helping refugees and migrants in need and urgently adopt guidelines which clarify that assistance to people seeking international protection does not constitute a crime.

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<sup>518</sup> <https://govwatch.gr/en/finds/anakoiMosi-eleda-gia-ti-chrisi-meiotikon-gia-tin-prosopikotita-oron-apo-tin-el-as/>

<sup>519</sup> [https://www.efsyn.gr/ellada/dikaiomata/382896\\_beltioseis-ston-kodika-metanasteysis-meta-tin-kriTiki](https://www.efsyn.gr/ellada/dikaiomata/382896_beltioseis-ston-kodika-metanasteysis-meta-tin-kriTiki)

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- 🔍 Immediately replace all CSO registries with one central registry and simplify requirements to ensure that the registry and information required are in line with European and international standards on the freedom of association;
- 🔍 Urgently initiate structured dialogue with CSOs to ensure that registration requirements are proportionate and do not hinder their work and activities;
- 🔍 Amend Law 4703/2020 which restricts the right to peaceful assembly in line with international standards;
- 🔍 Urgently implement the recommendations made by the Pega committee, including to prevent arbitrary and disproportionate surveillance and restore the independence of oversight bodies, including ADAE;
- 🔍 Immediately carry out a thorough and independent investigation into the arbitrary surveillance on journalists;
- 🔍 Conduct thorough investigations into violence against journalists and media, and adopt new protective measures to ensure their safety;
- 🔍 Refrain from publicly vilifying civil society and sharing negative public narratives about them;
- 🔍 Take effective measures to address abusive litigation, including Strategic Lawsuits Against Public Participation (SLAPPs) in line with the Europe Commission's April 2022 Recommendations on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings;
- 🔍 Respect the right to peaceful assembly in line with international standards and investigate violations during protests by law enforcement officers and take measures to stop police violence and impunity;
- 🔍 Provide financial support to the NGO sector, including through EU funding, and increase clarity and transparency around EU funding and opportunities for NGOs participation;
- 🔍 Take urgent and structured measures to include CSOs in the planning, monitoring and implementation of EU Funds, as per the EC's guidelines, including by organising regular meetings with CSOs, including CSO representatives in monitoring Committees, ensuring that selection criteria are transparent and establishing clear guidelines so that the opinion of all partners is taken into account and that consultations are effective.

- 🔍 Ensure open, transparent and regular dialogue between civil society and policymakers at national and EU levels;
- 🔍 Provide adequate time for public consultation on legislative changes;
- 🔍 Improve the operational framework for CSOs, following a meaningful consultation process with them, to ensure their effective protection against attacks and other forms of harassment.
- 🔍 Promote transparency and accountability within the government and government bodies.

# About the author

Dominika Spyratou is an independent consultant with over 12 years of advocacy and research experience. Her work focuses on migration, human rights and the rule of law. She has worked at various humanitarian organisations in Greece including the International Federation of Red Cross and Red Crescent Societies (IFRC), the International Rescue Committee and the local NGO, SolidarityNow. Between 2008 and 2016 she worked at the Civil Society and Human Security Research Unit at the London School of Economics and Political Science where she managed research and dialogue projects aiming to understand conflict and violence and bridge the gap between citizens and policymakers. Dominika holds a Master of Arts in International Relations from the University of Sussex and a Bachelor of Arts in Balkan Studies from the Aristotle University of Thessaloniki.





# Civic Space Report 2024

# HUNGARY



**ökotárs**  
alapítvány





# Key trends

- 🔍 New foreign influence legislation poses a major threat to civic space.
- 🔍 Civil society engaged in advocacy or critical of certain government policies subjected to smear campaigns and continuously vilified.
- 🔍 Limited opportunity for CSOs to engage in civic participation with public institutions and in decision-making.

# Summary

The space for civil society continues to decline and civic space is rated as 'Obstructed' in Hungary.<sup>520</sup> The Hungarian government made no steps to implement the European Commission's 2022 recommendation "to foster a safe and enabling civic space and remove obstacles affecting civil society organisations (CSOs), including by repealing legislation that hampers their capacity of working, in particular the immigration tax."<sup>521</sup> Rather, smear campaigns and vilification of CSOs and Human Rights Defenders (HRDs) remained a routine practice. The government continued to sustain and extend the state of danger which has contributed to the creation of an insecure legal and political environment for civil society since 2020 and the COVID-19 pandemic.

Restrictive legislation, including the anti-LGBTIQ+ propaganda law, remained in effect and new laws were adopted, in particular the Sovereignty Defence Act. The act will give the authorities broad powers to investigate any organisation or individual suspected of serving foreign interests or threatening national sovereignty and therefore can be used to arbitrarily target CSOs, journalists, opposition politicians and HRDs. The government-created narrative of labelling civic actors as foreign

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<sup>520</sup> <https://monitor.civicus.org/country/hungary/>

<sup>521</sup> [https://commission.europa.eu/system/files/2023-07/40\\_1\\_52623\\_coun\\_chap\\_hungary\\_en.pdf](https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf)

agents remained strong and led to increased polarisation, as well as de-politicisation and self-censorship of civil society.

The right to peaceful assembly was occasionally violated as police used excessive force and imposed indiscriminate bans on protests. Some protests were specifically targeted, including Palestinian solidarity protests and the teachers', students' and parents' movement calling for better public education. The blocking of and lack of coherent and accessible state funding remained an issue and led to an increased dependency on unsustainable crowdsourcing and foreign funding for independent civil society.

# Institutional, political and socio-economic landscape

2023 in Hungary was characterised by the economic and cost-of-living crisis. The economy went into recession until the third quarter, and the state deficit exceeded official forecasts, amended several times during the year, reaching 5.9 per cent of the GDP. The country also suffered a record high inflation, more than 25 per cent at the beginning of the year, which declined to below 10 per cent just by the end of 2023. This hit poorer segments of society the most, especially as food prices increased steeply, with food costing 50 per cent more compared to two years ago. This was coupled with a serious rise in energy prices as well.

Economic difficulties were exacerbated by the fact that until the end of the year, EU funds (both Cohesion and Recovery and Resilience Fund support) remained suspended due to partial fulfilment of the rule of law conditionalities, mainly in the areas of judicial independence and anti-corruption. In December, eventually, a 10 billion € tranche was approved by the Commission, but the fate of the remaining, larger amount remains undecided. The conditionality process, together with the country's friendly relations with Russia led to increasing tensions and a gradual isolation of the Hungarian government vis-a-vis its allies in the EU and NATO. Domestically, Prime Minister Viktor Orbán

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routinely blames “Brussels” for all ills, while internationally he has undermined the unity towards Ukraine in several decisions, most recently in December by vetoing the EU’s €50 billion aid package.

Despite the worsening living conditions, the popularity of the Fidesz government remained stable. According to the October poll by Medián, 30 per cent of the population supports the governing party, while 34 per cent are undecided or wouldn’t vote. The remaining 36 per cent is distributed among numerous opposition parties, with left-populist Democratic Coalition and right-extremist Our Homeland parties being the strongest, with 7 per cent each.<sup>522</sup> Pro-government propaganda outlets, and more recently social media “influencers” with almost unlimited public funding very efficiently convey the government’s messages that attribute all problems to external factors, mainly the war in Ukraine, the EU sanctions and the “misguided” decisions of Brussels, while the government valiantly fights for the “national interests”. At the same time, many people dissatisfied with the government (52 per cent in the above poll) are disillusioned by the opposition as well, which not only seems unable to cooperate but also to find the issues and messages that could make them relevant in the public discourse.

In addition to the economy and foreign relations, two main issues dominated the first half of the year: the state of public education and plans to build battery factories in several locations around the country. In the former case, broad public protests (including demonstrations and acts of civil disobedience) that began in 2022 demanding greater autonomy, better working conditions and higher wages in public education continued in spring 2023. The government responded by developing and adopting *Act LII. of 2023* on the legal status of teachers, which strips them of remaining autonomy and benefits. While protests died down after the summer holidays, many teachers refused to sign their new contracts under the new conditions, further increasing the existing understaffing in education.

The anti-LGBTQI+ campaign was stepped up in 2023. Based on the provisions of the 2021 “child protection” (up to then not quite enforced) legislation, in July, the publisher and bookstore chain ‘Lira’ was fined HUF 12 million (app. €31,500) for exhibiting a book in the young adult section with alleged homosexual content without a closed foil wrapping<sup>523</sup>. Following this, there were inspections in bookstores, wrapping of many titles, and some shops even banned underage people from entering the adult sections. Added to these developments, seeking asylum in Hungary remains virtually impossible.

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<sup>522</sup> <https://telex.hu/belfold/2023/10/04/median-kozvelemeny-kutatas-partpreferencia-kormanyvaltas>

<sup>523</sup> <https://444.hu/2023/07/13/12-millio-forintos-birsagot-kapott-a-lira-mert-nem-csomagolta-be-homoszexualitast-megjelenito-konyvet>

# Civic freedoms: regulatory environment and implementation

The overall legal framework for CSOs - the Civil Code (Act V of 2013), the Nonprofit Act (CLXV of 2011 on the freedom of association, public benefit status and the operation and financing of civil society organisations) and other relevant regulations - including the provisions for registration, operation and dissolution of CSOs effectively did not change in 2023, and generally conform to European standards. CSOs - associations and foundations - pursuing any legal objectives may be registered freely, and with the use of electronic means relatively easily. According to the latest statistical data<sup>524</sup>, in 2022, approximately 53,000 CSOs operated in Hungary, with only slight fluctuations in numbers observed in the past five years, typically with a decrease in the number of foundations offset by an increase in associations. In 2023, there were no reports of forced dissolution of any organisation. Up until the end of the year, no new legislation affecting civil society (positively or negatively) was passed either, however, some problematic acts remained in effect and continue to pose threats to civil society, two in particular:

1. The government has still not fully implemented ruling *C-821/19. of the Court of Justice of the European Union* issued in November 2021, to repeal the provisions of the so-called Stop Soros legal package passed in 2018, criminalising persons providing aid and support to asylum-seekers and refugees. It may face new fines imposed by the European Commission for this delay. Likewise, the potential 25 per cent punitive “special immigration” tax remains in the books. Albeit no individual or organisation has been prosecuted under these provisions so far, however the threat to CSOs and activists working with migrants and refugees remains.<sup>525</sup>
2. Based on the provisions of *act XLIX of 2021* on the “Transparency of Organisations Capable of Influencing Public Life”, in 2022 the State Audit Office (SAO) requested hundreds of CSOs falling under this legislation (i.e. having annual income above 20 million HUF) to submit data and documents, primarily their internal financial regulations. To our knowledge, the SAO has not

<sup>524</sup> Central Statistical Office, [https://www.ksh.hu/stadat\\_files/gsz/hu/gsz0014.html](https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html)

<sup>525</sup> See e.g. <https://civilizacio.net/hu/hirek-jegyzetek/ot-eves-a-stop-soros>

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followed up on its report published at the end of 2022, nevertheless, affected CSOs have been kept in uncertainty.

A major legal development affecting (among others) civil society arrived at the end of 2023, in the form of the so-called Sovereignty Defence Act passed on 12 December, consisting of two main elements:

- 🔍 It forbids persons and organisations, including associations running or supporting candidates in elections (European, national and local) to receive support from foreign sources, and forbids funds from domestic legal entities and anonymous donations with regard to nominating organisations.
- 🔍 It establishes a new Sovereignty Defence Office with broad and ill-defined competencies to collect (even via using the intelligence services) and publishes information on any person or organisation it suspects of serving foreign interests and/or receiving funding, with no legal remedies available.

The intentionally vague wording of the law may potentially threaten any critical person or organisation - including CSOs, journalists, philanthropic donors, trade unions or churches - with smear campaigns, intimidation and harassment (ab)using the data published by the authority, and it may also form the basis of further procedures carried out by other state agencies (e.g. the tax authority). The new authority is to be established in early 2024. The Human Rights Commissioner of the Council of Europe, Dunja Mijatović has already warned Hungary not to adopt the law.<sup>526</sup> The CoE Parliamentary Assembly requested Hungary to submit the draft to the Venice Commission for review.<sup>527</sup>

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<sup>526</sup> **Hungary: The proposal for a “defence of national sovereignty” package should be abandoned - Commissioner for Human Rights (coe.int)**

<sup>527</sup> **Hungary should submit the bill on the ‘defence of national sovereignty’ to the Venice Commission, PACE monitors say (coe.int)**



# Safe space

Smear campaigns and public vilification against human rights defenders and civil society organisations (CSOs) engaged in advocacy or critical of certain government policies remained a routine practice in government-controlled media and in the communication of associated social media influencers. While serious forms of intimidation or harassment were generally not reported during the year, there are no institutional systems of monitoring or support for those potentially affected available either. The frequent and recurring narrative which remained unchanged, accused certain CSOs of being members of the “Soros-network” and/or part of the (foreign-funded) political opposition and thus allegedly undermining Hungarian national interest. This has led to a generally chilling atmosphere and a marked polarisation within civil society whereby many organisations do not dare speak out on public issues and/or refuse to be associated with organisations perceived as “problematic” or political. While many organisations are regularly labelled as such, in 2023 several cases of extended attacks stood out:

1. The *Association of Alternative Communities in Debrecen* (East-Hungary) which provided a community space for the peoples protesting against a planned car factory battery (see below) to organise and coordinate their activities, was labelled in both local and national media as the ‘instigator’ of the protests and dubbed a politically biased and controlled organisation.<sup>528</sup> A journalist even camped outside their office for days with a video camera, taking pictures of those who entered the premises.
2. *From Streets to Homes Association*, a Budapest-based CSO that provides (among other activities) low-rent housing to people emerging from homelessness was attacked for their cooperation with the municipality of the 19<sup>th</sup> district and accused of bringing “filth and deviance” to the neighbourhood. It was also implied that they are closely connected to the opposition leadership of the city, and thus, act on their behalf.<sup>529</sup>
3. The *EU Citizens, Equality, Rights and Values (CERV)* and USAID’s Central Europe fund were also targeted with allegations that they support “Soros-organisations” and the “LGBTQI-lobby” and that thereby Brussels continues the work and act under the guidance of the philanthropist in Europe. Most major human rights groups were named in a series of articles, in particular those awarded the new re-granting program managed by a consortium led by Ökotárs Foundation, with pre-suppositions about which organisations would receive support from

<sup>528</sup> E.g. <https://magyarnemzet.hu/belfold/2023/02/az-akkumulatortgyar-elleni-hergelessel-gyanusított-egyessel-valoban-kapott-penz-t-sorostol-video>

<sup>529</sup> <https://magyarnemzet.hu/belfold/2023/02/kudarcba-fulladt-kispesti-program>

this source.<sup>530</sup> After the actual grant decision, many of the grantees were again exposed to a similar negative context.

4. In a long-standing dispute, in the autumn, the tax authority deducted several hundred million from the bank accounts of the 'Oltalom' Charitable Association and the Hungarian Evangelical Fellowship (HEF) due to their outstanding public debts, which were incurred in the first place because HEF was illegally stripped of its church status and its related funding in 2011 in violation of its rights according to the judgement of the ECtHR.<sup>531</sup> Although Hungary has paid €3,000,000 in damages accordingly in 2017, due to lack of access to grants obtainable only for incorporated churches, HEF is still not being recognised and this has resulted in a continued lack of access to certain funds.
5. After the elections in 2022, the National Information Centre, a newly set up all-powerful intelligence agency investigated the financial management of opposition political actors that had received foreign funding from the US-based private donor organisation, Action for Democracy, during the 2022 general election campaign. In its declassified but redacted report, the National Information Centre dedicated a chapter to a number of independent CSOs, think-tanks and media outlets that have received grants from the German Marshall Fund (GMF) and the US National Endowment for Democracy, portraying them as threats to national security and sovereignty, thereby conveying a serious chilling effect to these organisations.<sup>532</sup>

In the autumn months, after Fidesz first introduced the idea of developing and adopting an act on "sovereignty defence", its relatively low-key anti-NGO campaign received new momentum, and more "news" on the alleged objectives and activities of human rights organisations in particular (e.g. Amnesty-International Hungary, Hungarian Helsinki Committee) were published along with accusations of them representing foreign interests and powers.

## Restrictions on the right to protest

Regarding freedom of peaceful assembly, both disproportionate excessive police responses, and indiscriminate bans on demonstrations were observed in 2023. As previously noted in our 2022 submission, teachers who staged protests have faced restrictions. Participants of the teachers'

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<sup>530</sup> <https://magyarnemzet.hu/kulfold/2023/09/itt-tartunk-brusszel-fizet-soros-helyett>  
<https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>

<sup>531</sup> *Magyarországi Evangéliumi Testvérközösség v. Hungary*, Application no. 54977/12, Judgment (Just satisfaction) of 25 April 2017

<sup>532</sup> The NIK's summary report of 21 June 2023 on foreign interference in the 2022 parliamentary elections in Hungary is available here: <https://tinyurl.com/yhkswd3e>.

demonstrations, attempting to access the cordoned-off office of the Prime Minister were met with tear gas at least twice<sup>533</sup>, and in September 2023 the police blocked them from marching to the Prime Minister's office altogether.<sup>534</sup> Several protesters, including high-school students (teenagers), also received heavy fines amounting to several hundred thousand HUF or faced criminal proceedings for participating in "illegal assemblies" or breaching assembly rules.<sup>535</sup> Soon after the new dramatic escalation of violence in Israel and Palestine in October, the Minister of Interior issued a blanket ban on any demonstrations in solidarity with Palestinian people, a step criticised by human rights organisations.<sup>536</sup>

## Funding for civil society

The financial situation of Hungarian civil society continues to be characterised by an abundance of funding on the one hand and "starving" organisations on the other. While the "architecture" of civil society is still there as key organisations continue to operate (with new EU and US funding sources playing an important role in 2023), the chilling effect on smaller, rural CSOs is visible and threatening to further widen the gap and alienate them from the larger, institutional organisations.

According to the latest official statistics, the sector's overall income in 2022 continued to grow (to HUF 1,270 billion, € 3.3 billion from 1,070 billion, 2.8 billion in 2021, probably also as a result of the record-high inflation), while the share of public funding decreased somewhat, to 40 per cent (with increasing

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<sup>533</sup> [https://eduline.hu/kozoktatas/20230606\\_Harag\\_nincs\\_de\\_fajdalom\\_van\\_\\_mondta\\_a\\_tuntetesen\\_fogdaba\\_zart\\_fiu\\_edesanyja](https://eduline.hu/kozoktatas/20230606_Harag_nincs_de_fajdalom_van__mondta_a_tuntetesen_fogdaba_zart_fiu_edesanyja)

<sup>534</sup> See e.g. <https://444.hu/2023/06/23/tobb-mint-szazezer-eszrevetel-erkezhetett-a-statusztorvenyhez-de-a-belugyminiszterium-nem-hozza-nyilvanossagra-oket>  
<https://444.hu/2023/05/24/politikai-babszinhaz-vs-brusszelezes-a-szakszervezetek-szotsem-kaptak-a-statusztorvenyes-egyeztetesen>

<sup>535</sup> [https://eduline.hu/kozoktatas/20230614\\_Birsagot\\_kapott\\_Pankotai\\_Lili](https://eduline.hu/kozoktatas/20230614_Birsagot_kapott_Pankotai_Lili)  
[https://eduline.hu/kozoktatas/20230614\\_Sas\\_Biborka\\_EDF\\_hivatalos\\_szemely\\_elleni\\_eroszak](https://eduline.hu/kozoktatas/20230614_Sas_Biborka_EDF_hivatalos_szemely_elleni_eroszak)

<sup>536</sup> <https://tasz.hu/cikkek/tuntetesek-tiltasa-a-gazai-konfliktus-kapcsan>

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private funding amounting to another 25 per cent).<sup>537</sup> Yet, 68.5 per cent of all CSOs operate with an annual budget under HUF 5 million (app. €3,000), and only 8 per cent have an income larger than 50 million, with the average income being approximately 25 million.

As reported in our 2022 submission to the Commission, independent organisations promoting human rights, advocacy and similar issues can rarely secure public funding. While in theory, they may apply to major state grant schemes, such as the National Cooperation Fund, the Village and the Town Civil Funds, they mostly remain unsuccessful (with no special justification) or cease to apply altogether. There are no dedicated sources available for the protection of human rights or democracy.

Most recently, another negative trend in state funding has affected a special subset of CSOs, i.e. independent, alternative theatres. Such groups could apply for operational funding at the Ministry of Culture and Innovation annually (albeit to a continuously shrinking budget), however, similar to 2022, in 2023 many long-standing, well-respected groups received zero support<sup>538</sup> in a non-transparent, unknown decision-making process. For most of them, this means that their mere survival is at grave risk, and more generally it risks the elimination of alternative or critical voices from cultural life.

CSOs cut off from public funding remain dependent on crowdsourcing tools, which many of them are using with increasing success, and on foreign philanthropies and donors. In this respect, in 2023, important new funding opportunities became available thanks to the EU Citizens, Equality, Rights and Values (CERV) and USAID's Central Europe programs. The largest of these is the CERV re-granting program managed by Ökotárs Foundation and its partners which provided grants amounting to €1.5 million in 2023 (and will distribute a similar amount in 2024)<sup>539</sup>, Equally important is the "Stronger Roots" fund operated by NIOK Foundation and the grant programs of the German Marshall Fund/Transatlantic Foundation.<sup>540</sup>

The increasing lack of state funding is to some extent offset by the growing amount of individual donations. In 2023, both the amount collected from the assigned 1 per cent of income taxes (available since 1997) and the number of taxpayers using this option grew significantly, by approximately 26 per cent compared to 2022 (total amount HUF 15.3 billion, €40 million, number of taxpayers 1.8

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<sup>537</sup> [9.1.1.12. A nonprofit szervezetek működési jellemzők szerinti száma és bevétele szervezeti forma szerint \(ksh.hu\)](#)

<sup>538</sup> [https://emet.gov.hu/app/uploads/2023/06/EMT-TE-23\\_dontesi-lista.pdf](https://emet.gov.hu/app/uploads/2023/06/EMT-TE-23_dontesi-lista.pdf)

<sup>539</sup> <https://kozosertekeink.hu/>

<sup>540</sup> <https://www.niok.hu/tarsadalmibazis> <https://www.gmfus.org/democracy-work/engaging-central-europe>

million).<sup>541</sup> While mainly charitable organisations remain the top beneficiaries of this source, human rights and similar CSOs were also able to collect more funding (e.g. Hungarian Civil Liberties Union, HUF 36.8 million, €97,000 compared to 35.5 million, €93,500, Hungarian Helsinki Committee 10 million, €26,500 versus 7.8million, €20,500). At the same time, tax incentives for donations remain meagre or absent: there are no tax benefits at all for private persons who donate, and companies may decrease their corporate tax base with 20 per cent of the donation, but only in case of CSOs with public benefit status (21 per cent of all organisations).

## Civil dialogue and the right to participation

Since the 2020 outbreak of the COVID-19-pandemic, the government has sustained and regularly extended the state of danger (most recently to May 2024) enabling it to rule by decree, which generally creates an insecure legal environment. Despite amending Act CXXXI of 2010 on Public Participation in the Preparation of Legislation in response to the milestones set by the European Commission, there remains little or no room for CSOs and citizens to engage with public institutions and in decision-making. While legislation is published on the government's website, time allocated for responses to consultations are short (usually not more than eight days), and most often there is no feedback on whether and how opinions from the public were taken into account. In cases generating strong public concern, participation is typically tokenistic, and instead the vilification of involved CSOs and activists could be observed (see above).

Some progress was made regarding CSO participation in official consultative bodies (Monitoring Committees, the Anti-corruption Task Force), but these are offset by the Defence of Sovereignty Act adopted at the end of the year, with potentially wide-ranging consequences and further silencing of any critical voices. The Act itself was prepared and adopted without any civil dialogue. The draft was submitted to Parliament by an individual MP, instead of the government, a usual practice in case of

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<sup>541</sup> <https://www.nonprofit.hu/hirek/Nagy-meglepetesek-a-2023-as-1-felajanlas-teren-novekvo-osszegek-novekvo-felajanlasok-uj-szereplok>



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the most sensitive pieces of legislation, which circumvents legal provisions for participation. Rather, the government has continued with its practice of issuing a “national consultation on the defence of our sovereignty” i.e. questionnaire or rather a list of misleading and distorted statements posted to all households.

Overall, the “usual” forms of protest or expression of opinion such as petitions, statements, etc. are completely ignored by the government, and this in some cases led both to stronger citizen action and further government backlash:

1. The single piece of legislation generating the broadest public interest and protest this year was undisputedly the law on the legal status of teachers. While the government claimed to have organised the “broadest public consultation ever” in fact, relevant trade unions and teachers’ associations were not allowed to speak up at meetings organised with relevant ministers and state secretaries, and most written submissions were neglected. This, together with the general crisis of the public education system generated demonstrations and acts of civil disobedience throughout the spring, to no avail.

2. Another issue that received significant public attention was the plans to build battery factories for electric cars in several locations around the country (Győr, Debrecen, etc.), which resulted in local protests for fear of the overuse of water supplies and pollution. These investments have mostly been prepared in secret, with the public only informed at the later stages of the process. This led to angry scenes at the compulsory public hearings organised by the local permitting authorities. In response, *government decree 146/2023* was passed in April (using the state of danger) changing the rules so that participation in local matters and permitting processes can be organised without personal presence, solely via electronic means, thereby saving officials from having to meet citizens face-to-face. In practice, this means that relevant documents are placed on the website of the authority and citizens can respond only through email, or by leaving (time-limited) messages on an answering machine.

Various consultative forums continue to exist and operate but their impact is usually limited. The new Monitoring Committees of the various Operative Programs of EU Cohesion and RRP funds have been set up in spring 2023. This time, CSOs working in relevant fields could apply to become members in an open process, and a number of independent organisations were selected to participate as well. As the Committees meet only a few times a year, it is too early to see whether they will have an impact on decision-making in any way. An Anti-corruption Task Force was created to assist the Integrity Authority (established in late 2022), with the participation of several CSOs, including Transparency International-Hungary and K-Monitor Association, but has already been criticised by the former for adopting its first report largely neglecting CSOs’ opinions and motions.<sup>542</sup>

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<sup>542</sup> <https://transparency.hu/hirek/korrupcioellenes-munkacsoport-jelentes-nemzavazat/>

# Civil society resilience

In spite of the above developments, up until mid-November, Hungarian civil society enjoyed a relatively peaceful year, and organisations could pursue their core activities. The Civilisation coalition, presently with a membership of 40 major organisations, remained the key player in coordinating joint response to challenges and promoting a positive image of civil society. Its statement against Sovereignty Defence Act in December was signed by more than 120 organisations and 15,000 individuals.<sup>543</sup> Cooperation among CSOs working on specific issues was active (e.g. the Egalipe network of Roma and pro-Roma organisations) and new collaborations were initiated. Four organisations working in the major countryside cities of Pécs, Szeged, Debrecen and Miskolc formed the Aspect group, intending to support civic activism outside Budapest.<sup>544</sup> CSOs represented in the Monitoring Committees started coordinating among themselves. Human rights and anti-corruption organisations also increasingly cooperate with independent media outlets, which struggle with similar challenges in their operating environment. The movement around public education brought relevant trade unions, teachers' organisations and students' movement together in a more permanent cooperation.

In the autumn, a public opinion poll commissioned by the Civilisation coalition on the level of knowledge about and the perception of civil society showed positive results: compared to similar surveys in 2019 and 2021 both the share of respondents were able to name a CSO (49%), those who have been contacted and/or helped by a CSO (44%, up from 16%), and those who supported an organisation with donation, volunteering or other means (48%) increased. Positively, 70 per cent of respondents agreed that it is an important function of CSOs to voice concerns or formulate criticism.<sup>545</sup> While the underlying factors of these results would need further research, the series of crises experienced over the past years certainly raised the profile of civil society in the public eye.

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<sup>543</sup> <https://civilizacio.net/en/news-blog/over-100-ngos-protest-against-the-defense-of-sovereignty-law>

<sup>544</sup> <https://www.aspektus.hu>

<sup>545</sup> <https://civilizacio.net/en/ouractivities/civic-poll-2023>

# Recommendations

## Targeted recommendation:

🔍 Urgently Repeal the Defence of Sovereignty Act

- 🔍 Refrain from abusing the special legal order and eliminate the situation where the temporary state of emergency becomes de facto permanent.
- 🔍 Urgently Repeal the Defence of Sovereignty Act.
- 🔍 Repeal the Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life.
- 🔍 Repeal the discriminatory anti-LGBTQI+ or “child protection” legislation of 2021 Implement the judgement of the European Court of Justice in case C-821/19 and repeal the "Stop Soros" law criminalising the assistance of asylum seekers in lodging an asylum application.
- 🔍 Refrain from smearing, harassing and attacking civil society and creating additional administrative burdens to hamper their work.
- 🔍 Ensure that there is funding transparency and equal access for all CSOs to state funding, including the National Cooperation Fund and Village and Town Civil Funds.
- 🔍 Fully implement Act CXXXI. of 2010. on public participation in legislation.
- 🔍 Respect the right to freedom of peaceful assembly and expression in line with international standards.

# About the author

Ökotárs-Hungarian Environmental Partnership Foundation is an independent foundation committed to strengthening and supporting civil society and community initiatives in Hungary. It provides grants, training and technical assistance with the aim of contributing to the development of a democratic, sustainable and equitable society and an institutional system based on citizen participation.





# Civic Space Report 2024

# LATVIA





# Key trends

- 🔍 Overall positive environment for civil society
- 🔍 More measurements needed for public participation at all levels
- 🔍 Adequacy of funding resources a significant constraint to CSO and societal resilience

# Summary

Civic space in Latvia is rated as "open" by the CIVICUS Monitor<sup>546</sup> and fundamental freedoms are generally well respected. In its 2023 Rule of Law report on Latvia, the European Commission recommended that the government ensure the effective implementation of legislation on lobbying, including the establishment of a special lobby register. Additionally, it concluded that Latvia had "fully implemented the recommendation on taking measures to increase the participation of civil society in decision-making at the local level" since Latvia passed the new Local Government Law in 2022. However, civil society organisations (CSOs) do not believe that this recommendation was fully implemented, given that the legal framework must be implemented in practice. In several policy planning documents, the government and parliament have stated their political commitment to implement civic dialogue and to strengthen the existing Memorandum Council as the central platform for civic dialogue. The availability and adequacy of financial resources remain one of the most significant constraints to the activities of CSOs in Latvia.

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<sup>546</sup> <https://monitor.civicus.org/country/latvia/>

# Institutional, political and socio-economic landscape

More than 25,000 associations and foundations were registered in Latvia in 2023.<sup>547</sup> Data shows<sup>548</sup> that fewer CSOs are established. While in the period 2010-2013, at least 1,500 new organisations were founded, less than 1,000 have been founded in the last four years. However, in 2023, the number of new organisations has increased for the first time in the last seven years, relative to the previous year.

Only half of all registered associations and foundations are active and functioning. Although there are overall 25,600 associations and foundations in Latvia, about a quarter of them do not submit annual reports. Additionally, 25 per cent of those who submit annual reports do not report any financial activity.

The number of employees in the sector is decreasing, from 29,600 in 2018 to 21,900 in 2022 (a decrease of 7,700 persons). Moreover, while the total number of persons employed is high, they are employed in a small proportion of all CSOs, as only 17 per cent of CSOs have at least one employee.

The financial activity of CSOs has been declining in recent years, with a gradual decrease in the number of organisations showing financial activity across all revenue categories. Specifically, the number of CSOs receiving donations (-27%) and grants (-6%) has decreased. The total amount of donations is increasing, but the number of CSOs receiving them is decreasing. Donations received by CSOs in 2022 amounted to EUR 97.7 million, representing a 55 per cent increase compared to the previous year. However, the number of CSOs that have received donations has decreased year on year over the last four years due to a 2018 tax policy reform that affected the system of donations. Of all the CSOs that have submitted annual accounts, only 16 per cent reported donation income in 2022.

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<sup>547</sup> According to the official database of Lursoft Ltd.,

[https://www.lursoft.lv/lursoft\\_statistika/?&id=41](https://www.lursoft.lv/lursoft_statistika/?&id=41)

<sup>548</sup> CSOs monitoring report 2023:

[https://nvo.lv/uploads/nvo\\_sektora\\_monitorings\\_2023\\_pap181.pdf](https://nvo.lv/uploads/nvo_sektora_monitorings_2023_pap181.pdf)

According to a study<sup>549</sup> by the Civic Alliance - Latvia (CAL) on the economic impact of the non-governmental sector, in 2022, CSOs contributed EUR 331 million directly to the economy in Latvia, while indirectly contributing EUR 223 million. However, the true size of the sector is larger, but as there is no data available on the added value of all the organisations of the civil society sector, including volunteering, the full picture of the economic impact is incomplete.

Latvian civil society supported Ukraine in diverse ways in 2023, including military support, humanitarian aid, aid for war refugees, housing, volunteering, and community-building activities. More than 2,000 off-road vehicles were delivered to Ukraine (Twitter Convoy), among other forms of assistance.<sup>550</sup> There are numerous support activities organised by CSOs and new social initiatives such as volunteer coordination, fundraising campaigns, creation and maintenance of various platforms, and translation services.

The New Unity (JV) party won the elections in October 2022 and formed a coalition with the conservative National Alliance and the United List. However, after less than a year, the coalition collapsed. Evika Siliņa (also from JV) was appointed as the prime minister. The new government is composed of a three-party coalition between the New Unity (JV) party, the Greens and Farmers Union (ZZS), and the social-democratic Progressives (PRO).

President Edgars Rinkēvičs assumed office as the President of Latvia on July 8, 2023. In his inauguration speech to the Parliament (Saeima), President Rinkēvičs highlighted: “During my presidency, I will stand up for a modern and strong Latvia, for a legal and just Latvia, for the well-being of the people, for an inclusive and respectful society.”<sup>551</sup>

After long discussions, on November 30, 2023, Latvia's Parliament supported the draft law intended to ratify the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence, commonly known as the Istanbul Convention<sup>552</sup>. The Convention will enter into force on May 1, 2024.

Additionally, on November 9, the Parliament adopted amendments to eight laws envisaging the introduction of a new partnership institution in Latvia – a new way to legally strengthen relations between two adults, including same-sex couples, and provide social and economic protection for them. Amendments to the laws are expected to come into force on July 1, 2024.<sup>553</sup>

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<sup>549</sup> **Non-governmental organisations Socio-economic impact. Contribution to GDP and public investment** [https://nvo.lv/uploads/petijums\\_nvo\\_ieguldijums\\_latvijas\\_ekonomika\\_.pdf](https://nvo.lv/uploads/petijums_nvo_ieguldijums_latvijas_ekonomika_.pdf)

<sup>550</sup> <https://www.mk.gov.lv/en/latvia-supports-ukraine>

<sup>551</sup> <https://eng.lsm.lv/article/politics/president/09.07.2023-president-rinkevics-inauguration-speech-to-saeima.a515947/>

<sup>552</sup> <https://eng.lsm.lv/article/society/society/28.12.2023-latvian-foreign-minister-signs-istanbul-convention-ratification-document.a536991/>

<sup>553</sup> <https://eng.lsm.lv/article/politics/saeima/09.11.2023-latvian-saeima-adopts-partnership-law.a531042/>

# Civic freedoms: regulatory environment and implementation

## Freedom of association

The Constitution of the Republic of Latvia recognises and protects fundamental rights. The existing fundamental rights chapter in the Constitution guarantees freedom of speech and thought, press freedom, freedom of association and assembly, freedom to strike, and inviolability of correspondence and home.

CSOs are primarily governed by two laws – the Law on Associations and Foundations and the Public Benefit Law. CSOs are generally able to operate freely under the law without harassment by the government and can freely address matters of public debate and express criticism. The registration process is easy and accessible, and all documentation can be submitted electronically.

The core legal document establishing citizen's rights to participate in state matters (Article 101) states that: *“Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service. Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language”*<sup>554</sup>.

During 2023, the Ministry of Justice drafted amendments to the law governing associations and foundations. These proposed changes aim to enhance the regulation for greater participation of members, boards, and other stakeholders in the decision-making processes of organisations. They also seek to enable organisations to operate more efficiently and resourcefully by granting the right to conduct membership meetings electronically.

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<sup>554</sup> <https://www.saeima.lv/en/legislative-process/constitution>

The amendments also establish a classifier for CSOs, which is viewed as a crucial tool for effective sector analysis, monitoring, and the implementation of data-driven civil society development policies. Without comprehensive and complete data, it is impossible to analyse civil society organisations, their areas of activity, and various financial indicators, including development trends. Moreover, an inaccurate database, which includes inactive or defunct organisations, provides a misleading portrayal of the associations and foundations sector.

As of 2023, there remains no specific institution explicitly responsible for civil society in Latvia. However, discussions on this matter have been ongoing in various formats throughout the year. Suggestions have been made to appoint a civil society advisor within the offices of the President, Prime Minister, and Minister of Culture, or to designate a ministerial member specifically responsible for the development of civil society.

In response to these discussions, the Ministry of Culture has taken steps by identifying a responsible official for civil society and dialogue with CSOs, namely the parliamentary secretary. Furthermore, discussions are in progress regarding the establishment of a government committee to address issues related to a cohesive society, which may include matters concerning civil society.

## Safe space

In June 2023, the Parliament adopted amendments to the State Border Law and the Border Guard Law legalising pushbacks of migrants and refugees. The law aims to prevent illegal entry at the border to Belarus, including by force, violating international and EU human rights standards and the right to seek asylum.<sup>555</sup> Pushbacks have already been taking place on the Latvian-Belarusian border for years and the violations have resulted in injuries and even the death of one person.<sup>556</sup> In January 2023, the Latvian State Border Guard initiated criminal proceedings against Ieva Raubiško and Egils Grasmanis, two members of the refugees and migrants rights organisation "I want to help refugees" for providing assistance to a group of five Syrian nationals on the Latvian and Belarusian border.<sup>557</sup> The Un Special Rapporteur on Human Rights Defenders raised concerns that the case was "initiated in direct

<sup>555</sup> <https://www.unhcr.org/neu/102005-unhcr-concerned-with-new-legislation-in-latvia.html>

<sup>556</sup> <https://www.infomigrants.net/en/post/45549/latvia-afghan-migrant-smuggled-from-belarus-dies-of-hypothermia>

<sup>557</sup> <https://www.world-today-news.com/a-criminal-case-has-been-initiated-against-two-i-want-to-help-refugees-activists-for-activities-on-the-border/>



response to their legitimate acts of solidarity with asylum seekers.”<sup>558</sup> The first hearing in the case began on 28 February 2024.<sup>559</sup>

# Funding for civil society

## Availability and adequacy of funding resources a concern

According to data<sup>560</sup>, the total revenue of associations and foundations in 2022 amounted to approximately EUR 590 million. From 2020 to 2021, revenues remained relatively stable, but in 2022, they experienced a notable increase of 22 per cent compared to the previous year.

However, expenditures have shown a significantly higher rate of increase over the last two years. While they decreased by 10 per cent in 2020, they increased by 10 per cent and 21% in 2021 and 2022 respectively. Over the past four years as a whole, expenditures have grown at a faster rate than revenue.

Regarding revenue sources, 25% of the total revenue comes from operating activities, 19% from grants, and another 21% from miscellaneous sources. Donations contribute only 17% of the sector's revenue, while EU and other non-EU funding account for nine per cent. Membership fees represent 9% of the total revenue.

In comparison to the financial performance of associations and foundations between the period 2019-2022, the number of organisations showing financial activity has gradually decreased in all revenue categories, indicating a declining financial performance of the sector. Specifically, the number of organisations receiving donations (-27%) and grants (-6%) has decreased. Although donations and grants have increased in total, they are reaching a narrower range of organisations.

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<sup>558</sup> <https://srdefenders.org/latvia-alleged-undue-use-of-criminal-proceedings-against-human-rights-defenders-ieva-raubisko-and-egils-grasmanis-joint-communication/>

<sup>559</sup> <https://gribupalidzetbegliem.lv/2024/02/26/saksies-tiesas-process-pret-gribu-palidzet-begliem-darbinieci-par-palidzibu-patveruma-mekletajiem/>

<sup>560</sup> [https://nvo.lv/uploads/nvo\\_sektora\\_monitorings\\_2023\\_pap181.pdf](https://nvo.lv/uploads/nvo_sektora_monitorings_2023_pap181.pdf) p.29

The total government expenditure on associations and foundations in 2022 amounted to EUR 102.9 million, out of a total budget of EUR 102 billion. The majority of this expenditure comes from public subsidies at both national and local levels, totalling EUR 69.7 million. The largest portions of this budget expenditure are allocated by the Ministry of Education (EUR 35.5 million), the Ministry of Culture (EUR 18.6 million), and the Ministry of Welfare (EUR 16.1 million).

The financial sustainability of organisations is largely linked to the diversification of revenue sources. However, data on annual accounts show that most organisations typically have only one major source of revenue, while the others account for an insignificant share. In this respect, it can be concluded that the financial sustainability of associations and foundations is currently weak, as a large proportion of organisations are dependent on a single source of funding.

CSOs had access to increased government funding, after receiving approximately two million euros from the National NGO Fund, which is administered by the Society Integration Foundation. In addition, the foundation provides other programs for CSOs, funded by the state.<sup>561</sup> Line ministries in the fields of youth, culture, environment, and other sectors also provide different grants for CSOs. There were also specific programmes for CSOs who implement activities to help Ukrainians.

On December 9, 2024, the Saeima adopted the national budget. An evaluation of the budget's content reveals that calls from civil society for additional funding to support civil dialogue, civic participation, and cooperation have been partially met. The funding allocated in the State Budget for the Council for the Implementation of the Memorandum of Cooperation between the cabinet of ministers and CSOs, which serves as a platform for civic dialogue, received an annual allocation of 200,000 euros (from 2024 to 2026).

In addition, The National NGO Fund program is allocated €2.5 million in the national budget, EUR 105,000 are allocated for the co-financing programme, and the funding for the Regional NGO Support Programme remains unchanged at EUR 150,000. Additionally, there is a new program planned to be administered by the Ministry of Culture, financed by EU funds, titled "Bringing Society Together by Promoting Self-Organization and Enhancing Skills and Opportunities for Cooperation and Participation." The total allocated amount for this program is more than four million euros, spanning from 2024 to 2029.

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<sup>561</sup> <https://www.sif.gov.lv/lv/nvo-fonds>

# Civil dialogue and the right to participation

Regulatory enactments, such as the State Administration Structure Law and the Cabinet Rules of Procedure, determine civic participation in the state administration, and methods for such participation – including working groups, advisory councils, participating in public consultations, providing opinions, proposals and objections in the process of drafting political and legal acts. This means that at the governmental level, each ministry at least has a consultative council, and parliamentary commissions which invite CSO representatives to participate in their meetings and provide input.

In practice, CSOs have relatively easy access to politicians and civil servants who are responsible for various public policy issues. However, the quality of the dialogue between state and CSOs generally depends on the individuals involved.

To assess the local authorities' involvement with associations and foundations in public participation, a survey was conducted on the participation of local governments in public and voluntary associations and foundations, as well as the engagement of representatives from the non-governmental sector in various participation mechanisms established by municipalities.<sup>562</sup> The survey identified a total of 655 associations and foundations that participated in public participation mechanisms set up by municipalities between 2020 and 2022. Among these, 13 organisations participated in multiple municipal participation mechanisms, with nine of them operating at the national level.

Overall, there are at least 600 local associations and foundations in Latvia that have been engaged in decision-making processes at the local government level. Notably, 309 of these organisations are based in Riga, while 346 are located outside of Riga. It's important to note that not all of these organisations are strictly civic organisations; they also include entities such as housing associations, sports clubs, cultural groups, and firefighters' associations.

Some municipalities report cooperation with associations and foundations on practical day-to-day issues, although these organisations may not be involved in formal participation mechanisms. Other municipalities altogether lack formalised mechanisms for public participation. Additionally, some

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<sup>562</sup> [https://nvo.lv/uploads/apkopojums\\_nvo\\_lidzdaliba\\_lemumpienemsana\\_lpa\\_2023.pdf](https://nvo.lv/uploads/apkopojums_nvo_lidzdaliba_lemumpienemsana_lpa_2023.pdf)

municipalities mention that associations and foundations participate in various municipal events such as seminars, workshops, and discussions, but not in formalised participatory mechanisms. These types of engagements were not considered as part of the research on participation in the decision-making process.

## Attempts to improve participation

There is a delay in the implementation of local government referendums, which, according to the law, was planned for 1 January 2024. It is related to ensuring the necessary financing, and technical solution development. In December 2023, the parliament adopted voting procedures in local government referendums - whereby voting via electronic voter register will be possible through registration envelopes, until the introduction of the online electoral register. To ensure participation in decision-making in local governments and influence the work of the council in the interests of local residents, as of September 1, 2024, the residents have the opportunity to propose local government referendums.<sup>563</sup>

Additionally, in December 2023, the parliament, the European Commission, and the European Parliament Liaison Office in Latvia signed a Memorandum of Understanding on strategic partnership. The memorandum aims to jointly raise awareness and educate society about important matters concerning Latvia's membership in the European Union, promote broader public participation in EU-related discussions, and provide information about the role of national parliaments in EU-level decision-making.<sup>564</sup>

To promote meaningful public participation, the State Chancellery has developed new procedures and drafted a new legal framework. The proposed legislation updates the process for institutions to provide opportunities for public participation and introduces significant changes to the current arrangements. For instance, it clarifies that opportunities for public participation should be provided for both policy-making processes, such as drafting planning documents and legislation, as well as for other initiatives and processes of public interest, including reforms and budgetary matters. The draft legislation also emphasises the importance of public feedback in fostering understanding and citizen involvement in decision-making processes. Institutions are encouraged to publish summaries of public participation events on the TAP portal or their websites, outlining proposals received and follow-up actions. This enhances transparency and accountability in public administration.

An important aspect of the proposed legislation is the ability for citizens to initiate their own participation processes on issues, with institutions obligated to consider these requests and respond if opportunities for public participation are not provided.

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<sup>563</sup> <https://www.saeima.lv/en/news/saeima-news/32967-the-saeima-adopts-voting-procedures-in-local-government-referendums-until-the-introduction-of-the-online-electoral-register>

<sup>564</sup> <https://www.saeima.lv/en/news/saeima-news/32991-saeima-signs-memorandum-of-understanding-to-promote-public-participation-in-eu-related-discussions>

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Additionally, the draft legislation updates existing forms of participation by standardising their conditions and incorporating innovative methods such as think tanks and project teams. This move aims to provide greater clarity in organising various participation opportunities for both authorities and the public, fostering more inclusive and effective decision-making processes. Following proposals from civil society calling to implement civil dialogue, similarly to social dialogue, both the government and parliament have expressed a political commitment to implementing civil dialogue through various policy documents. These include the National Development Plan, Declaration of the Government, Action Plan of the Government, Open Government Plan, Guidelines for Development for a Cohesive and Civic Active Society, and other key political documents pertaining to civil society.

The Government's Declaration and the Action Plan include a political commitment to promote a cohesive society, increase funding for initiatives of civil society organisations, develop a legal framework for civil dialogue, and strengthen the resilience of society.

The plan includes commitments on strengthening civil society, civil dialogue, cohesive societies and societal resilience by:

- 🔍 promoting a cohesive society – increasing community representation in cohesion-building activities, promoting inclusive community self-organisation, strengthening local communities and organisations working with ethnic minorities, vulnerable and disenfranchised groups.
- 🔍 increasing funding for CSOs ' initiatives – increasing funding for key CSO support programmes, creating a new programme to promote volunteering.
- 🔍 developing of a legal framework for civil dialogue – in addition to the practical implementation of civil dialogue,
- 🔍 strengthening societal resilience – in addition to the establishment of a Crisis Management Centre, strengthening the self-organisation of society and local communities, the psychological resilience of the population, ensuring resistance to misinformation and the improving capacity of the population to organise resistance in the event of a possible invasion.

The government's commitment to the implementation of the plan is also welcome, with the involvement of its social and cooperation partners and non-governmental organisations representing the sector in the implementation of the measures included in the action plan, as well as the semi-annual reporting on the implementation of the measures in the plan.

In addition, there are financial milestones set for advancing civil dialogue in Latvia. Two specific programs for civil dialogue will begin in 2024. The first program is funded under the European Social Fund Plus (ESF+) for the implementation of civil dialogue. Cooperation partners from CSOs will be allocated 500,000 euros for the period of 2024-2027. The second program provides funding from the national budget for the Memorandum Council as the central civic platform. An annual allocation of 200,000 euros is designated for this purpose, spanning from 2024 to 2026.



# Civil society resilience

CSOs play a vital role in fostering a strong, independent, and democratic civil society with a focus on the common good and social impact, thus increasing societal resilience. Recent crises in Latvia, such as the COVID-19 pandemic and Russia's aggressive invasion of Ukraine, underscored the indispensable role of civil society in crisis response and humanitarian aid efforts, particularly at the local level. Leaders within local communities, social media influencers, and national-level CSOs all played crucial roles in these crisis situations, driven by shared values regarding humanity, rights, and freedoms. They served as trusted sources of information, catalysts for action, facilitators of connections, and agents of change.

The past years have demonstrated that motivated and skilled individuals can lead remarkable civil society actions at all levels. It is noteworthy that the majority of these roles have been performed by women, who constitute a predominant part of the civil society sector in Latvia.

In recognising the importance of bolstering the capacity of CSOs, it is acknowledged that there is a need to strengthen resources at the regional level to promote social resilience. However, municipal resources alone are insufficient for this purpose. While increasing funding for CSOs is necessary, there is a concern that a significant increase could lead to undue political influence over CSO activities. Therefore, a careful balance must be struck to ensure that CSOs can effectively fulfil their roles while maintaining their independence and integrity.

During 2023, Civic Alliance – Latvia and The Latvian Platform for Development Cooperation (LAPAS) collaborated with national and international experts on a series of activities for CSOs. These activities included workshops and training aimed at building various crisis management skills, ranging from individual to collective action. The initiative aimed to establish a network of resilience champions within the civil society sector, to increase social capital and lead by example.

Through these workshops and training, CSOs were equipped with the necessary skills and knowledge to effectively respond to crises, whether at the individual level or through collaborative efforts. By empowering CSOs with crisis management skills, the initiative aimed to strengthen their ability to navigate and overcome challenges, ultimately contributing to the resilience of the civil society sector as a whole.

The capacity of the civil society sector to respond to crises is currently limited, but its role in providing support during the later stages of crises is growing. CSO representatives interviewed for a study,

conducted by PROVIDUS in 2023,<sup>565</sup> expressed that the sector in Latgale (eastern Latvia, next to the Russian border) was not active during crisis situations, such as in the pandemic or during the arrival of refugees from Ukraine. Reasons cited included a lack of capacity for additional activities, perceived redundancy due to active local government intervention, and concerns about ethnic tensions affecting their involvement.

However, examples were provided where organisations became more engaged in crisis-related issues as the situation evolved, such as supporting the integration of Ukrainian civilians into the local community. Additional funds from sources like municipalities and the Society Integration Fund were crucial for facilitating such activities.

# Recommendations

## Targeted recommendation:

- 🔍 Recognise and implement civil dialogue as equal dialogue to social dialogue

- 🔍 Identify the institution responsible (at political and civil servant level) for the development of civic society and the strengthening of democracy, through cross-sectoral policies to guide and coordinate reforms; to develop and support mechanisms for societal self-organisation and resilience, as well as the establishment and implementation of a crisis management system, which is particularly relevant in the current geopolitical situation.
- 🔍 Take measures to increase the participation of civil society in decision-making at all levels, including local, national and parliamentary levels in practice.

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<sup>565</sup> <https://providus.lv/wp-content/uploads/2023/11/Providus-Latgale.pdf>

- 🔍 Ensure public participation in the planning and monitoring of public funding.
- 🔍 Implement a targeted civic society development policy in practice, with permanent state budget funding to strengthen civil society capacity.

# About the author

The Civic Alliance - Latvia is an independent umbrella non-governmental organisation dedicated to strengthening civil society and democracy. Its mission is to represent the collective interests of civil society, including associations and foundations, while upholding fundamental democratic freedoms and human rights. The Civic Alliance - Latvia boasts a membership of over 140 organisations, representing approximately 70,000 individuals.





# Civic Space Report 2024

# POLAND



Ogólnopolska  
Federacja  
Organizacji  
Pozarządowych

INSTYTUT SPRAW  
PUBLICZNYCH





# Key trends

- 🔍 CSOs, journalists and activist remain targeted by SLAPPs.
- 🔍 Criminalisation of activists assisting refugees and asylum seekers at the Polish/Belarusian border continues.
- 🔍 Violations on the right to protest an increasing concern.

# Summary

Civic space is rated as “Obstructed” in Poland.<sup>566</sup> In its 2023 report, the European Commission recommended that the government take steps to “improve the framework in which civil society operates and continue such efforts regarding the Ombudsperson, taking into account European standards on civil society and Ombuds institutions”. It also made recommendations on the granting of operating licenses to media outlets and independent governance and editorial independence of public service media. No progress has been made in this regard under the Law and Justice (PiS) administration (before the 15 October election).

In 2023 civil society organisations galvanised around the elections, including voter turnout campaigns and election monitoring. The election period saw increasing xenophobia and scapegoating of migrants by the ruling Law and Justice (PiS) party for election purposes, yet no counter-narrative on migration was offered, even by the majority of the opposition. The situation at the Poland/Belarusian border remains grave, with ongoing pushbacks of refugees and asylum seekers being legitimised by

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<sup>566</sup> <https://monitor.civicus.org/country/poland/>

a 2021 regulation<sup>567</sup>. Furthermore, organisations and activists assisting migrants at the border have faced criminalisation and harassment.

CSO, journalists, and environmental and LGBTQI+ defenders remain targeted by Strategic Lawsuits against Public Participation (SLAPPs). Police violence during peaceful assemblies remains a concern. Funding remains a challenge for independent civil society, with a lack of transparency and a funding policy reflecting the official party line (under the Law and Justice government).

# Institutional, political and socio-economic landscape

The parliamentary elections in Poland dominated 2023. This was also the case for the CSO sector, which focused on activities around the elections, including the monitoring of the campaign and election observation, which considerably overshadowed other activities for activists and NGOs alike. While the elections were deemed free, given the significant domination of the ruling right-wing coalition over the media landscape and irregular use of public funding and other resources (incl. from state-controlled enterprises), they were not recognised as fair.<sup>568</sup> According to OSCE head of delegation Pere Joan Pons: “While the elections in Poland were competitive, we noted the erosion of checks and balances to gain further control over state institutions by the governing party, including

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<sup>567</sup> **The procedure of returning foreigners to the border line was introduced through an amendment in August 2021 of the March 13, 2020 Regulation of the Minister of Internal Affairs and Administration on temporary suspension or restriction of border traffic at certain border crossing points, Journal of Laws, item 435 as amended.**

<sup>568</sup> <https://www.osce.org/files/f/documents/2/4/555048.pdf>

## Civic Space Report 2024

the courts and the public media. (...) This tilted the playing field, which meant the opposition did not have fully equal opportunities."<sup>569</sup>

The situation of minorities, including the LGBTQI+ community and in particular transgender people, was also impacted by the elections as the targeting of minorities was a popular and recurring theme of right-wing parties in Poland.<sup>570</sup> The ruling PiS party, also stirred anti-German and xenophobic sentiments to delegitimise the candidates of the opposition (Donald Tusk in particular)<sup>571</sup>. Additionally, asylum-seekers have been targeted by negative political rhetoric, contributing to the already difficult situation of those seeking refuge in Poland.

CSOs were active in the legal developments before elections, such as the abrupt and last-minute amendments to the election code that introduced changes to favor the ruling party. For instance, they increased the number of Polling Election Committees (PECs) in rural areas, despite the main challenges of oversized PECs in cities. However, the rural electorate was a significant base for the then-ruling United Right<sup>572</sup>. Several organisations were engaged in monitoring the abuse of state resources in the election campaign, led by the Accountable Politics Foundation.<sup>573</sup>

Furthermore, a broader group of organisations engaged with parliamentary candidates at the conference "We have an idea for Poland," where they presented their vision for reforms in areas like the rule of law, education, and minority rights, which was endorsed by politicians of the then opposition.<sup>574</sup>

The extensive voter turnout (74,38 %) was at least in part due to a dozen pro-voting campaigns. Examples include campaigns addressed to women, such as Great Coalition for Equality and Choice - addressing reproductive rights,<sup>575</sup> East Initiative Foundation (young women),<sup>576</sup> Batory Foundation addressing women in their thirties and forties or Women's Power Foundation campaign "Women to the polls."<sup>577</sup> Other campaigns were addressed at young people, e.g. a TikTok account run by

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<sup>569</sup> <https://www.osce.org/odihr/elections/poland/555072>

<sup>570</sup> <https://www.theguardian.com/world/2022/aug/24/trans-community-in-poland-braces-for-political-attacks-as-election-nears>

<sup>571</sup> <https://www.dw.com/en/whats-at-stake-in-polands-fall-election/a-66501627>

<sup>572</sup> <https://ofop.eu/nie-dla-pospiesznych-i-nieprzemyslanych-zmian-w-kodeksie-wyborczym- stanowisko-organizacji-spolecznych/>

<sup>573</sup> <https://odpowiedzialnapolityka.pl/publikacje/raporty-z-observacji/naduzywanie-zasobow-publicznych-w-kampanii-wyborczej- raport-wstepny>

<sup>574</sup> <https://ofop.eu/mamy-pomysl-na-polske/>

<sup>575</sup>

<https://www.facebook.com/wielkakoalicja/posts/pfbid02eyULkTYZNq5M39XV9zLBvShoBGf wprDijHsP7pE9REkKJweqBTsWqTAn2h9uNL6vl>

<sup>576</sup> <https://www.youtube.com/watch?v=3D4p1q-wuhM>

<sup>577</sup> <https://kobietynawybory.org/>

Association 61/I have a right to know (smart voting)<sup>578</sup> or Foundation for Supporting Rural Communities which addressed young people in rural communities.<sup>579</sup> Amnesty International and Helsinki Foundation, with the support of other organisations, conducted a campaign under the slogan "Don't let the referendum fool you. Don't be manipulated. Refuse to take the ballot paper spreading prejudiced referendum. Say "NO" to the referendum, vote in the elections."

There was also a significant part of the public (above 20,000) mobilised by the Committee for Defence of Democracy for public election observation.<sup>580</sup>

After elections - mostly in November and December - organisations advocated for more participatory process of electing persons heading or forming the most important institutions in the country, such as ombudsperson for children,<sup>581</sup> head of the data protection office<sup>582</sup> or members of the election committee.<sup>583</sup>

Other organisations became involved in the public debate on the first changes introduced by the new government, among which the most visible were changes in the public media<sup>584</sup>, in reproductive rights via the in vitro law<sup>585</sup> and the renewed discussion around the introduction of civil partnerships (after the ruling of the ECHR of 12 December 2023).<sup>586</sup>

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<sup>578</sup> <https://www.tiktok.com/@orientuj.sie>

<sup>579</sup> <https://www.facebook.com/reel/832443948362147>

<sup>580</sup> <https://okw.info.pl/>

<sup>581</sup> <https://publicystyka.ngo.pl/kto-zostanie-rzecznikiem-praw-dziecka>

<sup>582</sup> <https://panoptykon.org/wybory-prezesa-uodo-2023-debata-pytania>

<sup>583</sup> <https://odpowiedzialnapolityka.pl/publikacje/stanowiska/list-otwarty-do-marszalka-sejmu-w-sprawie-wysluchania-publicznego-kandydatow>

<sup>584</sup> <https://hfhr.pl/aktualnosci/stanowisko-hfpc-ws-zmian-w-mediach-publicznych>

<sup>585</sup> <https://nasz-bocian.pl/nasze-dzialania/projekt-ustawy-tak-dla-vitro-w-sejmie>

<sup>586</sup> <https://kph.org.pl/trybunal-w-strasburgu-nakazal-polsce-uznanie-praw-par-osob-tej-samej-plci-brak-ochrony-prawnej-zwiazkow-osob-tej-samej-plci-narusza-konwencje-panie-premierze-spotkajmy-sie-mowia/>

# Civic freedoms: regulatory environment and implementation

## Freedom of association

The legal environment governing CSOs operation in Poland has not been modified in the course of 2023. According to the law, registration courts have seven days to consider an application for the establishment of an association or foundation. In reality, however, the process often takes many weeks. Inconsistent jurisprudence has led to some courts questioning certain provisions in the statutes of new organisations, which further prolongs the process. Companies and other private enterprises, on the other hand, can count on fast-track registration.

The possibility to register a CSO with the court by means of electronic communication was introduced in the middle of 2021. Thus 2022 and 2023 were the first years, where it was possible to assess the effectiveness of the new system. Unfortunately, the new registration procedures did not solve long-standing problems with registration. Rather, the process of registering a new organisation continued to take a long time in some parts of the country. Furthermore, both registration and online reporting are particularly difficult for small CSOs and those whose members are digitally-excluded.<sup>587</sup>

The standard annual reporting requirements for organisations registered with the National Court Register are also burdensome. They must submit annual reports on income and corporate income tax due. The reports must be signed by their board members through the use of electronic signatures, which costs several hundred zloty (approx. 100 EUR) per year. This creates a particular burden on smaller organisations who have limited budgets and capacity. Only CSOs that did not employ a single person (even on minimum wage) in the reporting year are exempt from this requirement.

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<sup>587</sup> Pazderski F. (2023), 2022 Civil Society Organization Sustainability Index, FHI360/USAID, Washington DC, <https://www.isp.org.pl/en/publications/2022-civil-society-organization-sustainability-index-1283>, p. 2.



Given the difficulties associated with registering and reporting, an increasing number of community initiatives are choosing not to seek formal legal status and are operating as non-registered structures instead. This trend has been fostered by the increase in public funding available to such initiatives over the past several years, as well as the development of social media and crowdfunding tools.

In 2023 the Family Foundation Act was finalised. CSOs criticised the name of the proposed new legal form as misleading as family foundations are not civic organisations. Rather, their purpose is to organise succession in large companies and ensure the continuation of business operations. Despite CSOs' appeals, the government did not change the name. The law was finally passed at the beginning of 2023.

Work on the NGO reporting bill, introduced in 2021, continued throughout 2023. However, no further consultations were organised with CSOs to validate its assumptions. The draft bill increases oversight over civil society and grants broad supervisory powers to the Chairman of the Committee for Public Benefit (the government body responsible for coordinating policies concerning CSOs). The position paper of the Polish National Federation of NGOs, the Klon/Jawor Association and the Donors' Forum in Poland concerning this bill observed that "the bill (...) is poorly drafted, does not address the real problems of organisations and is more an element of centralising government policy than an idea to simplify social activities." "The draft builds an atmosphere of suspicion around the operation of social organisations, introduces a new category of domestic and foreign donations and imposes on organisations the obligation to report additional information on large donations from private donors. New areas are thus emerging over which the State wants to have administrative control, on the assumption that these are potentially dangerous areas and require greater oversight than is the case under current legislation."<sup>588</sup>

In addition, work continued on a parliamentary bill on the transparency of NGO funding (introduced in a parliament in 2022). The bill would have required CSOs to keep registers of contributions and contracts and disclose information on support received, sources of project funding and other income, and costs and types of activities carried out. The law also proposed new reporting obligations, especially for the larger organisations and entities receiving funding support from abroad. Work on both bills were not concluded before the end of the Sejm's term and therefore both bills were subject to discontinuation.

The second half of the year also brought an interesting example of how the Referendum Law can be used to benefit CSOs. The provisions of this act allowed NGOs with proper statutory purposes to register with the National Electoral Commission (Państwowa Komisja Wyborcza, PKW) as entities entitled to officially conduct referendum campaigns. Thanks to the engagement by a group of CSOs, these provisions proved to be effective. After fulfilling rather simple administrative procedures, these CSOs obtained a right to apply for free airtime in the public media at national and regional level.

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<sup>588</sup> <https://ofop.eu/ustawa-o-sprawozdawczosci/>

Although it must be acknowledged that the possibility of exercising this entitlement came with administrative burden as it required the submission of additional applications by each of the dozens of CSOs, using different templates and often documents needed to be submitted in person at the CSOs' offices in different parts of the country. Such a procedure represents a significant inconvenience for many CSOs. Publicity material prepared by CSOs and submitted to public media (published on the basis of existing law), which stated that the referendum calls for human rights violations, were available in the public media and widely promoted.<sup>589</sup>

## Freedom of peaceful assembly

The most comprehensive report on the legal framework when it comes to the freedom of peaceful assembly was published in 2018 by the Office of the Commissioner for Human Rights (the Ombudsman). The overall legal situation has not improved since then.<sup>590</sup> If anything, it has further deteriorated during the pandemic. The report of the Ombudsman summarised the legal challenges that the modified regulations (the so-called "cyclical assemblies") introduced by Law and Justice in 2016 brought about. According to the Ombudsman's evaluation for the period 2016-2018, the new regulations restricted freedom of peaceful assembly guaranteed by the Polish constitution (Article 57) and international law in a significant manner, raising doubts about their constitutionality. The Ombudsman's office also supported the civic legal challenge to the restrictions introduced during the pandemic (sygn. akt SK 4/21). However, the Constitutional Tribunal discontinued the proceedings in this case in 2023.<sup>591</sup> The Ombudsman also intervened in the case of police interventions during counter-demonstrations organised by the public to express dissent, which were often blocked by the police.<sup>592</sup> According to the Ombudsman "(t)he police must (...) look for the least restrictive solutions, which in principle allow both demonstrations to take place at the same time."<sup>593</sup>

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<sup>589</sup> [https://youtu.be/Tq-1n0fbDGw?si=Dk5TzTpyg6iZxng\\_](https://youtu.be/Tq-1n0fbDGw?si=Dk5TzTpyg6iZxng_)

<sup>590</sup> <https://hfhr.pl/aktualnosci/opinia-hfpc-w-sprawie-odwolania-od-decyzji-prezydenta-warszawy-zakazujacej-organizacji,l:948771893>; Full report: [https://bip.brpo.gov.pl/pl/content/wolnosc-zgromadzen-w-polsce-jest-naruszana-zrenica-wolnosci-raport-rpohttps://bip.brpo.gov.pl/sites/default/files/Wolno%C5%9B%C4%87%20zgromadze%C5%84%20w%20Polsce%20w%20latach%202016-2018.%20Raport%20RPO\\_0.pdf](https://bip.brpo.gov.pl/pl/content/wolnosc-zgromadzen-w-polsce-jest-naruszana-zrenica-wolnosci-raport-rpohttps://bip.brpo.gov.pl/sites/default/files/Wolno%C5%9B%C4%87%20zgromadze%C5%84%20w%20Polsce%20w%20latach%202016-2018.%20Raport%20RPO_0.pdf)

<sup>591</sup> <https://bip.brpo.gov.pl/pl/content/rpo-wolnosc-zgromadzen-pandemia-tk-postanowienie>

<sup>592</sup> <https://bip.brpo.gov.pl/pl/content/rpo-zgromadzenia-kontrmanifestacje-miesiecznice-policja-ponowne-odpowiedz>, see also: <https://bip.brpo.gov.pl/pl/content/rpo-zgromadzenia-kontrmanifestacje-miesiecznice-policja-ponowne-odpowiedz> - S.embed\_link-K.C-B.1-L.5.zw

<sup>593</sup> <https://warszawa.wyborcza.pl/warszawa/7,54420,29543056,megafony-lotnej-brygady-opozycji-to-narzedzia-sluzace-do-popelnienia.html>

Given the numerous irregularities during protests in recent years (e.g. during Women's Strike protests for reproductive rights), including incidents of unchecked police violence towards protesters, the Ombudsman's office applied to the Ministry of Interior and Administration to equip police officers from units dedicated to crowd management with clearly visible individual identification marks, e.g. service numbers.<sup>594</sup> Unfortunately, the Ombudsman's call was rejected by the administration in 2023. Hence, it is almost impossible to hold individual members of law enforcement to account for unlawful, excessive or unjustified use of force during protests and manifestations.<sup>595</sup> A report published by Amnesty International in 2020 (covering 2018-2019) also documented the improper use of chemical substances (pepper spray and others), and excessive force during protests; as well as instances of police surveillance of demonstrators.<sup>596</sup> Such was the case, for example, in 2022 during a counter-demonstration against the 150th Smolensk crash commemoration, which was widely commented on by media and society.<sup>597</sup> Although the counter-demonstrations, which happen regularly and legally, had been previously disrupted by the police, this particular case was investigated by the prosecutor's office, given that it was widely covered. The case was dropped in 2023, even though one of the demonstrators was knocked over and choked. On April 4, 2023, a complaint against the discontinuation of the investigation was filed.

It is important to emphasise in this context that police violence in Poland has been a growing problem. As of July 2023, The Ombudsman registered 111 cases of death resulting from various types of police interventions in Poland in recent years (2018-2021)<sup>598</sup>. Another case that attracted particular attention in 2023 was the degrading treatment by the police of a person seeking medical and psychological support in relation to the termination of pregnancy.<sup>599</sup> In this case the police were called by the doctor (who decided an intervention was needed given the psychological state of the patient). The woman was transported to a hospital, where two female police officers told her to

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<sup>594</sup> **The situation escalated in particular during the pandemic. See also:**

<https://oko.press/warszawa-stolica-policyjnej-przemocy-wobec-demonstrujacych-duch-nowogrodzkiej>

<sup>595</sup> <https://bip.brpo.gov.pl/pl/content/rpo-policja-numer-sluzbowy-mswia-premier-resort-odpowiedz-kolejna>

<sup>596</sup> <https://www.amnesty.org.pl/wp-content/uploads/2020/11/Zgromadzenia-PL.pdf>

<sup>597</sup> <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyła-sprawę>

<sup>598</sup> <https://oko.press/policyjna-przemoc-co-zrobic-by-policja-nie-zabijala>  
<https://warszawa.wyborcza.pl/warszawa/7,54420,30506000,piet-lat-i-ponad-sto-zgonow-po-interwencji-policji-to-ona.html>

<sup>599</sup> <https://wiadomosci.onet.pl/krakow/nowe-fakty-w-sprawie-pani-joanny-lekarka-opowiada-o-wezwaniu-sluzb/enjgfwp>

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undress, do squats and cough. This police intervention was unnecessary and, according to the Ombudsman for Patient Rights, violated the right to privacy and respect for intimacy and dignity.<sup>600</sup>

It is important to note that restrictions to freedom of peaceful assembly were not only implemented by the ruling party. The mayor of Warsaw, Rafał Trzaskowski from the Civic Platform, tried to prevent the demonstration calling for a ceasefire for Gaza from happening (November 2023), in light of the escalating violence in Israel/Palestine. However, after a complaint by the Helsinki Foundation, the decision was revoked by the court.<sup>601</sup>

Several other protests in solidarity with Palestine and Israel have taken place in several cities across Poland without incidents. However, an earlier protest in October 2023<sup>602</sup> was condemned by the Israeli ambassador to Poland for being “blatantly antisemitic” due to a poster held by Norwegian student, Marie Anderson, that said “Keep the world clean” alongside an image of the Israeli flag being thrown in a bin. The ambassador called on the authorities to investigate the student. Under Polish law, inciting hatred on the basis of religious, ethnic or national differences is a crime punishable by up to two years in prison. The ambassador also condemned the chanting of “genocide” and the slogan “from the river to the sea, Palestine will be free”. Polish President Andrzej Duda said he “strongly condemns the antisemitic slogans that appeared during [the] march in Warsaw”. Following this, the Medical University of Warsaw (WUM) suspended the student. Responding to the criticism against her poster, Anderson stated that her poster did not intend any hatred towards Jewish people. “My poster is about the Israeli government...and the ethnic genocide they are doing right now to the Palestinian people”. The university’s disciplinary officer has also been asked to conduct an investigation into four other students who were reported to have “posted legally questionable content on social media”.<sup>603</sup>

## Freedom of expression

On 28 March 2023, the Human Rights House Foundation delivered a statement at the UN Human Rights Council depicting the current deterioration of media freedom and pluralism in Poland, but

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<sup>600</sup> <https://wiadomosci.gazeta.pl/wiadomosci/7,114883,30614069,sprawa-pani-joanny-z-krakowa-rpp-wskazal-3-przypadki-naruszenia.html>

<sup>601</sup> <https://www.amnesty.org.pl/kolejny-prewencyjny-zakaz-zgromadzenia-uchylony-przez-sad/>, <https://hfhr.pl/aktualnosci/opinia-hfpc-w-sprawie-odwolania-od-decyzji-prezydenta-warszawy-zakazujacej-organizacji.l:948771893>

<sup>602</sup> <https://notesfrompoland.com/2023/10/21/israeli-ambassador-condemns-blatant-antisemitism-at-pro-palestine-march-in-warsaw/>

<sup>603</sup> <https://notesfrompoland.com/2023/10/31/warsaw-university-suspends-norwegian-student-over-keep-world-clean-banner-at-palestine-march/>

also highlighting the general decline in freedom of opinion and expression more broadly. This downward trend also pertains to academic freedom and artistic expression.<sup>604</sup>

In 2023, the Helsinki Foundation for Human Rights published a report describing the situation in regional media outlets (Polska Press) after their takeover by PKN Orlen, a state-owned company. The findings are based on interviews with the journalists of Polska Press, which comprises of 20 local newspapers in 15 regions. It identified a plethora of problems triggered by the takeover, which significantly impacted freedom of press. For example: it found that there was *favouring of the ruling majority and its politicians in the message of the editorial board, with a person participating in the survey stating, "the new editor-in-chief said directly 'we are not attacking the government'"*<sup>605</sup>. Other concerns included the absence of coverage of the opposition and the restriction to coverage of topics, which were considered to be too contentious by the ruling party, such as LGBTQI+ rights.<sup>606</sup>

The situation in public media has been increasingly worse for many years and, as summarised in a report by Freedom House, is very far from "the editorially independent public service model."<sup>607</sup> The overhaul of the media landscape by PiS (implemented since 2015), including the introduction of the National Media Council, has created legal chaos, marginalising the National Broadcasting Council (KRRiT), which is the constitutional agency dedicated to media oversight. This allows TVP info (Polish public TV) to participate in not only propagandist coverage of the government but also in promulgating hate speech (famous example – the programme *Inwazja*) or conducting attacks on various groups in Polish society.<sup>608</sup> The same goes for public radio. The most tragic instance of political misuse of public media in 2023, resulted in the suicide of the son of an opposition MP Magdalena Filiks, after sensitive information was revealed by TVP info and a public regional radio station in Szczecin that her son was a victim of pedophilia.<sup>609</sup>

In 2023, the Minister of Science and Education, Przemysław Czarnek targeted Barbara Engelking, the head of the Center for Holocaust Research, and one of the world's most renowned Holocaust researchers. Her remarks on Polish attitudes toward Polish Jews during World War II were summarised by Czarnek as "a slander of Poland's good name". After this incident, Professor

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<sup>604</sup> <https://humanrightshouse.org/statements/hrc52-freedom-of-opinion-and-expression-in-poland/>

<sup>605</sup> <https://hfhr.pl/publikacje/raport-od-prasy-regionalnej-do-orken-press-sytuacja-w-mediach-nalezacych-do-polska-press->

<sup>606</sup> <https://hfhr.pl/upload/2023/07/report-from-the-regional-press-to-orken-press.pdf>

<sup>607</sup> [https://freedomhouse.org/sites/default/files/FH\\_Poland\\_Report\\_Final\\_2017.pdf](https://freedomhouse.org/sites/default/files/FH_Poland_Report_Final_2017.pdf)

<sup>608</sup> <https://www.wirtualnemedi.pl/artykul/tvp-inwazja-przeprosiny-atak-na-lgbt>

<sup>609</sup> <https://fakty.tvn24.pl/zobacz-fakty/samobojstwo-syna-poslanki-niektorzy-uznali-ze-mozna-zrobic-z-tego-sprawie-polityczna-ra1138917-ls6817050>



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Engelking, who was supported by hundreds of academics, took legal action against the Minister.<sup>610</sup> The attack can be seen as a part of the confrontation with the Centre, which had its funding temporarily cut by the Minister with a similar justification in the spring of 2023. Czarnek stated that “insulting Poles and the Polish nation, the greatest victim of World War II, was not the role of Polish scientists supported by state money”. Hence, he refused to finance the work of the Centre, which is part of the Polish Academy of Sciences, as earlier planned. After worldwide opposition, from institutions such as Yad Vashem, the money has been disbursed in full. This confrontation with the academic community might have had serious consequences for academic freedom in Poland as it could also potentially undermine the autonomy of universities when it comes to research and funding, creating a chilling effect.<sup>611</sup> However, the outcome of the elections resulted in a change at the helm of the Ministry in October 2023.

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<sup>610</sup> <https://fakty.tvn24.pl/fakty-po-poludniu/profesor-engelking-wytacza-proces-przemyslawowi-czarnkowi-oczekuje-przeprosin-st7302776>

<sup>611</sup> <https://oko.press/czarnek-pieniedzy-na-badania-nad-zaglada>

# Safe space

## Strategic Lawsuits Against Public Participation

In 2022, Poland was named the country with the highest number of SLAPP cases by the Coalition Against SLAPPs in Europe (CASE).<sup>612</sup> In 2023, the situation in Poland remained unchanged and the SLAPP cases continued.<sup>613</sup> Journalists, activists, and CSOs are targeted predominantly by politicians and public administration. SLAPPs are usually based on civil law proceedings (based on Article 23 of the Civil Code). However, it is also quite common in Poland that criminal law is used to muzzle civil society and the media (based on Article 212 of the Criminal Code – see below).<sup>614</sup> One of the problems that the Polish anti-SLAPP group established as a part of the CASE coalition in 2022, is the underreporting of cases. In 2022 there were 236 SLAPP cases in Poland (based on the Ministry of Justice data concerning Article 212 (2) of the Criminal Code). This means that there might be many more civil cases as there is a tendency to not reveal litigations (especially among prosecuted journalists).<sup>615</sup> Therefore, the actual number of SLAPPs in Poland is unknown and it is safe to assume that it might be significantly higher. Official reports, such as the report published by CASE, name 128 such court cases.<sup>616</sup> One of the reasons for underreporting is a lack of awareness that a case might qualify as SLAPP or fear of further retribution.

Intimidation as a result of SLAPPs is a daily reality for environmental activists and journalists globally (which is confirmed in numerous reports by international organisations such as the International Centre for Non-profit Law (ICNL) or Amnesty International). However, in the Polish case, activists from

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<sup>612</sup> <https://www.the-case.eu/>, <https://www.the-case.eu/latest/the-european-slapp-contest-2024/>

<sup>613</sup> <https://www.the-case.eu/latest/the-european-slapp-contest-2024/>

<sup>614</sup> **Art 212 of the Criminal Code: “(1) Whoever slanders another person, group of persons, an institution, a legal person or organizational unit without legal personality in a manner that may humiliate him in the eye of public opinion or expose him to the loss of confidence necessary for a given position, profession, or type of activity, shall be subject to a fine or restriction of liberty. (2) If the perpetrator commits the act referred to in paragraph 1 by means of mass communication, they shall be subject to a fine, restriction of liberty or imprisonment of up to one year.”**

<sup>615</sup> <https://publicystyka.ngo.pl/skala-zjawiska-slapp-w-polsce>

<sup>616</sup> <https://www.the-case.eu/latest/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/>

a variety of CSOs (including those defending the LGBTQI+ persons) have been the target of lawsuits. Examples of court cases in 2023 include:

The Court of Appeal in Białystok dismissed the appeal of the Przasnysz district in a case against the LGBTQI+ activists who published a rainbow map of local governments (known as the Atlas of Hate), which introduced the infamous so-called 'anti-LGBT zones' or similar documents and guidelines, such as the Local Government Charter of the Rights of Families ("Atlas nienawiści"). The court found that the defendants acted in the public interest and within the limits of public debate.<sup>617</sup>

Gaz System, the state-owned company that operates Poland's gas transmission network, sued an activist from the Bombelki collective and the environmental magazine Green News over the publication of an article questioning the development of gas infrastructure. The defendants are represented by Helsinki Foundation for Human Rights.<sup>618</sup>

## The humanitarian crisis at the border and the criminalisation of solidarity

Since the crisis at the Polish-Belarusian border has started, 55 people attempting to cross the border have died<sup>619</sup>. The problem which still remains unresolved has been summarised by the Commissioner for Human Rights, Marcin Wiącek, in a letter to the new government on the International Day of Migrants (18.12.23): *"(t)he most important problem that needs to be solved is the use of the so-called pushbacks by the Border Guards, i.e. returning foreigners to the state border line immediately after being detained, without prior individualized assessment of their factual and legal situation"*<sup>620</sup> Based on the data of the Grupa Granica the number of people asking for help and humanitarian assistance still continues to be about 100-150 weekly.<sup>621</sup> Grupa Granica has assisted approximately over 14 000 people since the beginning of the crisis (as of January 2023).<sup>622</sup>

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<sup>617</sup> <https://blog.atlasnienawisci.pl/index.php/2023/04/21/apelacja-powiatu-przasnyskiego-oddalona/>

<sup>618</sup> <https://hfhr.pl/aktualnosci/pozew-przeciwko-aktywistom-ekologicznym-i-gazecie-hfpc-interweniuje>

<sup>619</sup> <https://oko.press/mial-23-lata-ofiara-smiertelna-na-granicy>

<sup>620</sup> [https://bip.brpo.gov.pl/pl/content/rpo-pushbacki-dopuszczalnosc-uchylenie-mswia-odpowiedz-kolejne?fbclid=IwAR00MFr7w3sxl8\\_CUP3yOw6uM2U1UT0ZJ64xEsqdxDi9r9Bf8D\\_VLYqn17w](https://bip.brpo.gov.pl/pl/content/rpo-pushbacki-dopuszczalnosc-uchylenie-mswia-odpowiedz-kolejne?fbclid=IwAR00MFr7w3sxl8_CUP3yOw6uM2U1UT0ZJ64xEsqdxDi9r9Bf8D_VLYqn17w)

<sup>621</sup> <https://www.sklepbezgranic.pl/>

<sup>622</sup> <https://oko.press/kryzys-humanitarny-na-granicy-polsko-bialoruskiej-grupa-granica-pomogliśmy-14-tys-osob>

Hence, almost daily people are trapped at the border in life threatening situations, especially if pushed back on the Belarusian side.<sup>623</sup> When caught by the Polish Border Guards, asylum seekers often have their phones removed, which makes it much more difficult for humanitarian organisations to track individual cases (many people have been pushed back numerous times, many are missing). The Polish section of Doctors Without Borders lists the most typical interventions, which include assistance in cases of sprains, fractures, and dog bites. People are exhausted and dehydrated or have serious physical injuries (some as a result of the fall from the over five-meter-high border wall). In the wintertime, the most typical challenge is hypothermia. People afraid of border violence hide in the border forest, often in highly dangerous swamps.<sup>624</sup>

The most recent case, where a young person from Syria was shot in the back by a soldier, has been described by a lawyer assisting asylum-seekers as a new level of escalation of violence.<sup>625</sup> The gendarmerie's reports indicate that there was an unfortunate accident and a soldier stumbled while firing for warning. Grupa Granica emphasises that the Syrian "*heard one, single and incomprehensible scream, coming at him from behind, followed by a shot that knocked him to the ground, which was followed by three other shots.*"<sup>626</sup>

Not only are the practices at the border inhumane, but importantly unlawful and in contravention of both Polish and international law. As pointed out by Marcin Wiącek, "*The [amended] regulation of the Ministry of Interior and Administration of 13 March 2020, which allows for the so-called pushback, does not guarantee foreigners protection against inhumane treatment and in practice makes it impossible to apply for international protection*". In the letter to the Minister of Interior, Wiącek repeated the decision of the Polish Administrative Court which pointed out that the Regulation violated the *Act on Granting Protection to Foreigners on the Territory of the Republic of Poland* and the *Act on Foreigners*.<sup>627</sup>

Concerningly, activists at the border continue to face intimidation by the Border Guards and the military forces for their life-saving work. Activist Mariusz Kurnyta, describes the situation at the border in the following words: "*Everything would be different and saving human lives would be more efficient, if it were not for the fact that we have to hide from the government apparatus. Not only are we conducting a search and rescue operation, but we have to be hiding it.*" In September 2023, one

<sup>623</sup> <https://fakty.tvn24.pl/zobacz-fakty/trwa-kryzys-na-granicy-spotykamy-coraz-wiecej-ludzi-bardzo-gleboko-poranionych-st7607789>

<sup>624</sup> <https://lekarze-bez-granic.pl/polska-lekarze-bez-granic-prowadza-dzialania-na-granicy-polsko-bialoruskiej/>

<sup>625</sup> <https://oko.press/mial-23-lata-ofiara-smiertelna-na-granicy>

<sup>626</sup> <https://tvn24.pl/bialystok/topilo-zolnierz-postrzelil-migranta-biegly-zbada-bron-z-ktorej-padl-strzal-trwa-wyjasnianie-co-wydarzylo-sie-przy-granicy-st7440023>

<sup>627</sup> [https://bip.brpo.gov.pl/pl/content/rpo-pushbacki-dopuszczalnosc-uchylenie-mswia-odpowiedz-kolejne?fbclid=IwAR00MFr7w3sxI8\\_CUP3yOw6uM2U1UT0ZJ64xEsqdxDi9r9Bf8D\\_VLYqn17w](https://bip.brpo.gov.pl/pl/content/rpo-pushbacki-dopuszczalnosc-uchylenie-mswia-odpowiedz-kolejne?fbclid=IwAR00MFr7w3sxI8_CUP3yOw6uM2U1UT0ZJ64xEsqdxDi9r9Bf8D_VLYqn17w)

of the activists assisting at the border was arrested on charges of human trafficking and is currently awaiting trial. NGOs operating in the region refused to draw conclusions in the case before it went to trial as the activist acted in an individual capacity and is not connected with them. However, some activists engaged in humanitarian assistance expressed concern that the case might be politically motivated, given the government visa scandal during an election campaign. In a press comment, the Helsinki Foundation for Human Rights highlighted many cases where based on accusations that proved to be unsubstantiated.<sup>628</sup> The civic initiative 'Hope and Humanity' expressed support for the activist, stating that the arrest was "aimed at an ordinary person, whose image and life the current authorities prefer to sacrifice", but was "also a demonstration that each of us should be afraid, that anyone could be next".<sup>629</sup>

## Recent court rulings concerning the border crisis

Three activists (from Grupa Granica and Fundacja Ocalenie) who were detained on January, 11th 2022 by the Polish military (10. Brygada Kawalerii Panczernej) have received compensation for their detention. Although the District Court in Bielsk Podlaski, branch in Siemiatycze) decided that it was not illegal to detain them (as they were in an area close to the border), it found that the military violated all procedures. The activists filed for compensation. According to a report by OKO Press: "On October 16, 2023, a verdict was passed: volunteers of the Ocalenie Foundation (Agata Ferenc and Tomasz Thun-Janowski) and a volunteer of the Granica Group, specifically the Homo Faber Association (Dobrosław Rola) will each receive PLN 10,000 in compensation for their "undoubtedly unjust" detention. The judgment is not final."<sup>630</sup>

Foreigners who have been pushed back several times at the Polish-Belarusian border filed complaints against Poland with the European Court of Human Rights. According to the Office of the Commissioner for Human Rights, the application of the unlawful border regulation, which allows to push back those who are crossing the Polish border without any prior assessment of their situation violates the Convention for the Protection of Human Rights and Fundamental Freedoms. The Commissioner for Human Rights published detailed information about the case.<sup>631</sup> The claimants

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<sup>628</sup> <https://bialystok.wyborcza.pl/bialystok/7,35241,30202485,murem-za-ewa-aktywisci-i-aktywistki-w-obronie-aresztowanej.html>

<sup>629</sup> <https://bialystok.wyborcza.pl/bialystok/7,35241,30202485,murem-za-ewa-aktywisci-i-aktywistki-w-obronie-aresztowanej.html>

<sup>630</sup> <https://oko.press/zadoscuczynienie-za-zatrzymanie-dla-aktywistow-na-granicy-sad-nalezy-im-sie-szacunek-nie-represje>

<sup>631</sup> <https://bip.brpo.gov.pl/pl/content/rpo-migranci-pushbacki-opinia-etpc>



maintain that they were detained during the pushbacks which took place on 21 and 22 August 2021 and that they were not informed of the reasons for their detention. Additionally, according to the claim, the District Court in Sokółka refused to consider the merits of their appeals. The claimants also pointed out that the conditions of their detention in the Węgrzyn detention centre were appalling. According to the Ombudsman office, *“the housing conditions in this centre did not meet the standards of appropriate treatment of persons deprived of liberty (...) the conditions prevailing there could be classified as inhuman treatment.”*<sup>632</sup>

## Ongoing targeting of women human rights and LGBTQI+ defenders

Those working on sexual and reproductive health and rights have continued to face threats and attacks from non-State and State actors in 2023. Forms of harassment include SLAPPs and judicial harassment orchestrated by the government, which was enabled by the tightening of the abortion ban and the lack of independence of the prosecution service. Examples of SLAPPs include leaders of the Polish Women’s Strike, Marta Lempart, Klementyna Suchanow and Agnieszka Czerederecka-Fabin, against whom prosecutors filed an indictment in 2022 related to their role in organising major abortion rights protests. They are accused of “causing an epidemiological threat,” criminal charges which carry up to an eight-year prison sentence. Marta Lempart in particular has been facing a total of up to 118 cases against her, by both the State and non-state actors. She was recently acquitted in a case filed against her by Ordo Iuris, an ultra-conservative Christian organisation opposing abortion rights.<sup>633</sup>

There have also been several criminal complaints and investigations on the basis of the provisions criminalising anyone who assists women in obtaining an abortion outside the narrow scope of the law (Article 152 para 2 of the Criminal Code). In March 2023, Justyna Wydrzyńska, an activist with the Abortion Dream Team, a grassroots civil society group, was sentenced to unpaid community service for providing another woman with abortion medication. The case is currently on appeal.<sup>634</sup>

In 2023, civil society remained the main provider of direct assistance to women and girls from Ukraine who need sexual and reproductive health care and gender-based violence support. However, they continued facing serious threats, intimidation and harassment from both public and private actors.

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<sup>632</sup> <https://bip.brpo.gov.pl/pl/content/rpo-migranci-pushbacki-opinia-etpc>

<sup>633</sup> <https://civicspacewatch.eu/poland-activist-marta-lempart-wins-slapp-case/>;  
<https://wroclaw.wyborcza.pl/wroclaw/7,35771,30548082,marta-lempart-wygrala-z-ordo-iuris-sad-okreslenie-sadysci.html>

<sup>634</sup> <https://www.rp.pl/prawo-karne/art38427071-to-nie-koniec-sprawy-aktywistki-skazanej-za-pomoc-w-aborcji>

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Such developments have a broader chilling effect, seeking to diminish reproductive rights defenders' efforts to hold the government accountable and ensure legal entitlements are accessible in practice for all women in Poland.<sup>635</sup>

## LEX TUSK

One of the most controversial legislative acts passed by Law and Justice in 2023 was a bill which allows banning anyone from holding public office for 10 years if the dedicated commission decided that the person in question was subject to "Russian influence". The Law on the State Commission for Investigating Russian Influences on the Internal Security of the Republic of Poland between 2007-2022 (April 2023) has been unofficially called "Lex Tusk". It is believed that the politician, Donald Tusk, was the primary target as it would prevent his re-election.<sup>636</sup> However, 'Lex Tusk' was also seen as extremely dangerous for civil rights in Poland more broadly. One journalist described the bill as a "legal Frankenstein" given that it gives unrestricted powers to, a special non-judicial Commission, composed of nine members elected by the lower house of parliament – the Sejm -- with a simple majority- to demand any documents from any public institution (including those containing sensitive data)<sup>637</sup>. Only the verdict and not the hearings of the Commission would be public.<sup>638</sup> As pointed out by Amnesty International, *"The establishment of this type of institution is reminiscent of practices that resulted in appalling human rights violations in the region of Central and Eastern Europe for decades after World War II, particularly against anyone deemed to be a dissident or critical of the authorities"*.<sup>639</sup> Members of the Commission would be immune from prosecution for their work. Amnesty International stressed that the law could be weaponised to attack *anybody* critical of the government.<sup>640</sup>

Hence, its set-up was in clear breach of the Polish Constitution, European and international law. After the bill caused controversy, not only in Poland but internationally, on 2 June President Andrzej Duda, proposed amendments to the bill (which he himself signed earlier in May). Despite the introduction

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<sup>635</sup> **Joint ROL submission by IPPF, ILGA Europe and Centre for Reproductive Rights.**

<sup>636</sup> <https://wyborcza.pl/7,75398,29805808,lex-tusk-z-zapisow-koncowych-jasno-wynika-po-co-powstala.html>

<sup>637</sup> <https://wiadomosci.onet.pl/kraj/lex-tusk-o-co-chodzi-9-rzeczy-ktore-musisz-wiedziec/jnwtm2e>

<sup>638</sup> <https://wiadomosci.onet.pl/kraj/lex-tusk-o-co-chodzi-9-rzeczy-ktore-musisz-wiedziec/jnwtm2e>

<sup>639</sup>

<https://www.amnesty.org/en/documents/eur37/6931/2023/en/#:~:text=The%20Polish%20parliament%20on%2014%20April%202023%20adopted,Tusk%E2%80%9D%2C%20entered%20into%20force%20on%2031%20May%202023.>

<sup>640</sup> **Ibid**

of changes, such as the appeal procedure in courts, the fundamental premise of the bill has not changed significantly.

## Fear-mongering and the election campaign

While the Law and Justice party was using migration clearly to stoke fear, the opposition did not do much to produce a viable, fact-based counter-narrative, leaving the playing field to the ruling party, as shown in a report on the election campaign by the Helsinki Foundation for Human Rights.<sup>641</sup> Xenophobic language has been used by politicians on both sides as the scandal around the visa scheme gave the opposition an opportunity to attack the government. It was revealed that the Polish consular service was fast-tracking visas against payments to people coming from Asia and Africa. On the other hand, the government used the crisis at the Polish-Belarussian border to increase social anxiety around migration issues.<sup>642</sup>

Additionally, the premiere of the movie “Green Border” by Agnieszka Holland further ignited resentment against those raising the issue of human rights violations at the border, the director included. Holland was attacked by right-wing politicians and representatives of the government.<sup>643</sup> The Minister of Justice, Zbigniew Ziobro, compared her movie to Nazi propaganda. The president doubled down saying that only “pigs were sitting in the cinema”, which is a World War II slogan against Nazi propaganda<sup>644</sup>. The movie also ignited hostile online comments. As reported by journalists, at least two websites promoting the movie had to have their comment sections blocked even prior to the film being screened. The filmmaker admitted that she knew she may be in physical danger.<sup>645</sup>

Additionally, the government pushed for a referendum to accompany the elections (see next section), where migration has also been one of the central topics. It also produced a warning video to be

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<sup>641</sup> [https://hfhr.pl/upload/2023/10/kxenofobia\\_w\\_natarciu\\_1.pdf](https://hfhr.pl/upload/2023/10/kxenofobia_w_natarciu_1.pdf)

<sup>642</sup> <https://www.reuters.com/world/europe/seven-charged-polish-visa-irregularity-probe-prosecutor-2023-09-14/>

<sup>643</sup> <https://www.theguardian.com/film/2023/sep/14/refugee-film-green-border-by-agnieszka-holland-attacked-by-polish-government>, **see also:** <https://bialystok.wyborcza.pl/bialystok/7,35241,30220841,pokazy-zielonej-granicy-w-bialymstoku-agnieszka-holland.html>

<sup>644</sup> <https://www.hollywoodreporter.com/movies/movie-news/poland-government-the-green-border-warning-spot-1235595800/>; <https://www.polsatnews.pl/wiadomosc/2023-09-21/przed-filmem-agnieszki-holland-widzowie-zobacza-specjalny-spot-przygotowany-przez-mswia/>

<sup>645</sup> <https://variety.com/2023/film/global/agnieszka-holland-green-border-backlash-1235771071/>

screened before the movie “Green Border”, which presented a counter-narrative to that of the government. Such practices are a novelty in the history of post-communist Poland.<sup>646</sup>

The ruling alliance also has a long track record of attacking the LGBTQI+ community. Although migration was the leading theme of the campaign, there have also been homophobic statements and narratives coming from the right-wing coalition. As pointed out in the Helsinki Foundation report, the main comments targeted the LGBTQI+ community for the supposed “sexualisation of children”- a persistent theme used in homophobic attacks.<sup>647</sup>

# Funding for civil society

Since the Law and Justice Party came to power in 2015, NGOs that are independent and do not support the right-wing government’s political agenda have experienced substantial funding problems, which (alongside the lingering effects of the pandemic) significantly weakened the civil society sector. There has been a longstanding debate around the National Freedom Institute (NIW) created by the right-wing government to distribute funds and organise calls for the third sector (2017). It has been severely criticised for the allocation of funding in previous years. Immediately after the elections, Michal Braun (Civic Platform), published an open letter to NIW’s Director calling on the institute to suspend the announcement of calls and pointing out the negative experience that CSOs have had in the past few years.

When it comes to the overall track record of the ruling right-wing coalition in the allocation of public funding to independent CSOs, including cultural institutions and organisations, it was marked by a notorious lack of transparency and a funding policy reflecting the official party line. There have been many cases of allocating large amounts of funding to organisations connected to politicians of the ruling coalition, which did not have sufficient institutional capacity to manage such allocations successfully.

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<sup>646</sup> <https://www.hollywoodreporter.com/movies/movie-news/poland-government-the-green-border-warning-spot-1235595800/>

<sup>647</sup> [https://hfhr.pl/upload/2023/10/ksenofobia\\_w\\_natarciu\\_1.pdf](https://hfhr.pl/upload/2023/10/ksenofobia_w_natarciu_1.pdf)

The leading recipients of the grants in the area of culture were predominantly the right-wing and Catholic organisations “promoting Polish artists inspired by Christianity.”<sup>648</sup> A similar problem also pertains to independent cultural and scientific journals, which the Ministry of Culture, Sport and National Heritage have defunded, for example leading cultural journals such as, for example, “Znak”, “Dwutygodnik”, “Pismo. Magazyn Opinii”, “Res Publica Nova”, “Przekrój”. It is concerning that the Minister’s decision was not bound by ranking based on points received from experts, so the decision on the final shortlist was not transparent.<sup>649</sup>

This trend continued in 2023. For example, the Minister of Science and Education, Przemysław Czarnek, publicly admitted that he was not willing to fund left-wing organisations<sup>650</sup>. However, a new development was that the sheer scale of the irregularities of funds distribution had been made public. The most prominent case was the call of the Ministry of Science and Education, which distributed 40 million PLN (Euro amount?) to both inexperienced or newly created organisations linked to the government in various ways.<sup>651</sup>

# Civil dialogue and the right to participation

In 2023 there were no positive steps towards participation and dialogue between the civil society sector and governing bodies. Organisations had some successes in opposing harmful acts.

CSOs objected to the planned amendments to the tax on donations. The respective regulation “group donation fundraising tax” was inserted in the new version of the law (Art. 5.2) of January 26, 2023 on

<sup>648</sup> <https://kultura.onet.pl/wiadomosci/jak-pis-inwestowal-w-kulture-miliony-nie-tylko-dla-tadeusza-rydzyka/2pcxy46>

<sup>649</sup> <https://wyborcza.pl/7,75410,29799497,ministrze-glinski-lub-czasopisma-nie-pomogly-odwolania-prasa.html>

<sup>650</sup> [https://www.rmfm24.pl/polityka/news-czarnek-jednostki-szkodliwe-i-lewackie-zadnych-pieniedzy-nie,nld,6554004#crp\\_state=1](https://www.rmfm24.pl/polityka/news-czarnek-jednostki-szkodliwe-i-lewackie-zadnych-pieniedzy-nie,nld,6554004#crp_state=1)

<sup>651</sup> <https://wiadomosci.onet.pl/kraj/willa-plus-wyjasniamy-co-chodzi-w-glosnej-afierze-wokol-ministra-czarnka/cxz1fll>



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amending laws to eliminate unnecessary administrative and legal barriers.<sup>652</sup> This action undertaken by CSOs was successful and the amendments were finally abandoned by the previous government.

Civil society also succeeded in preventing adoption of amendments proposed in January 2023 to the Law on Civil Protection and the State of Disaster which would have been harmful for human and civil rights. The draft bill enabled, under the state of emergency, the possibility for government authorities to issue binding orders directed at, i.a., local government authorities and companies (Article 35 of the draft). This would violate the basic principles set forth in the Polish Constitution, given that orders could be issued outside the states of emergency specified in the Constitution and that the scope of their issuance was not limited, as in the case of a state of natural disaster, where actions are only carried out to prevent the effects of the emergency. The draft also allowed uniformed service officers carrying out the orders described above to "issue orders to persons to behave in a certain way." This would restrict the rights and freedoms of citizens without imposing the states of emergency specified in the Constitution. And since it is overly broad it would give officers the power to decide what civil rights and freedoms are to be restricted and how.<sup>653</sup>

The Access to Public Information act did not undergo any changes in 2023, although concerns were raised by journalists who criticised the non-implementation of the law. Legal loopholes are continuously used to delay information requests via appealing to the courts, lengthy court proceedings and the lack of oversight and data on the situation. In 2023, the Watchdog Poland Civic Network issued a Report on the State of Openness, which summarises the situation over the years.<sup>654</sup>

One pro-active solution to this challenge could be publically sharing information. However, there are obstacles to this, e.g. the date for the entry into force of a central contract registry, which could show how the finances of public sector entities, has been delayed. The effective date for launching such a registry is 2026.<sup>655</sup>

A group of experts at the Ministry of Finance has been working to prepare an initial concept of the register of contracts of public finance sector entities, established by an Order of the Minister of Finance.<sup>656</sup> While the provisions of the preliminary new concept are not yet ready, according to the new proposals, the range of contracts available in the register will be significantly reduced compared

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<sup>652</sup> See: [https://orka.sejm.gov.pl/opinie9.nsf/nazwa/2628\\_u/\\$file/2628\\_u.pdf](https://orka.sejm.gov.pl/opinie9.nsf/nazwa/2628_u/$file/2628_u.pdf)

<sup>653</sup> <https://ofop.eu/stanowisko-ogolnopolskiej-federacji-organizacji-pozarzadowych-w-sprawie-rzadowego-projektu-ustawy-o-ochronie-ludnosci-oraz-o-stanie-kleski-zywiolowej-z-dnia-17-stycznia-2023-roku/>

<sup>654</sup> [https://siecobywatelska.pl/wp-content/uploads/2023/12/raport\\_2023.pdf](https://siecobywatelska.pl/wp-content/uploads/2023/12/raport_2023.pdf)

<sup>655</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20230001723>

<sup>656</sup> <https://www.gov.pl/web/finanse/zarządzenie-ministra-finansow-z-dnia-5-pazdziernika-2023-r-w-sprawie-powolania-zespołu-do-opracowania-wstępnej-koncepcji-rejestru-umow-jednostek-sektora-finansow-publicznych>

to the previous registers. The solutions sought by Polish organisations are already known in many EU countries, such as the Czech Republic, Slovakia, Bulgaria, Hungary and Spain.<sup>657</sup>

Another topic that the Watchdog Poland Civic Network investigated was the issue of the openness of meetings of popularly elected bodies. The Constitution of the Republic of Poland, the Law on Access to Public Information and the Regulations of the Sejm and the Senate guarantee everyone the possibility of access to meetings of the bodies of the Sejm, the Senate or sessions of municipal and county councils, as well as provincial assemblies. During the pandemic, the realisation of this right was very limited due to the remote mode of deliberation of many bodies - this problem was especially true for meetings of municipal councils.

Municipalities have dealt with these challenges differently, especially in the spring and summer of 2020. The transition to a remote platform proved to be an uneven process, generating conflicts and conflicting interpretations of the law. And what's more, as late as 2023, when the pandemic state was formally in force, but public life had returned to normal, 13 per cent of a drawn representative sample of municipalities were holding such sessions.<sup>658</sup> This has resulted in persistent difficulties for civil society to access the proceedings of these municipal councils.

# Civil society resilience

## Election outcome and civic engagement

A key achievement of civil society in 2023 has been engagement in election monitoring, and the organisation of campaigns to promote voting. Both proved to be effective in targeting the public encouraging them to vote (including via TikTok and social media) and attracted large numbers to monitor the elections on November 15th. According to data from the Committee for the Defence of

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<sup>657</sup> Read more about this topic

[https://www.youtube.com/live/mci\\_02NsEFk?si=UTAiDF1ddNYU1slj](https://www.youtube.com/live/mci_02NsEFk?si=UTAiDF1ddNYU1slj)

<sup>658</sup> Read more in the report





[https://backend.sprawdzamyjakjest.pl/media/annotations/mission/report\\_file/raport\\_zdanie\\_czy\\_realnie.pdf](https://backend.sprawdzamyjakjest.pl/media/annotations/mission/report_file/raport_zdanie_czy_realnie.pdf)



manipulated. Refuse to take the ballot paper spreading prejudiced referendum. Say “NO” to the referendum, vote in the elections”. The entire group also applied to the State Electoral Commission to obtain the status of referendum campaigners. In this way, the group was then able to apply to national and regional public broadcasters for free airtime. During this period, they broadcast TV and radio inserts they had prepared.<sup>664</sup>

# Recommendations

## Targeted recommendation:

-  Urgently create an open and structured framework for civil society dialogue to ensure engagement and participation in decision making processes, as regards to lawmaking, financing of NGOs and choosing persons for the key position in Poland.
  
-  Urgently implement transparent and decentralised processes for financially supporting civil society organisations, by including for funding allocated by the National Freedom Institute by reforming the appointment process of the Council to ensure that representatives are not politically affiliated.
  
-  Facilitate the law regarding registration and reporting by the civil society organisations and abandon any attempts to impose additional reporting obligations on CSOs.
  
-  Urgently reform access to information act to ensure effective and transparent access to information.

<sup>664</sup> <https://www.amnesty.org.pl/akcje/nie-daj-sobie-wcislac-referendum/>

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- 🔍 Enact anti-SLAPP legislation to protect the media and civil society and drop all SLAPPs against LGBTQI+ defenders and respect their right to freedom of expression.
- 🔍 Evaluate the act regulating freedom of peaceful assembly to ensure that is in line with international human rights standards and eliminate regulations which privilege certain assemblies.
- 🔍 Immediately halt all push backs and violence, refrain from criminalising those who are providing humanitarian assistance at the Polish-Belarussian border and drop all charges against them.
- 🔍 Immediately drop all charges against women human rights defenders who are currently being prosecuted on various charges, including for their role in pro-abortion protests.
- 🔍 Refrain from harassing and intimidating protesters and activists through criminal charges and other means and respect the right to freedom of peaceful assembly as per international law.
- 🔍 Drop all SLAPPs against LGBTQI+ defenders and respect their right to freedom of expression.
- 🔍 Ensure that there is funding transparency and equal access to funding for all CSOs, allocated by the National Freedom Institute by reforming the appointment process of the Council to ensure that representatives are not politically affiliated.



# About the author

National Federation of Polish NGOs (Ogólnopolska Federacja Organizacji Pozarządowych, OFOP) was established in 2003 as a representation body, whose main objective is to advocate for enforcing the role of the civil society organisations in taking responsibility for the state and building enabling environment for civil society to thrive. It associates over 140 diverse member organisations, working at national, regional or community level. It is politically independent and guided by the principles of the European Charter of Fundamental Rights.

The Institute of Public Affairs is a leading Polish think tank and an independent centre for policy research and analysis, established in 1995. Its mission is to contribute to informed public debate on key Polish, European and global policy issues. Its main areas of study include European policy, social policy, civil society, migration and development policy as well as law and democratic institutions.





## Civic Space Report 2024

# ROMANIA



# Key trends

- 🔍 Smear campaigns and SLAPPs against journalists and civil society organisations.
- 🔍 Media independence under pressure and political influence.
- 🔍 Civil society challenged due to bureaucratic practices, lack of adequate funding and inconsistent legislation.

# Summary

Civic space in Romania is rated as narrowed in 2023.<sup>665</sup> In its 2023 Rule of Law report, the European Commission recommended that the government of Romania step up to ensure effective public consultations before the adoption of legislation. While the government has taken some steps in this regard, civil society states that there has been no improvement or concrete progress in implementing this recommendation systematically.

In 2023 civil society organisations (CSOs) continued to call for coherent and appropriate legislation to protect the freedom of association. The current legislative framework is unclear and inconsistent, and results in significant administrative burdens for CSOs. While the Ministry of Justice proposed a draft law that would simplify and digitise existing legal procedures and bureaucratic requirements for CSOs, a new law which limits CSOs right to appeal to a court and environmental organisations' ability to challenge development projects, was also adopted.

Policymaking remains unpredictable and untransparent, as the Romanian legal framework continued to change very fast, in particular, a fiscal package proposed made it very difficult for civil society to observe and follow the legislative process. The government continued to legislate through

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<sup>665</sup> <https://monitor.civicus.org/country/romania/>

emergency ordinances, offering very little opportunity for stakeholders to be comprehensively consulted.

Journalists continued to face SLAPPs and smear campaigns, while civil society organisations remained targeted by SLAPPs brought by real estate developers in an attempt to force the organisations to cease their activities. There were significant challenges to media independence with major media outlets succumbing to political influence and pressure from private actors. This is expected to have a negative impact during 2024 when Romania will hold four rounds of elections.

# Institutional, political and socio-economic landscape

The justice system in Romania continued to be affected by turmoil in 2023. The legal system continued to be affected, with increased workload, understaffing, underfunding which led to longer trials and impacted on public trust in the judicial system.

Renewed discussions about changing the pension system for magistrates sparked widespread discontent among judges and prosecutors who organised a series of protests in response to these law proposals. This resulted in courts around the country suspending their activity in June-August 2023.<sup>666</sup> Protests ended in August 2023 after the proposed legislation was found to be unconstitutional by the Constitutional Court<sup>667</sup> However, this added to an already strained justice

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<sup>666</sup>An overview of decisions issued by court to initiative protest is available in Romanian at <https://www.unbr.ro/protestul-magistratilor-ultimele-informatii-pentru-avocati/> information last updated on 06 September 2023

<sup>667</sup> Romanian Constitutional Court Decision no. 467 from 2 august 2023, available in Romanian at: <https://legislatie.just.ro/Public/DetaliiDocument/273594>

system which is affected by severe staff shortages. Official data shows that 20 per cent of positions for judges and 27 per cent of prosecutor positions are already vacant, with the percentage expected to reach 40 per cent and 45 per cent respectively by the end of 2025. This would lead to the collapse of Romania's judicial system.<sup>668</sup> In addition, widespread protests organised by lawyers took place on October 4 in opposition to irregularities in the justice system coupled with a proposal to increase taxes.<sup>669</sup> These protests were followed by demonstrations organised in December 2023 by court clerks who raised concerns about their working conditions and unpaid salaries.<sup>670</sup> Some courts recommenced protests in December 2023 because of underfunding.<sup>671</sup>

A study on the LGBTIQ+ community in Romania shows that: 41 per cent of Romanians have a supportive or neutral attitude towards legalising civil union, and 38 per cent support same sex marriage; 49 per cent think LGBTIQ+ people are discriminated against in Romania; one in five Romanians know someone who identifies as LGBTIQ+, whilst 56 per cent would ban LGBTIQ+ parades.<sup>672</sup>

In addition to the 2022 law proposal<sup>673</sup> which would basically ban any information or communication about gender transition or homosexuality, a new legislative initiative<sup>674</sup> seeking to prohibit any visual, audio, or video materials related to LGBTIQ+ identities was proposed and criticised by LGBTIQ+ rights organisations. The draft proposal put forward by the initiators serves to protect children.<sup>675</sup> Both proposals are pending in the Chamber of Deputies, which is responsible for a decision in these cases.

On 23 May, ECHR ruled in favour of the 42 petitioners in the case of Buhuceanu and others versus Romania<sup>676</sup> confirming that Romania violated Article 8 of the Convention, which protects family life. As a result of this decision, Romania must adopt a legal form of recognition of families made up of

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<sup>668</sup> **According to an official press-release issued by the Superior Council of Magistrates on 13 June 2023, available in Romanian at:**

<https://www.csm1909.ro/PageDetails.aspx?Type=Title&FolderId=10473>

<sup>669</sup> <https://www.unbr.ro/o-zi-fara-avocati-o-zi-in-care-statul-de-drept-nu-exista-campanie-de-constientizare-a-rolului-si-importantei-avocatului-in-apararea-drepturilor-si-libertatilor-cetatenesti/>

<sup>670</sup> <https://grefajudiciara.ro/ample-forme-de-protest-in-instante-si-parchete-pentru-neplata-integrala-a-salariilor-si-a-altor-drepturi/>

<sup>671</sup> <https://tribunalulbucuresti.ro/index.php/informatii/anunturi/95-ag-14-12-2023>

<sup>672</sup> <https://www.mozaiqlgbt.ro/barometru-2023/>

<sup>673</sup> [https://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?nr=243&an=2022](https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?nr=243&an=2022)

<sup>674</sup> [https://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?cam=2&idp=20906](https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=20906)

<sup>675</sup> <https://www.mozaiqlgbt.ro/2023/02/comunicat-de-presa-ideologiile-putiniste-isi-fac-loc-in-parlamentul-romaniei/>

<sup>676</sup> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-224774%22%5D%7D>



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same-sex persons.<sup>677</sup> 35 civil society organisations (CSOs) joined a campaign asking for this decision to be applied and called for the legalisation of same-sex marriage.<sup>678</sup>

Gender-based violence continues to be a prevailing problem, whilst victims continue to face prejudice and reduced access to services. High rates of teenage pregnancies also continue to be an issue in 2022, with 409 births registered to mothers between the ages 10 to 14.<sup>679</sup>

In 2023 one of the most severe human rights violations took place after an official investigation in residential centres for older persons and persons with disabilities found inhumane treatment, grave human rights violations and exploitation of residents.<sup>680</sup> The official investigation began after the CSO Centrul de Resurse Juridice (Centre for Legal Resources) sent several repeated alerts to the authorities who ignored these for more than six months.

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<sup>677</sup> <https://acceptromania.ro/aritcol-test/>

<sup>678</sup> <https://acceptromania.ro/35-de-ong-uri-din-romania-sustin-adoptarea-instrumentelor-adevate-de-protectie-si-recunoastere-legala-a-tuturor-familiilor/>

<sup>679</sup> [https://centrulfilia.ro/new/wp-content/uploads/2023/12/Raport-monitorizare-VIF\\_2023\\_Centrul-FILIA.pdf](https://centrulfilia.ro/new/wp-content/uploads/2023/12/Raport-monitorizare-VIF_2023_Centrul-FILIA.pdf)

<sup>680</sup> <https://www.crj.ro/en/international-organisations-raise-concern-over-abuses-in-ilfov/>

# Civic freedoms: regulatory environment and implementation

## Freedom of association

The main law on associations and foundations is Government Ordinance no 26/2000 which prescribes how a non-governmental organisation is set up, how it functions and what its main rights and obligations are.<sup>681</sup>

The procedures governing the establishment and operation of CSOs are perceived by most representatives of the civil society sector as rigid, cumbersome, bureaucratic, and time-consuming. CSOs have raised concerns over unclear laws and non-uniform judicial practices, lengthy procedures, as well as lack of centralised data and communication between various state institutions.<sup>682</sup>

There are calls to modify the law and civil society has consistently asked for less bureaucracy needed to set up, run and dissolve a CSO.<sup>683</sup> Although legislation has improved, it is still difficult, particularly for smaller CSOs to comply with bureaucratic needs because there is a lot of uncertainty and inconsistencies in existing procedures. The law itself was modified 14 times already and there are wide discrepancies in how it is applied across the country.

The Romanian Ministry of Justice proposed a draft bill, pending before Parliament, in consultation with CSOs, which would bring several modifications to existing legislation including limiting bureaucracy, simplifying judicial procedures relating to the organisation of CSOs and digitalising existing procedures, including the National Register of Non-Profit Legal Entities, managed by the Ministry of Justice and the unification of NGO registers.<sup>684</sup>

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<sup>681</sup> <https://legislatie.just.ro/Public/DetaliiDocument/20740>

<sup>682</sup> <https://clnr.ro/raport-de-cercetare-privind-barierile-administrative-in-organizarea-si-functionarea-ong-urilor-din-romania/>

<sup>683</sup> [http://www.fdsc.ro/library/files/pozitie\\_pre\\_consultare\\_og\\_26\\_2000\\_iulie\\_2020.pdf](http://www.fdsc.ro/library/files/pozitie_pre_consultare_og_26_2000_iulie_2020.pdf)

<sup>684</sup> <https://clnr.ro/proiectul-de-modificare-a-og-26-2000-a-fost-depus-la-parlament/>

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Concerns remain about a 2022 legislative proposal which sought to impose severe restrictions on CSOs including limiting their right to appeal to the court and in particular the ability of environmental CSOs to challenge development projects.<sup>685</sup> 108 CSOs called on the President to not pass this law.<sup>686</sup> Despite these criticisms and the severe consequences for CSOs to pursue their mission for public interest, the law was adopted in April 2023. It includes provisions to minimise the possibility to challenge administrative decisions and initiate public interest litigations.

The Centre for Legal Resources (CLR), the human rights organisation, which exposed grave human rights violations in social care homes in Romania, claimed that instead of addressing the violations it raised following monitoring visits in the centres, the Ministry of Labour decided to unilaterally terminate the cooperation agreement with CLR for its unannounced visits to social care homes. This means that the organisation is no longer allowed to continue its work of investigating and reporting on human rights abuses.<sup>687</sup>

These incidents of abuses, publicly disclosed by the CLR and a team of investigative journalists, finally forced the authorities to respond. The government ordered a series of inspections of public and private residence centres across the country. The inspections took place hastily, without respect to the residents in the centre (e.g. persons with disabilities witnessed the raid by the inspection authorities and police officers who carried guns during their discussions with the centres' personnel). The authorities intimidated the staff, who were visited simultaneously by several control bodies, and created the impression that the aim was to issue (sometimes) disproportionate fines rather than propose remedies (see more in the Federation of NGOs Social Services Providers analysis<sup>688</sup>).

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<sup>685</sup> [https://senat.ro/legis/lista.aspx?nr\\_cls=b758&an\\_cls=2022](https://senat.ro/legis/lista.aspx?nr_cls=b758&an_cls=2022)

<sup>686</sup> <https://www.stiri.org/ong/drepturile-tutoror/108-organizatii-negovernamentale-cer-presedintelui-klaus-iohannis-sa-nu-promulge-o-lege-care-incalca-cel-putin-patru-articole-din-constitutie>

<sup>687</sup> <https://www.crj.ro/en/crj-urges-the-labour-minister-marius-constantin-budai-to-resign/>

<sup>688</sup> [https://fonss.ro/inchideti-amendati-si-dati-masuri-de-indeplinit-dar-cu-beneficiarii-ce-facem/?fbclid=IwAR1CVorRIm-M1RITaTVsOSQX3cPQ2RtXswd584h-pKR-2Zuo2n1P\\_vqmqJQ](https://fonss.ro/inchideti-amendati-si-dati-masuri-de-indeplinit-dar-cu-beneficiarii-ce-facem/?fbclid=IwAR1CVorRIm-M1RITaTVsOSQX3cPQ2RtXswd584h-pKR-2Zuo2n1P_vqmqJQ)

## Freedom of peaceful assembly

A legislative proposal from February 2023 raised concerns among civil society organisations, prompting 50 of them to write an open letter in which they criticised the proposal. They argued that the proposal threatened to severely restrict the right to protest by introducing a prison sentence of up to five years, a shift from the previous provisions which prescribed a sentence of up to two years or a fine.<sup>689</sup> The Parliament took into account the criticism it received and amended the proposal accordingly.<sup>690</sup>

Following the escalating violence in Israel and Palestine, protesters showing solidarity with Palestine have claimed that they were abusively called into police questioning for alleged anti-Semitism, advised not to participate in protests or to discuss the developments unfolding in Israel and Palestine.<sup>691</sup> Other activists reported abusive searches and being repeatedly identified and taken to the police station and questioned, in what they perceived as an attempt to intimidate them.<sup>692</sup>

A report monitoring antisemitism in Romania, published in July 2023, before the violence in Israel-Palestine escalated, showed a decrease in antisemitic attacks but continues to show a tendency of re-evaluating history with increased appreciation of fascist historical figures.<sup>693</sup>

## Freedom of expression

During the last decade, in an information ecosystem disrupted by technology-empowered propaganda, many experienced journalists have shifted to operate independently, outside the mainstream media, as have CSOs with new organisational and finance models. This development is the result of the rapidly deteriorating media landscape and the rise of disinformation and extremist tendencies in Romania. With four rounds of elections in 2024, the public need to be able to rely on

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<sup>689</sup> <https://www.stareademocratiei.ro/2023/03/27/libertatea-de-exprimare-si-dreptul-la-protest-trebuie-din-nou-aparate-senatorii-vor-discuta-propunerea-de-inasprire-a-pedepselor-pentru-tulburarea-ordinii-si-linistii-publice/>

<sup>690</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/272347>

<sup>691</sup> <https://www.libertatea.ro/stiri/exclusiv-politia-romana-ii-cheama-pe-palestinieni-si-pe-sustinatori-la-sediu-mi-au-cerut-sa-nu-ma-duc-la-miting-sa-nu-vorbesc-despre-razboi-si-sa-nu-postez-pe-facebook-cei-mai-mu-4705572>

<sup>692</sup> [https://www.libertatea.ro/stiri/dusi-la-sectia-de-politie-pentru-un-slogan-participantii-la-mitingurile-pro-palestina-acuza-un-abuz-din-partea-fortelor-de-ordine-4748462?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=tolo-page-post&fbclid=IwAR1K09ZAJYXB78xnWDtAKuTSUAVeL6ZoSOVIACiGUSBBMJT1GtueagCMXa0](https://www.libertatea.ro/stiri/dusi-la-sectia-de-politie-pentru-un-slogan-participantii-la-mitingurile-pro-palestina-acuza-un-abuz-din-partea-fortelor-de-ordine-4748462?utm_source=facebook&utm_medium=social&utm_campaign=tolo-page-post&fbclid=IwAR1K09ZAJYXB78xnWDtAKuTSUAVeL6ZoSOVIACiGUSBBMJT1GtueagCMXa0)

<sup>693</sup> <https://www.inshr-ew.ro/wp-content/uploads/2020/05/Raport-monitorizare-20-IULIE-2023.pdf>

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accurate and unbiased information to participate in these elections, which is why a strong independent media is crucial.

One of the main online publications from Romania, Libertatea, has been marked by controversy after the owner of the publication announced that 20 percent of all staff will be laid off. This included several high-profile journalists such as the editor in chief Cătălin Tolontan, and other senior staff. Civil society groups have criticised this move and argued that the decision comes as a result of alleged pressure from the gambling industry to not publish critical articles.<sup>694</sup> Other journalists claim that the pressure also comes from real estate developers, who are accused of buying favourable media coverage.<sup>695</sup>

Separately, Romanian prosecutors decided to close the investigation into the smear campaign against a well-known Romanian investigative journalist, Emilia Sercan, without pressing any charges. The investigation came after several of her intimate pictures were posted without her consent on adult websites.<sup>696</sup> The journalist protested against this decision and on December 18 around 50 other journalists and activists joined her daily protest held in front of the Prosecutor General's office.<sup>697</sup>

An analysis shows that, at times, Romanian journalists face pressure to breach the confidentiality and protection of their anonymous sources. They face pressure from individuals, lawyers, police, prosecutors and even by the court to disclose their sources. However, according to reports, Romanian journalists are also able to oppose and resist such pressure.<sup>698</sup>

Romanian media continues to receive large sums of financing from political parties, which spend large sums of money on favourable media reports and coverage, mostly through various intermediaries.<sup>699</sup> According to a report by an anti-corruption organisation, political parties receive large sums of money from the state and there is lack of transparency regarding what the money is spent on<sup>700</sup> as the contracts for the Romanian media remain opaque and very few publications cover

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<sup>694</sup> <https://www.stareademocratiei.ro/2023/12/14/80-de-semnatari-ai-scrisorii-de-solidaritate-cu-jurnalistele-si-jurnalistii-de-la-ziarul-libertatea/>

<sup>695</sup>

<https://www.facebook.com/victor.g.ilie/posts/pfbid0scdvQQzTAD59HTyN3BUFXkroyaFN4ZZzeorUH8HV5CwZxB2ofvpb9xkV1QhnCpCrI>

<sup>696</sup> <https://pressone.ro/parchetul-claseaza-abrupt-dosarul-de-kompromat-fapta-de-scurgere-a-unei-probe-din-politia-romana-nu-este-prevazuta-de-legea-penala/>

<sup>697</sup> <https://pressone.ro/parchetul-claseaza-abrupt-dosarul-de-kompromat-fapta-de-scurgere-a-unei-probe-din-politia-romana-nu-este-prevazuta-de-legea-penala/>

<sup>698</sup> <https://activewatch.ro/articole/presiuni-pentru-expunerea-surselor-norme-etice-si-legale/>

<sup>699</sup> <https://recorder.ro/pretul-tacerii-o-investigatie-in-contabilitatea-presei-de-partid/>

<sup>700</sup> <https://expertforum.ro/raport-finantarea-partidelor-2021/>



this subject.<sup>701</sup> A mainstream news website received one million euros a year from the governing party to publish favourable articles that were not clearly labelled as paid advertising. On the other hand, when news agencies publish critical articles, they run the risk of losing significant amounts of money.<sup>702</sup> This sort of financing distorts the local media landscape and threatens the access to information of the public who rely on these outlets for information.<sup>703</sup>

## Safe space

An analysis published in December 2023 shows that strategic lawsuits against public participation (SLAPPs) continue to be a concern in Romania. These consist of mostly of civil defamation cases, brought either under the general provisions on tort (*răspundere civilă delictuală*) or under the special provisions of the Civil Code on the protection of non-pecuniary subjective rights (the right to private life, the right to personal dignity, the right to one's image, the right to protection of personal data). Such proceedings can be on the merits and/or for temporary measures and are aimed at obtaining moral or material damages and/or putting an end to the alleged violations of the non-pecuniary subjective rights. In practice, in many cases the claimants specifically aim to silence those subjected to the lawsuit by asking the courts to forbid them from making further public statements in their respect.<sup>704</sup>

As reported in our previous submission to the Commission, the worrying trend of real estate developers targeting civic actors with SLAPP cases, in an attempt to force them to cease their activities, continues. In December 2023, another court ruled against an NGO, forcing its closure because it could not pay the exorbitant legal expenses, of approximately €12,000, after already

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<sup>701</sup> <https://expertforum.ro/wp-content/uploads/2023/12/PB-160-subventii-2023-1.pdf>

<sup>702</sup> [https://www.libertatea.ro/stiri/investigatie-un-milion-de-euro-de-la-pnl-pentru-site-ul-digi24-articolele-nu-au-fost-marcate-cu-semnul-p-publicitate-dar-au-fost-trimise-pentru-plata-la-partid-4745569?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=tolo-page-post&fbclid=IwAR3fbCTMjOtEgbwOfB01wnnBwCKP9rViF\\_npLvS-rc3Qyt4QiskuCKRfr8s](https://www.libertatea.ro/stiri/investigatie-un-milion-de-euro-de-la-pnl-pentru-site-ul-digi24-articolele-nu-au-fost-marcate-cu-semnul-p-publicitate-dar-au-fost-trimise-pentru-plata-la-partid-4745569?utm_source=facebook&utm_medium=social&utm_campaign=tolo-page-post&fbclid=IwAR3fbCTMjOtEgbwOfB01wnnBwCKP9rViF_npLvS-rc3Qyt4QiskuCKRfr8s)

<sup>703</sup> <https://activewatch.ro/articole/partidele-banii-si-presa-o-relatie-toxica-freeex-digest-nr-4/>

<sup>704</sup> <https://cji.ro/en/slapp-in-romania-case-study/>

paying approximately €10,000, sought by the developer.<sup>705</sup> The decision prompted large support from civil society who came together to raise the remaining funds and in the hopes that this may overturn the decision on appeal.<sup>706</sup>

Although the Whistle-blower law was passed in December 2022<sup>707</sup> challenges with its implementation still exist. One challenge is the access to legal aid for whistle-blowers, and although the right is prescribed by law, irrespective of the income of the person in need of it, in practice, petitioners do not have access to legal representation.<sup>708</sup>

# Funding for civil society

After years of protest and mobilisation the local civil society sector is facing fatigue and acute lack of resources, operating in a constantly changing environment and mounting pressure. Funding for the sector in Romania remains limited, creating financial precarity and unsustainable conditions.

In August 2023, a group of leading CSOs mobilised in the defence of the fiscal facilities related to sponsorship and the three and a half percent funding mechanism for CSOs. This comes after a draft law for the adjustment of the Fiscal code, leaked to the media in early August, included the government's intention to change and limit the benefits for both mechanisms, with extensive negative effects on the civil society sector's funding sources. In a public letter<sup>709</sup> signed by over 1,300 CSOs and addressed to the government, CSOs called for the withdrawal of the proposals. Following

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<sup>705</sup>[https://www.facebook.com/photo.php?fbid=771622698339174&set=a.554200323414747&type=3&ref=embed\\_post](https://www.facebook.com/photo.php?fbid=771622698339174&set=a.554200323414747&type=3&ref=embed_post)

<sup>706</sup>[https://www.facebook.com/permalink.php?story\\_fbid=pfbid02idbS92cSdq9GQ9sSTufcuuND57ABSt8saNba59FrrHNCD3ufUfKcbWogpwKaM64jl&id=100064743517221](https://www.facebook.com/permalink.php?story_fbid=pfbid02idbS92cSdq9GQ9sSTufcuuND57ABSt8saNba59FrrHNCD3ufUfKcbWogpwKaM64jl&id=100064743517221)

<sup>707</sup> <https://apador.org/cronologia-adoptarii-legii-de-protectie-a-avertizorilor-de-integritate/>

<sup>708</sup> <https://apador.org/tara-in-care-nici-barourile-de-avocati-nu-respecta-legea/>

<sup>709</sup> **The letter is available at:**

<https://docs.google.com/document/d/1LjDHjXjBwAlXkFnB7k4bI3dbWODHWY/edit?pli=1#heading=h.lsraxses2630> and one media article on the topic here:

<https://www.presshub.ro/peste-1-000-de-ong-uri-cer-premierului-sa-nu-anuleze-mecanisme-de-sponsorizare-281201/>

a consultation meeting with the Prime Minister and his office in September 2023<sup>710</sup>, the proposed changes to the Fiscal Code amendments were dropped.

However, the proposed changes were announced again in December 2023 when the government issued an Emergency Ordinance that introduced significant changes to the Fiscal Code. CSOs mobilisation and discussions with the Government<sup>711</sup> only partially managed to safeguard the sponsorship mechanism as self-employed, independent professionals and microenterprises<sup>712</sup> can no longer make sponsorships.

The Emergency Ordinance of December 2023 introduced obligations for CSOs that receive money through sponsorship and other similar mechanisms to conduct a compulsory procedure that would generate a new declaration submitted along the annual financial statements. The technical details on this additional financial reporting procedure are to be defined in the secondary legislation issued by the Ministry of Finance in 2024. Several concerns are yet to be addressed in the secondary legislation, such as the need for external verification entailing costs, whether income thresholds are required for the additional reporting, the technical details related to the purpose, scope and costs of the procedure, the methodology used by the fiscal authorities to analyse these declarations and the conditions for the storage, processing and disclosure of the information received.

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<sup>710</sup><https://www.facebook.com/guv.ro/posts/pfbid02MnWiaMdikXMRyQ9BhbsDVSJcZeKxW4Pptxv1Rv4QdLy3LigPGwCaugafpSxeSZV4I>

<sup>711</sup><https://www.facebook.com/AsociatiaPentruRelatiiComunitare/posts/pfbid0sMZst9krZYyBQnMM9QA3v6PBrtjA3V6ttvsa9UfwEPX9U3AyKmFWbu7gJuUjMx7ol>

<sup>712</sup> Companies with a turnover up to 60.000 Euro that are taxed 1% on the revenues or up to 500.000 euro that are taxed with 3% on the revenues instead of on their profit.

# Civil dialogue and the right to participation

As the following examples illustrate, the right to participation was violated on several occasions during 2023. A local NGO from the municipality of Radauti, which was excluded from town hall meetings, launched a petition with over 1,000 signatures from the locals opposing the decision. It delivered the petition to the city council but was ignored by the local elected officials.<sup>713</sup>

The human rights organisation APADOR-CH criticised the fact that although Law 52/2003 on decision-making transparency sets a minimum time limit of ten days for consultation, in practice, public authorities provide a maximum of ten days for consultations, regardless of the workload required to examine a legislative package. This was the case for three legislative proposals which would modify seven legal texts and for which civil society organisations had only ten days to share their input.<sup>714</sup>

A report from Open Spending EU shows that, out of ten counties analysed, Romania is at the bottom of this ranking when it comes to transparency on how the funds received through the European Union's Recovery and Resilience Mechanism are spent. Romania published only 28 percent of recommended information and only 36 percent of it is user-friendly.<sup>715</sup>

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<sup>713</sup> <https://www.stareademocratiei.ro/2023/06/21/autoritatile-din-radauti-au-interzis-accesul-asociatiei-radautiul-civic-la-sedinta-de-consiliu-local/>

<sup>714</sup> <https://apador.org/cum-se-mimeaza-dezbaterea-publica-pe-repede-inainte/>

<sup>715</sup> <https://www.open-contracting.org/wp-content/uploads/2023/05/RRF-transparency-report.pdf>

# Civil society resilience

Romania's general public attitude toward civil society is complex and evolving. Surveys show that:<sup>716</sup>

- 🔍 75 per cent of Romanians believe CSOs are essential in promoting democracy and human rights.
- 🔍 44 per cent of respondents considered CSOs to be effective in achieving their goals while only 19 per cent believed them to be ineffective.
- 🔍 37 per cent of Romanians reported trusting CSOs, a rate that is significantly lower than the European average of 53 per cent.
- 🔍 only 26.8 per cent of respondents had a favourable opinion of CSOs, while 37.5 per cent had an unfavourable opinion, and 35.7 per cent were neutral.

The European Implementation Network and Democracy Reporting International, made a comparison on how EU countries are doing in the execution of ECHR and CJEU judgements and found that the state with the largest number of judicial decisions not implemented is Romania, with 113 such decisions.<sup>717</sup>

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<sup>716</sup> [https://funky.org/wp-content/uploads/2023/10/TechSoup\\_Disinformation-and-Civil-Society-Regional-Mapping-Report\\_Black\\_Sea-1.pdf](https://funky.org/wp-content/uploads/2023/10/TechSoup_Disinformation-and-Civil-Society-Regional-Mapping-Report_Black_Sea-1.pdf)

<sup>717</sup> <https://apador.org/romania-pe-primul-loc-la-neimplementarea-hotararilor-cedo-si-in-2023/>



# Recommendations

## Targeted recommendation:

- 🔍 Refrain from abusing laws, legislative proposals, norms and practices to diminish the capacity of civil society and journalists carrying out their public interest missions.
- 🔍 Remove the severe restrictions which limit the right of CSOs to appeal to a court and in particular would limit the ability of environmental CSOs in particular to challenge development projects.
- 🔍 Ensure and protect an enabling environment for independent media outlets and the access to public information.
- 🔍 Restore the cooperation agreement with the Centre for Legal Resources and ensure the access of human rights monitoring organisations into the premises of residential homes for vulnerable persons.
- 🔍 Take urgent measures to protect journalists, civic actors and human rights defenders targeted by SLAPPs.
- 🔍 Ensure sustainable and predictable funding for civil society sector.
- 🔍 Fully implement the Whistleblower Law by ensuring access to legal aid.

# About the author

Civil Society Development Foundation (FDSC) is an independent, non-governmental organisation founded in 1994 at the initiative of the European Commission. FDSC promotes a strong and sustainable civil society that contributes to defending democratic values by supporting civil society actors, mobilising resources, fostering an enabling environment, and strengthening co-operation with other sectors. Thus far, FDSC managed over 2600 grants in its funding programs for CSOs as well as played a key role in building CSO capacity in Romania, being one of the most important training providers and promoters of the interests of the sector.





# Civic Space Report 2024

# SLOVENIA



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center za informiranje, sodelovanje  
in razvoj nevladnih organizacij



# Key trends

- 🔍 A vast majority of funds from the NGO fund remain undistributed due to corruption scandal
- 🔍 Support measures in the Law on NGOs have not been implemented thus hampering an enabling environment
- 🔍 Online hate speech and smear campaigns from the opposition party against civic actors remain a significant concern.

# Summary

Civic space is rated as “Narrowed” in Slovenia.<sup>718</sup> In the last two Rule of Law Reports by the European Commission (2023, 2022) there were no recommendations for Slovenia linked to civic space. Since the new government came into power in 2022, the environment for civil society and civic actors has become stronger as serious threats to basic freedoms and fundamental rights ceased, but there are some new emerging concerns for civic actors. While there has been cooperation, dialogue, and participation between civil society and government, there is room for further improvement. For example, the government does not respect consultation deadlines for draft legislation which are prepared in a rushed and non-transparent manner. Online attacks and smear campaigns against civic actors by opposition members on X (formerly Twitter) and their media outlets remain a crucial concern for civil society.

There has been a deterioration of the enabling environment for NGOs as the implementation of support measures in the Law on NGOs has come to a halt. The mandate of the Government Council for Cooperation development of voluntarism, voluntary and non-governmental organisations has ended and is yet to be renewed. The draft for the new Government Strategy for the development of NGOs has not been prepared or finalised.

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<sup>718</sup> <https://monitor.civicus.org/country/slovenia/>

Funding remains a concern, with a vast majority of funds from the NGO fund remaining undistributed, while coalition parties in the Parliament prevented two attempts by the opposition parties to abolish the national NGO fund.

# Institutional, political and socio-economic landscape

As predicted by the current government, 2023 was a year for the development of new reforms in health care, tax, and education. However, the government has failed to prepare new proposals and resignations of ministers followed in some cases (e.g. health minister<sup>719</sup>).

In August 2023, Slovenia faced tremendous floods, damaging significant parts of the country, including infrastructure, private houses, and businesses. Similarly, as during the Covid-19 pandemic, several intervention laws for damage recovery were passed. Due to the natural disaster, the main focus of politics and the public for some time shifted from reforms to recovery.

In September, the media focused on the former Minister of Public Affairs who later resigned due to alleged corruption. During the media frenzy, two other ministers left as well (one resigned after the Prime Minister demanded so, the other refused to resign, but she was removed by the parliament). Thus, in the course of one year, the Prime Minister replaced four ministers. Public opinion polls for the current government are rapidly decreasing.

In the media sector, significant efforts went into the normalisation of the national broadcaster RTV Slovenia. After the public voted for a new law which addresses the governance of RTVSLO via a

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<sup>719</sup> Kos, S., Eržen, B. and Žgajnar, B.F. (2023) Danijel Bešič Loredan Odstopil, Erik Breclj Se Mu Zahvaljuje. *Delo*. <https://www.delo.si/novice/slovenija/neuradno-danijel-besic-loredan-odstopa/>



referendum, the Constitutional Court temporarily suspend the article on the establishment of the new RTV Council<sup>720</sup>. Later, the Court withdrew the suspension, the council was established, and a new board was appointed<sup>721</sup>. Currently, the broadcaster is struggling due to its poor financial situation. Moreover, other forms of media, especially daily newspapers, are facing a similar financial situation. Their owners (mostly different companies) demand reorganisation, budget cuts, etc. In December 2023, the Ministry of Culture published a new draft Law on media for public consultation which tackles several issues including state aid, political and state advertising and more transparency in media ownership. However, this draft does not include subventions for newspapers distribution as proposed by different media. Thus, it can be concluded that media freedom is still steadily deteriorating.

# Civic freedoms: regulatory environment and implementation

## Freedom of peaceful assembly

As part of the new government key coalition commitments, in September 2023, the Parliament passed a law which halts all misdemeanour procedures linked to legislation which were deemed as

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<sup>720</sup> <https://www.ebu.ch/news/2022/12/slovenian-referendum-backs-rtv-slo-reforms>

<sup>721</sup> <https://europeanjournalists.org/blog/2023/06/05/slovenia-efj-welcomes-court-ruling-on-rtv-slo-reform/>

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unconstitutional by the Constitutional Court.<sup>722</sup> The law also provides a legal basis for the return of all fines already paid. Namely, the law repaired the damage of all unconstitutional government decrees and legislation passed during the COVID-19 pandemic, under the previous government.

Throughout 2023, several protests took place, some of which were quite large and led by people who are close to the opposition.<sup>723</sup> Several counter protests were also staged for example, by those for and against the right to abortion.<sup>724</sup> The police were always present, but there was no interference or interactions with the police. All protests were peaceful.

However, there was one protest where the police used tear gas against protesters.<sup>725</sup> An autonomous community that previously occupied the Rog factory in Ljubljana staged a protest during the opening of a new art centre that was built where the factory once stood. This comes after an eviction by the municipality of Ljubljana of those occupying the Rog factory in 2021.<sup>726</sup> Protesters stuck stickers and graffiti and wanted to enter the building during the opening but were met with excessive force.<sup>727</sup>

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<sup>722</sup>Portal GOV.SI. (2023) Zakon o Ureditvi Vprašanj V Zvezi Z Določenimi Prekrški V Času Covid-19 Sprejet V Državnem Zboru. <https://www.gov.si/novice/2023-09-20-zakon-o-ureditvi-vprasanj-v-zvezi-z-dolocenimi-prekrski-v-casu-covid-19-sprejet-v-drzavnem-zboru/>

<sup>723</sup> K, G. (2023) Upokojenci Na Protestu Za Višje Pokojnine in Novo Stranko. *RTV Slovenija*. <https://www.rtvlo.si/slovenija/upokojenci-na-protestu-za-visje-pokojnine-in-novo-stranko/685333>

<sup>724</sup>Šta, A.I. (2023) V Središču Ljubljane Shoda Za in Proti Pravici Do Splava. *Delo*. <https://www.delo.si/novice/slovenija/v-srediscu-ljubljane-shoda-za-in-proti-pravici-do-splava/>

<sup>725</sup>Pervanje, A. (2023) Na Protestu Ob Odprtju Centra Rog Policija Med Prerivanjem s Protestniki Uporabila Solzivec. *RTV Slovenija*. <https://www.rtvlo.si/kultura/drugo/na-protestu-ob-odprtju-centra-rog-policija-med-prerivanjem-s-protestniki-uporabila-solzivec/686162>

<sup>726</sup> <https://siol.net/novice/slovenija/na-obmocju-nekdanje-tovarne-rog-evikcije-stanovalcev-in-vzpostavljanje-gradbisca-543835>

<sup>727</sup> <https://sloveniatimes.com/39936/new-ljubljana-creative-hub-opens-amid-protests>

# Safe space

Online attacks on civic actors continue daily and are mostly initiated by members of the opposition Slovenian Democratic Party (SDS) party. Additionally, SDS media outlets continue to smear prominent civic actors, such as Nika Kovac (director of 8th of March Research Institute), Jasa Jenull (key figure in protests against the previous government), Barbara Rajgelj (Legal Network for the Protection of Democracy) and Goran Forbici (director of CNVOS). The person responsible for physically attacking Nika Kovac in 2022 was convicted.<sup>728</sup> Additionally, some other persons/media were already convicted of online hate speech. For example, the courts are also issuing temporary decisions for removal of articles (e.g. case of Barbara Rajgelj, known lawyer and LGBT activist, against right-wing media outlets that accused her of sexual harassment).

Various segments of the population, including ethnic, racial, religious, gender, LGBTQI+, and other excluded groups, are able to exercise rights and freedoms in the public space offline and online. However, civil society has witnessed an increase of different incidents in connection to the pride (physical attacks<sup>729</sup>) and even the burning of the LGBT flag at the beginning of the LGBT film festival<sup>730</sup>). The police are investigating all incidents.

The government established a Strategic Council for fighting hate speech with several NGO representatives as members. The council completed its work in July and presented 57 recommendations to the government. So far, recommendations have not yet been realised.

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<sup>728</sup> <https://n1info.si/novice/slovenija/napadalec-na-niko-kovac-pogojno-obsojen-na-pet-mesecev-zapora/>

<sup>729</sup>R., M., and M. Z. (2023) Skupina Neznancev Po Paradi Ponosa Pretepla Aktivista, Nasilje Obsodilo Več Političnih Predstavnikov. *RTV Slovenija*. <https://www.rtvlo.si/crna-kronika/skupina-neznancev-po-paradi-ponosa-pretepla-aktivista-nasilje-obsodilo-vec-politichnih-predstavnikov/681663> ; Bezljaj, M. (2023) Parada Ponosa Tarča Homofobnih Napadov. *Delo*. <https://www.delo.si/novice/slovenija/v-prestolnici-povorka-pod-geslom-vec-skupnosti-en-boj/>

<sup>730</sup>Šta, N. (2023) Policija Išče Najstnike, Ki so v Centru Ljubljane Zažgali Mavrično Zastavo. *N1*. <https://n1info.si/novice/slovenija/po-zazigu-mavricne-zastave-na-festivalu-lgbt-filma-se-vrstijo-obsodbe-dejanja/>

# Funding for civil society

In general, the NGO sector is doing quite well financially. Its annual income and public funding have increased year on year.<sup>731</sup>

Similarly to COVID-19 intervention laws, NGOs (after significant advocacy towards the Ministry of Public Administration and the Parliament) are now recognised as recipients of damage recovery after the floods in the same manner as companies. The initial Natural Disaster Recovery law was passed in 2005 and a lot of entities (e.g. foundations, associations, farmers) were not included in it. While farmers and others were added immediately, significant advocacy was needed to add associations and foundations as well.

Public funding for NGOs from ministries and other public institutions is now running smoothly again and according to the rules.

However, in March 2023, the Ministry of Public Administration published a call for proposals for strengthening active civil rights and empowering non-governmental organisations in this area.<sup>732</sup> The purpose of the call for proposals (CfP) was to support organisations that work in the field of democracy, transparency, and human rights, on national and local levels (in short, equated to a national CERV programme). The ministry dedicated 10 million EUR over the next four years from the national NGO fund. In August 2023, it published the list of recipients. However, as reported by the media there were several concerns about the recipients: The largest recipient, out of the three projects granted, was an organisation that does not fulfil the formal requirements of the application, i.e. applicants must be an NGO as prescribed by law, even though the Ministry of Infrastructure granted them public benefit status in 2021.

A consultancy company previously co-owned by the Minister of Public Administration, Sanja Ajanović Hovnik, wrote several project proposals for several different applicants for the success fee of seven per cent (the fee paid if the project application is successful). All projects were supported. The company is presently co-owned by the minister's mother and her friend. The minister's friend is also a director of one of the awarded organisations. This organisation also received core-funding from the CfP, but only after the minister decided to move some funds to the core-funding LOT. The

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<sup>731</sup>CNVOS (2024) NGO Sector: Facts and Numbers. Cnvos. <https://www.cnvos.si/en/ngo-sector-slovenia/>

<sup>732</sup>Uradni List. (2023) Glasilo Uradni List Rs. *Uradni List*. <https://www.uradni-list.si/glasilo-uradni-list-rs>

minister claimed that she didn't know that the organisation had applied, however prior to this she had signed a letter of support for this particular application.

Following this, the minister resigned. The Anti-corruption commission concluded its preliminary investigation and launched an official investigation in December 2023. Police are investigating the case as well. The ministry also ordered an internal revision of the call. As a result, the CfP was initially suspended and in January 2024, the newly appointed minister abolished the call for proposal. Several NGOs are preparing lawsuits with a claim that there is no legal basis or explanation for the ministry's decision, since the internal investigation has not yet been finalised.

The NGO fund was established for the development of the sector in line with the law on NGOs. Each year, approximately €10 million is dedicated to the fund from an undistributed share of personal income tax (each taxpayer can distribute one per cent of personal income tax to publicly benefit NGOs, trade unions, churches, or political parties). If the share is not distributed, it goes directly to the NGO fund.

Apart from the above-mentioned CfP, the Ministry of Public administration in 2023 concluded one CfP that was published in 2022 and published only one additional CfP in July 2023. The application deadline was at the beginning of September and there are no results to date. As a result, a vast majority of funds from the NGO fund remains undistributed.

## Civil dialogue and the right to participation

The framework for civil dialogue has remained the same for quite some time. However, the level of implementation differs. The current government established many consultative or working bodies in which NGO representatives are included. However more time is required to assess their activities and efficiency.

The main consultation body for an enabling environment for civil society is the Government Council for Cooperation for the development of voluntarism, voluntary and non-governmental organisations. The mandate of the previous council ended in October 2023. Even though the Ministry of Public



Administration announced in September that it will start a procedure for the appointment of the new Council, this has not yet happened. Similarly, the Ministry of Public Administration started the preparations for the Government Strategy for the development of NGOs for 2024- 2028 in the Spring of 2023 with two strategic workshops. However, there is no progress to date on the draft of the new strategy.

## Gaps remain with the right to participation

The general rule for public consultation deadlines is 30 days. However, the current government breaches this rule in 65 per cent of cases<sup>733</sup>, fewer breaches than the previous Jansa government (70%) but slightly more than the Sarec Government (60%).<sup>734</sup>

Even though the Resolution on Legislative Regulation clearly states that stakeholders should be involved in the process of drafting at early stages, this is usually not the case. For example, the current government prepared the first Healthcare Intervention law without any involvement of the stakeholders. They also prepared and sent changes to the Parliament on the Law on Institutes that could affect thousands of public institutes, as well as more than 3,000 NGOs. After outrage from the stakeholders, the government withdrew the law from the Parliament.<sup>735</sup> Moreover, in the same manner, the Ministry of Public Administration prepared guidelines for Government Cooperation with NGOs<sup>736</sup> and only opened public consultations after the guidelines were already drafted. After receiving criticism from the other ministries about the closed process and low quality of the guidelines, NGOs and the Government Council for Cooperation development of voluntarism, voluntary, and non-governmental organisations rewrote the guidelines in cooperation with NGOs. However, in the end, the government did not pass the guidelines.

All in all, on paper the government appears to be very open and participative. However, in practice, the level of civil dialogue and the state of enabling environment has decreased in the last year.

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<sup>733</sup> CNVOS. (2024) Števec Kršitev Rendej. <https://cnvos.si/stevec-krsitev/>

<sup>734</sup> CNVOS. (2024) števec kršitev Arhiv Prejsnjih Vlad. <https://cnvos.si/nvo-vseved/stevec-krsitev/arhiv-prejsnjih-vlad/>

<sup>735</sup> STA. (2023a) Po Ostrih Kritikah Vlada Umaknila Predlog Novele Zakona O Zavodih. N1. <https://n1info.si/novice/slovenija/po-ostrih-kritikah-vlada-umaknila-predlog-novele-zakona-o-zavodih/>

<sup>736</sup> Portal GOV.SI. (2024). Smernice Za Sodelovanje Vlade Republike Slovenije Z Nevladnimi <https://www.gov.si/assets/ministrstva/MJU/SNVO/Smernice-za-sodelovanje-Vlade-RS-z-NVO.pdf>

# Civil society resilience

The public image of the civic sector improved due to the understanding that civic actors were the key factor in changing the government and in preventing several poor decisions. Civic mobilisations achieved between 2020 – 2022 are still active (e.g. the number of laws submitted to the Parliament with the signatures of people increased tremendously). State authorities foster trust in the sector. However, members of SDS continue their smear campaigns on X (formerly Twitter), while pro-SDS media outlets publish false stories about civic actors on a daily basis, which portray NGOs as one of the biggest enemies of the state.

Even though the media are generally supportive of civic actors (with the exception of right-wing media), during and after the alleged corruption case of the Minister of Public Administration, the focus of the debate was on whether or not NGOs should receive public funding at all and whether the NGO fund should be abolished. The same harsh narrative does not apply when there are scandals involving the business sector. Legal networks for the defence of democracy are still actively responding to cases of hate speech, for example.

While cooperation between different actors, e.g. NGOs and journalists, NGOs and trade unions, have increased as they are seen as natural allies, it remains ad hoc – and only takes place in specific concrete cases.

## Recommendations

### Targeted recommendation:

- 🔍 Urgently prioritise the transparent distribution of the National NGO funds.

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- 🔍 Immediately and fully implement the Law on NGOs by appointing new members of the Government Council for Cooperation development of voluntarism, voluntary and non-governmental organisations.
- 🔍 Engage with the process of developing a new Government Strategy for the development of NGOs.
- 🔍 Implement the recommendations of the Strategic Council for fighting hate speech to counter online attacks and smear campaigns against civic actors.
- 🔍 Increase state funding for watchdog, monitoring and advocacy activities, as well as support to civic activism.

# About the author

CNVOS is a national NGO umbrella network in Slovenia. It serves as a national information, training, advocacy and re-granting centre for NGOs in Slovenia. In over 20 years of existence CNVOS has participated in all major achievements for NGO enabling environment, while also serving as the main protector of civic space. CNVOS is through cooperation with EU platforms and directly active on the EU level and in the regions of the Western Balkan and Eastern Neighbourhood.





## Civic Space Report 2024

# SPAIN





# Key trends

- 🔍 Anti-terrorism laws increasingly applied against human rights and environmental defenders in the name of public or national security.
- 🔍 Police infiltration operations in social movements seriously violates fundamental rights & creates a chilling effect.
- 🔍 Protesters face arrests, persecution, disproportionate fines, police violence and ill-treatment in police custody

# Summary

Civic space is rated as narrowed in Spain.<sup>737</sup> There were no recommendations on civic space for Spain in the European Commission's 2023 Rule of Law report, however the report noted civil society concerns regarding the so-called Gag law. This continued in 2023 as the Spanish government failed to reform the Gag Law.<sup>738</sup> In a serious concern, independent media uncovered police infiltrations in social movements<sup>739</sup> which have been criminalised. The application of anti-terrorist laws has been instrumentalised by the authorities to restrict human rights and environmental defenders advocating for different issues, such as environmental and climate protection and Catalanian self-determination.

Police violence and the lack of police identification and accountability, the arbitrary banning of protests, persecution, detention and arrests, identity checks, as well as ill-treatment, humiliation and assaults of activists in police custody have remained worrying issues. These types of violations and

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<sup>737</sup> <https://monitor.civicus.org/country/spain/>

<sup>738</sup> <https://www.elsaltodiario.com/ley-seguridad-ciudadana/reforma-ley-mordaza-game-over-psoe-represion-sanciones>

<sup>739</sup> <https://www.elsaltodiario.com/policia/seis-infiltrados-curso-2022-2023>

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the lack of police transparency, often justified for reasons of public and national security, are serious threats to democracy and the rule of law in Spain.

There was an escalation in cases restricting freedom of expression and information, with a significant number of journalists arrested during protests.<sup>740</sup> The last few months of the year were characterised by protests in solidarity with Palestinian people as a result of escalating violence in Israel/ Palestine. During these protests, legal proceedings against activists were initiated<sup>741</sup>, arbitrary racial profiling took place, and the display of Palestinian flags in public spaces, especially at sporting events<sup>742</sup> was restricted. Online pro-Palestinian engagement was censored by removal or banning of content.

The Spanish authorities have failed to address and investigate the massive Pegasus spyware scandal of 2022, targeting at least 65 persons<sup>743</sup>, including members of the Catalan independence movement, politicians, lawyers, journalists, activists as well as some of their family members. Most of the ongoing judicial investigations were paralysed and the Spanish authorities have not implemented any of the recommendations of the European Parliament's PEGA Committee.<sup>744</sup>

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<sup>740</sup> <https://www.elsaltodiario.com/libertad-informacion/detenidas-dos-periodistas-informaron-accion-climatica-majas-goya-museo-prado>

<sup>741</sup> [https://www.elnacional.cat/es/politica/detenidas-cuatro-personas-por-protesta-propalestina-contrahotel-judio-en-barcelona\\_1129041\\_102.html](https://www.elnacional.cat/es/politica/detenidas-cuatro-personas-por-protesta-propalestina-contrahotel-judio-en-barcelona_1129041_102.html)

<sup>742</sup> [https://www.eldiario.es/sociedad/multa-llevar-bandera-legal-estadio-caso-eibar-agita-debate-libertad-expresion\\_1\\_10603804.html](https://www.eldiario.es/sociedad/multa-llevar-bandera-legal-estadio-caso-eibar-agita-debate-libertad-expresion_1_10603804.html)

<sup>743</sup> <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/un-ano-despues-ni-rastro-de-pegasus/>

<sup>744</sup> <https://www.lavanguardia.com/politica/20230508/8951868/comite-pegasus-pide-espana-investigue-todos-presuntos-casos-espionaje-politico.html>

# Institutional, political and socio-economic landscape

In July 2023, general elections were held with the right-wing Partido Popular (PP) winning but without enough support to form a government. In November, after months of negotiations, Pedro Sanchez from the Spanish Socialist Workers' Party (PSOE) managed to form a minority government with the left Sumar coalition, thanks to an amnesty deal with Catalan parties. The controversial deal led to mass protests around Spain.

Although the state of civic space in Spain is not threatened at very high levels, it should be noted that civic space is shrinking, and the political landscape is increasingly polarised. The legal framework created since 2015 has resulted in challenges for an enabling environment for civil society and the exercise of the fundamental freedoms of association, peaceful assembly and expression.

The entry of right-wing parties PP and Vox into the government of various city councils and regional executives after the elections in May, has resulted in suppression of Equality councils, opposition to 'violent points', censorship of plays, or even rejection of minutes of silence in memory of women murdered by their partners or ex-partners.<sup>745</sup> With Vox's support, PP has eliminated the equality areas of the city councils, that mostly work on supporting victims of sexist violence, in one third of the large cities in which it governs. Some of these municipalities are regional capitals, such as Valladolid and Toledo, or prominent cities like Burgos, Huelva, Talavera de la Reina, Orihuela, Molina de Segura, and Ponferrada. In Valdemorillo (Madrid). The performance "Orlando" by the British author Virginia Woolf was removed from the programme of a theatre due to the Vox party. In Toledo, the council removed "La Infamia", a play by the Mexican journalist Lydia Cacho who depicted her kidnapping and women's rights violations in her country.

The final months of 2023 were marked by protests against the escalating violence in Israel/Palestine. During the protests, numerous cases of arbitrary identifications and ethnic and racial profiling have

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<sup>745</sup> <https://www.huffingtonpost.es/politica/lo-pp-vox-han-fulminado-dos-meses-concejalias-igualdad-puntos-violeta-obras-feministas.html>

been reported. The extreme right-wing demonstrations in Madrid at the beginning of November which resulted in increasing levels of racism and homophobia<sup>746</sup>, generated a chilling effect in public spaces for racialised people and LGBTIQ+ communities.

# Civic freedoms: regulatory environment and implementation

## Freedom of association

### Police infiltration and the use of spyware

The primary laws governing freedom of association are the Spanish Constitution, particularly in Article 22, the Organic Law regulating freedom of association (LO 1/2002, March 22), and the Penal Code (LO 10/1995, November 23). Although the Penal Code underwent recent reform in 2022, the introduced modifications do not impact on freedom of association. These laws align with international standards on freedom of association. The police did not gain any additional powers in Spain in 2023.

Despite the regulatory environment, in the past few years Spanish state authorities have violated the right to association in various ways. Incidents such as the use of Pegasus spyware on political dissents, activists, journalists and lawyers, and police infiltration in civil society organisations and social movements have been documented.

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<sup>746</sup> [https://www.eldiario.es/politica/ultima-hora-investigacion-pedro-sanchez-actualidad-politica-directo\\_6\\_10676352\\_1104293.html](https://www.eldiario.es/politica/ultima-hora-investigacion-pedro-sanchez-actualidad-politica-directo_6_10676352_1104293.html)

2023 has been strongly marked by six cases of national police infiltrators in social movements uncovered by the media, mainly in Catalonia, Madrid and Valencia. Most of them had been involved for years in movements and organisations that work on different causes, such as the anarchist movement, housing unions, pro-independence organisations, student unions or the squatters' movement. In several cases, the infiltrated police officers developed emotional and sexual relationships with some activists, and even dated some of them. Sex-affective relationships have been identified as the main strategy for infiltrating and consolidating trust with movements<sup>747</sup>, with the endorsement and cover-up by the rest of the police structure. This strategy reflects how institutional and sexual violence intersect. Sexual violence is linked to institutional violence when these actions are perpetrated by a police officer in the course of duty, seemingly authorised, endorsed, and permitted by the institutional structure to which they belong.

In January 2023, five women activists initiated criminal proceedings against one of the infiltrated police officers for crimes including continuous sexual abuse, torture, or alternatively, violation of moral integrity, discovery and disclosure of secrets, and prevention of the exercise of fundamental rights, notably the violation of freedom of association.<sup>748</sup> In November 2023, one male activist and four civil society organisations, among them Omnium Cultural, initiated criminal proceedings against another infiltrated police officer for the crime of torture and violation of moral integrity<sup>749</sup>, as well as the discovery and disclosure of secrets.

Police infiltrations have had a chilling effect and a significant impact on social movements in Spain, especially in Catalonia. Such police operations are unnecessary and unjustified and violate the principles of the rule of law and democracy and restrict civic space.

The chronology of police infiltrations in social movements were as follows:

- 🔍 In June 2022, the newspaper La Directa revealed that the real identity of Marc Hernández Pon<sup>750</sup>, an activist in a *casal*<sup>751</sup> in the Eixample neighbourhood of Barcelona, corresponded to that of an agent of the National Police.

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<sup>747</sup> <https://www.publico.es/sociedad/policia-utilizaba-relaciones-sexoafectivas-infiltrarse-movimientos-sociales-barcelona.html>

<sup>748</sup> <https://elpais.com/espana/catalunya/2023-02-01/cinco-mujeres-se-querellan-contra-un-supuesto-policia-infiltrado-en-barcelona.html>

<sup>749</sup> <https://www.elperiodico.com/es/politica/20220801/omnium-demanda-infiltraciones-independentistas-policia-movimientos-juveniles-14203493>

<sup>750</sup> <https://blogs.publico.es/dominiopublico/46002/marc-el-poli-infiltrado/>

<sup>751</sup> **A Catalanian reference to place for social movements and communitarian work.**



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- 🔍 In January 2023, the same media disclosed that an 'activist' of the libertarian movement and the right to housing called "Dani"<sup>752</sup> was an agent of the National Police.
- 🔍 In February 2023, La Directa revealed the real identity of another police officer. Under the fake name "Ramón Martínez Hernández"<sup>753</sup> he had infiltrated social movements in València for two years, specifically different anti-fascist organisations and in squatting social projects.
- 🔍 In March 2023, El Salto published that Mavi L.F.<sup>754</sup>, an 'activist' of environmentalist movements and participant in the social centre *La Animos*a, was an agent of the National Police Force.
- 🔍 In July 2023, La Directa tracked down Maria I.T.<sup>755</sup>, who was active in the anti-racist movement and forged strong links with activists of the Comitè de Defensa de la República de Girona (Committee for the Defence of the Republic of Girona).
- 🔍 In September 2023, it was uncovered that Sergio<sup>756</sup>, a National Police officer, lived a double life for six years infiltrating anti-repressive movements in Madrid, and participated in many protests, including in the referendum of October 1, 2017, in Barcelona.

In 2023, many cases of spying on political party leaders with the use of the Pegasus were exposed in Spain. In December, it was revealed that the Spanish National Court ordered the use of spyware<sup>757</sup>, later revealed as Pegasus, on the phones of former members of the parliament as part of the investigations into the Catalan Tsunami Democràtic movement. Among those affected were persons such as former members of the Catalan Parliament, David Fernández and Quim Arrufat, from the CUP party, and Albano Dante, former leader of the political coalition *Catalunya Sí Que Es Pot*. Following these incidents, some parties have been pushing for a commission of enquiry in the

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<sup>752</sup> <https://www.elsaltodiario.com/espionaje/dani-segundo-infiltrado-activismo-catalan-destapado-directa>

<sup>753</sup> <https://arainfo.org/un-policia-infiltrado-en-valencia-que-lideraba-acciones-de-sabotaje/>

<sup>754</sup> <https://www.publico.es/sociedad/descubren-policia-infiltrada-movimientos-sociales-madrid.html>

<sup>755</sup> [https://www.elnacional.cat/es/politica/policia-espanola-infiltra-anos-movimientos-independentistas-girona\\_1061520\\_102.html](https://www.elnacional.cat/es/politica/policia-espanola-infiltra-anos-movimientos-independentistas-girona_1061520_102.html)

<sup>756</sup> <https://www.elsaltodiario.com/policia/seis-anos-infiltrado-movimientos-sociales-madrilenos>

<sup>757</sup> [https://www.elconfidencial.com/espana/2022-04-28/pegasus-sanchez-gobierno-autorizo-cni-tsunami-democratic\\_3415623/](https://www.elconfidencial.com/espana/2022-04-28/pegasus-sanchez-gobierno-autorizo-cni-tsunami-democratic_3415623/)

Spanish Congress of Deputies to clarify the facts and to determine who is responsible<sup>758</sup> for these human rights violations.

## Freedom of peaceful assembly

### Developments on the so called 'Gag law'

The main laws that regulate freedom of peaceful assembly, which is protected under Article 21 of the Spanish Constitution are the Organic Law regulating Freedom of Assembly (LO 9/1983, July 15), the Organic Law regulating Citizen Security (LO 4/2015, March 30), also known as the Gag Law, and the Penal Code (LO 10/1995, November 23), which was recently reformed. Both the Gag Law and the new version of the Penal Code approved in 2022 are criticised for not being in line with international and European human rights standards<sup>759</sup>, particularly the provisions that affect the right to freedom of expression, right of peaceful assembly, right to request asylum and the prohibition of refoulement.

The Gag Law has been criticised since it was passed due to multiple factors, such as the discretionary powers that it gives to police officers, the increase of infractions that it establishes compared to the previous law, and the difficulty of appealing against a sanction (because of the veracity presumption that police officers have, and because of the bureaucracy and technicality to do so). The language that is used in the law has been a target of criticism because it is very ambiguous, which, in practice, allows irregular and arbitrary police intervention.

The amendment to the Gag Law is urgently needed due to its ability to repress the freedom of peaceful assembly. Various international and regional human rights organisations, such as the Commissioner for Human Rights and the Venice Commission of the Council of Europe have called for its reform<sup>760</sup>. On March 14, the process of reforming the law failed. Numerous civil society organisations, including Amnesty International, *No Somos Delito*, *Defender a quien Defiende*, and Greenpeace, expressed regret over the "missed opportunity" to reform the Gag Law due to a lack of

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<sup>758</sup> <https://www.europapress.es/nacional/noticia-congreso-aprueba-comisiones-investigacion-operacion-cataluna-pegasus-atentados-17-20231212230311.html>

<sup>759</sup> [https://www.eldiario.es/politica/consejo-europa-insta-espana-reformar-ley-seguridad-ciudadana-potencial-represivo\\_1\\_7334898.html](https://www.eldiario.es/politica/consejo-europa-insta-espana-reformar-ley-seguridad-ciudadana-potencial-represivo_1_7334898.html)

<sup>760</sup> **Letter to the Spanish Government from the Commissioner for Human Rights on the reform of the Citizen Security Law (2022)** [https://es.scribd.com/document/558802891/CommDH-2022-4-Letter-to-the-Spanish-Parliament-EN#from\\_embed](https://es.scribd.com/document/558802891/CommDH-2022-4-Letter-to-the-Spanish-Parliament-EN#from_embed)

majority support in the Interior Committee.<sup>761</sup> This development is distressing for human rights defenders since it undermines confidence in the participation system and represents an exhaustion of formal political advocacy processes. Furthermore, it means continuing to maintain the *bureau repression*<sup>762</sup> faced by rights defence movements in Spain. On 24 October, PSOE and Sumar, the parties governing after the 2023 elections, signed a coalition pact for the next government<sup>763</sup>, renewing the failed commitment made in 2023: the approval of "a new law on citizen security, which replaces the 'Gag Law' to guarantee the exercise of the right to freedom of expression and peaceful assembly."

### Social movements branded as "terrorists"

A worrying trend in 2023 has been the arbitrary terrorism accusations against civic actors under the pretext of national or public security. The targeting of social movements as "terrorists" is reflected in the last annual report of the Prosecutor General's Office (covering 2022), published in September 2023<sup>764</sup>, which initially classified the actions of the anti-fascist movement, environmentalists (particularly the collectives Futuro Vegetal and Extinction Rebellion), and the Catalan independence movement as "national terrorism". However, after public criticism, the Prosecutor General's Office retreated<sup>765</sup>, denying that Futuro Vegetal and Extinction Rebellion are considered "terrorists".

The inclusion of these organisations and movements in the annual report reveals how Spanish institutions assess and categorise some civic actors. The categories used in the report contribute to the vilification and criminalisation of particularly active groups. In its subsequent clarification, the Public Prosecutor's Office only excluded the two environmentalist groups and avoided commenting on other criminalised groups, such as Catalan and Basque independence groups and the anti-fascist movement, which appear as "threats" under the label of "national terrorism".

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<sup>761</sup> <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/espana-ley-mordaza-oportunidad-perdida-y-frenazo-en-la-proteccion-de-los-derechos-humanos/>

<sup>762</sup> **Bureaucratic repression is the use of administrative sanctions available in the framework of laws, norms and ordinances in order to deactivate the protest of social movements. See more Oliver, P. (2013). "Bureaurepression: Administrative sanction and social control."**

<sup>763</sup> [https://www.newtral.es/wp-content/uploads/2023/10/ACUERDO\\_GOBIERNO\\_COALICION\\_2023-DEF.pdf?x97555](https://www.newtral.es/wp-content/uploads/2023/10/ACUERDO_GOBIERNO_COALICION_2023-DEF.pdf?x97555)

<sup>764</sup> <https://www.elperiodico.com/es/medio-ambiente/20230912/fiscalia-pasa-considerar-extinction-rebellion-91884518>

<sup>765</sup> <https://www.publico.es/politica/fiscalia-desmiente-futuro-vegetal-y-extinction-rebellion-sean-terroristas.html>

On 7 November, a National High Court judge investigating the Tsunami Democràtic movement requested that the Supreme Court charge 12 people from the movement with terrorism.<sup>766</sup> They are accused of organising the November 2019 Tsunami Democràtic protest against the more than 100 year prison sentence handed down to nine Catalan social and political leaders. The judge found non-violent civil disobedience mass demonstrations to be terrorism, citing examples of demonstrations at El Prat airport and the blocking of the La Jonquera road on the French border. The 12 individuals face charges of terrorism and potential sentences of more than 20 years in prison.<sup>767</sup> Moreover, the indictment of journalists in this case has also been perceived as a severe attack on freedom of expression.

Among the 12 people investigated for terrorism is journalist Jesús Rodríguez<sup>768</sup>, a prominent figure who uncovered cases of police espionage in social movements and Oleguer Serra, a member of the board of directors of Òmnium Cultural, a Catalan cultural civil society organisation. It is worth noting that the investigation was reopened in the same week during which negotiations for the formation of the new government took place and the amnesty law for people prosecuted and convicted in connection with the Catalan movement for self-determination. A decision to investigate political representatives, journalists and civil society actors for terrorism in the current context may interfere in the parliamentary negotiations on the amnesty law, which could de facto result in judicial interference by the legislature. The Amnesty Law remains unapproved due to the lack of agreement between the Government and the Catalan Party Junts. In January 2024, Junts voted against the law because the PSOE did not accept its amendments to exclude terrorist offences from the amnesty “as long as there is a final judgment” on a specific case.<sup>769</sup> The draft law was returned to the Justice Commission and the deadline to clear the law has been extended until March, allowing more time for negotiation.

On 22 November, the Public Prosecutor requested prison sentences of one year and nine months for each of the fifteen activists of the Scientific Rebellion movement who threw beetroot-stained water at the Congress of Deputies on 6 April 2022 to raise awareness of the climate crisis.<sup>770</sup>

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<sup>766</sup> <https://elpais.com/espana/2023-11-03/la-audiencia-nacional-envia-a-juicio-a-los-12-cdr-procesados-por-terrorismo-en-plena-negociacion-de-la-ammnistia.html>

<sup>767</sup> <https://www.europapress.es/nacional/noticia-fiscalia-pide-imponer-penas-27-anos-prision-12-cdr-pertenencia-organizacion-terrorista-20231124130850.html>

<sup>768</sup> <https://www.europapress.es/nacional/noticia-fiscalia-pide-imponer-penas-27-anos-prision-12-cdr-pertenencia-organizacion-terrorista-20231124130850.html>

<sup>769</sup> <https://www.euractiv.com/section/politics/news/last-chance-for-spanish-government-to-amend-controversial-amnesty-law/>

<sup>770</sup> <https://www.elsaltodiario.com/cambio-climatico/fiscalia-pide-21-meses-15-activistas-rebelion-cientifica-tineron-congreso-remolacha>

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On 24 November the Public Prosecutor's Office of the Audiencia Nacional accused the twelve members of the Committees for the Defence of the Republic (CDRs) involved in the Judas operation<sup>771</sup> carried out by the Civil Guard under the orders of the Central Court of Investigation number 6 of the National Court. The operation began in September 2019 with 500 agents deployed in Barcelona and several nearby locations. In total, nine people were arrested for links to an alleged organisation with the intention of trying to achieve the independence of Catalonia through violent means. They may face up to 27 years in prison and absolute disqualification. Eight of the activists were accused of being members of a terrorist organisation, for the possession and manufacturing of explosives, and for destruction. The remaining four were accused of being members of a terrorist organisation and sentenced to eight years in prison. The charges come following protests in December 2018, and in February 2019 on the occasion of the Council of Ministers held in Barcelona which led to forced road closures.

Other restrictions on the freedom of peaceful assembly included the banning of protests. For example, social movements, trade unions and political organisations in Granada accused the sub-delegation of the government of Granada for banning a demonstration against the European Summit planned for 5 October, despite a request for permits in advance. The social organisations appealed to the High Court of Justice of Andalusia on the grounds that the absolute prohibition of the demonstration violates the right to peaceful assembly. The court agreed and ruled that the sub-delegation should have proposed an alternative route admitting that the prohibition violates fundamental rights.<sup>772</sup>

On July 8 the Madrid municipal police intervened in an event on the climate crisis which took place in the Asamblea Popular de Carabanchel (a neighbourhood in the south of Madrid).<sup>773</sup> According to the organisers, the officers threatened to sanction and arrest those attending the meeting if it was not dissolved immediately because they did not have a permit. This contravenes Article 21.1 of the Spanish Constitution which recognises and specifies that "the exercise of (peaceful assembly) shall not require prior authorisation." It also states that prior notice is only required if the meeting is held in public places and for demonstrations.

Identity checks are common practice in the contexts of mobilisations and protests. For example, the platforms *Defender a quien Defiende* and *Stop Represión Granada* reported that an incident took

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<sup>771</sup> <https://www.elsaltodiario.com/cdr/en-libertad-los-ultimos-dos-cdr-presos-por-la-operacion-judas>

<sup>772</sup> <https://www.elsaltodiario.com/cumbre-social-granada/tsja-autoriza-manifestacion-cumbre-social-granada>

<sup>773</sup> <https://www.publico.es/sociedad/policia-almeida-disuelve-charla-vecinal-crisis-climatica.html>



place during a protest on 30 September.<sup>774</sup> According to both groups, an observer was allegedly forced into a doorway by a plainclothes policeman and identified by photographing her ID card. She was forced to delete all photographs and videos of the protest and threatened with a fine if she continued to document the protest. The organisations reported the incident to the sub-delegation of the government and the Ombudsman of Granada. It is important to note that the data provided by *Defender a quien Defiende's* platform may not be fully representative, as they lack the necessary resources to monitor the overall number of violations at a national level.

The *Defender, a quien Defiende* platform, reported at least 60 active cases against climate activists. Most of the cases were filed against members of Futuro Vegetal, a civil disobedience collective that aims to uncover unethical companies and governments responsible for the climate and eco-social crisis. In July 2023, the platform published an investigation showing the systematic repressive responses against the collective. The report illustrates the criminalisation and persecution that the environmental movement is facing.<sup>775</sup>

From January 2022 to June 2023, the platform also reported at least 131 violations of rights.<sup>776</sup> This included 34 actions carried out by the environmental collective, 49 arrests, with excessive use of force in some cases; (30 of them occurred only during the month of April) and five cases of alleged ill-treatment, torture and humiliation in police stations. The collective still has 29 criminal proceedings and faces a claim of at least €57,800 in property claims and other sanctions.

In 2022 and 2023, police carried out alarming violations during the arrests of the Futuro Vegetal activists. The length of detention exceeded the legal limit (an average between six and 78 hours). The activists were exposed to insults, humiliation during detention, and alleged threats of direct violence in some cases. The activists reported that vegetarians and vegans were denied food during their time in police custody without any explanation. The *Defender a quien Defiende* platform also reported gendered harassment by the police officers. For example, in June 2023, three women activists reported that they were forced to urinate and change their clothes with the doors open during the detention, while male police officers verbally harassed them. They were denied privacy while making the personal phone call and during the meeting with their lawyer. Both took place in a room with police officers and the sound was played through a loudspeaker.

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<sup>774</sup> <https://www.elsaltodiario.com/cumbre-social-granada/3000-personas-reclaman-otra-europa-granada-una-observadora-amenazada-policia>

<sup>775</sup> <https://defenderaquiendefiende.org/defender-a-quien-defiende-denuncia-que-entre-2022-y-2023-ha-sistematizado-al-menos-131-vulneraciones-de-derechos-humanos-contra-futuro-vegetal/>

<sup>776</sup> [https://defenderaquiendefiende.org/wp-content/uploads/2024/02/DQD\\_vulneracionesWEB.pdf](https://defenderaquiendefiende.org/wp-content/uploads/2024/02/DQD_vulneracionesWEB.pdf)

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The violations also took place against journalists covering Futuro Vegetal actions. At least three journalists have been detained, one prosecuted for damages, and four were identified, searched, and registered at the scene of the events, hindering their work. These developments violate the right of access to information and freedom of expression, especially in a protest context.

Access to public spaces remains unequal for certain groups. In particular, migrants with irregular administrative status cannot fully exercise their right to peaceful assembly, as they face the risk of deportation due to a punitive approach to demonstrations, where the identification and sanctioning of protesters have become the norm. Even migrants with regular administrative status (such as a residence permit) have expressed concerns that the risk of sanctions during protests discourage their participation, given that it could lead to a denial of permit renewals. Civil society organisations raised concerns over racist bias in access to public spaces and political participation. Such restrictions on the right to protest intersects with gender, resulting in specific security risks for women and the LGBTIQ+ community.

### Freedom of expression is threatened by censorship, attacks on journalists and the suppression of pro-Palestinian voices

The main laws that regulate freedom of expression are in Article 20 of the Spanish Constitution, the Organic Law regulating Citizen Security (LO 4/2015, 30 March, so-called Gag law, and the Penal Code (LO 10/1995, 23rd November). The main articles affecting freedom of expression in the Gag law are Article 36.23 and Article 37.4 Article 36.23<sup>777</sup> is used as a pretext by police officers to prevent protesters from recording their actions and to intimidate them. Article 37.4<sup>778</sup> is used by police officers to fine protesters because of their words.

As stated previously, the Penal Code has been reformed. However, the reform does not affect the articles regarding freedom of expression. The relevant articles that are mostly used to repress protest are glorification of terrorism (Art. 578 PC), insults against the monarchy or public officers (Art. 490.3 PC) and vilification of religious feelings, dogmas, beliefs or rituals (Art. 525 PC).

Throughout 2023, at least twenty journalists have faced restrictions while carrying out their work during actions and mobilisations. Some were arrested, others were fined, and some were identified

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***777 The unauthorised use of images or personal or professional data of authorities or members of the Security Forces that may endanger the personal or family safety of the agents, of the protected facilities or those at risk success of an operation, with respect to the fundamental right to information."***

***778 "The lack of respect and consideration whose addressee is a member of the Security Forces and Corps in the exercise of their functions of protection of the security, when these behaviours do not constitute a criminal offense".***

or detained while attempting to cover the events. One journalist was charged with terrorism in the case of the Catalan pro-independence movement Tsunami Democràtic.

Concerning the escalating violence in Israel/Palestine, the Palestine solidarity movement has carried out hundreds of protests throughout Spain. Police have carried out identifications (some involving ethnic profiling), detentions, and prohibition of Palestinian symbols<sup>779</sup> such as flags, clothes or 'keffiyehs' (Palestinian scarves). Pro-Palestinian symbols have been banned in sports stadiums and school teachers have been targeted for speaking about the violence ongoing in Palestine. Some schools restricted demonstrations in solidarity with Palestine for fear of being accused of anti-Semitism by the authorities.<sup>780</sup> However, this is not a new trend as public education has been used by political parties in Spain for years, particularly in Catalonia. For example, Catalan schools have been accused of indoctrination simply because teachers discussed social and political topics from a human rights and democracy perspective.

In terms of digital, social media users have denounced censorship, removal of content and suspension of accounts for creating or sharing pro-Palestinian content or content related to the escalating violations ongoing in Israel/Palestine. Catalan media outlet El Nacional violated the privacy rights of three pro-Palestinian activists after the unauthorised dissemination of their images. The online newspaper published an article detailing protests they had participated in and displayed images of the activists' faces, citing internal police sources. The newspaper accused the activists of anti-Semitism, even before the police investigation had been concluded.

Political institutions have also censored symbols, banners or messages of trade unions defending health rights or feminist causes. One of the most notable cases is the strike staged by health centres of Madrid in February 2023, during which the Community President, Isabel Díaz Ayuso, banned posters inciting strikes.<sup>781</sup> Another case was in Sant Cugat del Vallès in Barcelona, where the city council exercised censorship and forced the removal of a mural painted at a school by students and teachers in solidarity with civilians of Gaza.<sup>782</sup>

Musicians, comedians and cartoonists have also faced restrictions on their freedom of expression. In November 2023, the European Court of Human Rights dismissed the appeal filed by rapper Pablo

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<sup>779</sup> <https://blogs.publico.es/dominiopublico/56015/la-liga-y-el-peligro-de-prohibir-banderas-palestinas/>

<sup>780</sup> [https://www.eldiario.es/madrid/somos/israel-pide-prohibir-concentraciones-colegios-madrid-huelgas-estudiantiles-apoyo-pueblo-palestino\\_1\\_10679657.html](https://www.eldiario.es/madrid/somos/israel-pide-prohibir-concentraciones-colegios-madrid-huelgas-estudiantiles-apoyo-pueblo-palestino_1_10679657.html)

<sup>781</sup> [https://www.eldiario.es/madrid/ayuso-prohibe-carteles-favor-huelga-atencion-primaria-centros-salud-madrid\\_1\\_9954385.html](https://www.eldiario.es/madrid/ayuso-prohibe-carteles-favor-huelga-atencion-primaria-centros-salud-madrid_1_9954385.html)

<sup>782</sup> <https://www.elperiodico.com/es/sant-cugat/20231207/sant-cugat-ordena-retirar-mural-palestina-95536177>

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Hasel<sup>783</sup>, who was sentenced by a Spanish court in 2021 to nine months of prison for glorifying terrorism in his lyrics against the monarchy and hence perpetuating a serious violation of freedom of expression. In 2017<sup>784</sup>, twelve rappers from the musical group 'La Insurgencia' were convicted of glorifying terrorism and sentenced to six months of prison in 2023. One of the rappers, Valtòny, was indicted again upon his return to Spain<sup>785</sup> after spending several years in exile in Belgium, following his conviction for glorification of terrorism and insulting the Spanish Crown. Cartoonist and comedian Darío Adanti, co-founder of the magazine 'Mongolia', was prosecuted for offending religious feelings on a cover of the magazine.<sup>786</sup>

Separately, the Socialist Party of Catalonia (PSC) - which holds the mayor's office - denounced the councillor of the city of Sabadell for his statements on the radio where he asked the city government for explanations for a work-related death of the employee in the municipal water management company. The counsellor received a judicial notice to attend a conciliation process which is still pending resolution.

It should be noted that while censorship exists in Spain and is a serious human rights issue, far-right movements and parties distort narratives on censorship and freedom of expression and use them to create new narratives to justify and spread hate speech against marginalised groups. Self-censorship is most likely a widespread phenomenon due to threats to freedom of expression, although it remains difficult to measure the extent of its visibility. Amnesty International Spain has denounced increasing self-censorship, particularly in the areas of culture, social media and education.

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<sup>783</sup> [https://www.eldiario.es/catalunya/tribunal-estrasburgo-rechaza-demanda-pablo-hasel-espana-vulnerar-libertad-expresion\\_1\\_10668912.html](https://www.eldiario.es/catalunya/tribunal-estrasburgo-rechaza-demanda-pablo-hasel-espana-vulnerar-libertad-expresion_1_10668912.html)

<sup>784</sup> <https://www.publico.es/politica/insurgencia-condenan-2-anos-1-dia-doce-raperos-insurgencia.html>

<sup>785</sup> [https://www.elconfidencial.com/espana/2023-10-28/valtonyc-regresa-espana-extranjero-puigdemont\\_3763476/](https://www.elconfidencial.com/espana/2023-10-28/valtonyc-regresa-espana-extranjero-puigdemont_3763476/)

<sup>786</sup> <https://www.elsaltodiario.com/libertad-expresion/dario-adanti-mongolia-sentimientos-religiosos-acude-juzgado-explicarle-chiste-juez>

# Safe space

Beyond the often-disproportionate police violence exercised by state security forces against mobilisations and demonstrations, the following three cases show how physical violence in the context of protests has been exercised by other non-institutional actors. In these cases the Spanish authorities have failed to hold the perpetrators to account. On March 8, a driver hit three feminist protesters who were blocking one of the main roads in Barcelona.<sup>787</sup> A similar case occurred in Madrid during an environmental cyclist march in which another driver ran over several demonstrators with his car, injuring five people.<sup>788</sup> The third case occurred at a bullfight in the bullring of Los Santos de la Humosa in Madrid during which two animal rights activists were assaulted by several of the attendees, including a councillor of the Popular Party (PP).<sup>789</sup> In the case of the Barcelona hit-and-run, the Mossos d'Esquadra regional police stopped the aggression and identified the driver, but in the Madrid cycling march, it was the driver himself who denounced the protesters. The consequences in the case of the anti-bull fighting activists are still unknown.

Online hate speech including racist, misogynistic, homophobic, transphobic and Islamophobic attacks, particularly on X, remain an issue. There has been an observable normalisation of certain hate messages in public spaces and online. The presence of extreme right-wing parties, such as Vox and Aliança Catalana, in public institutions and administration has further contributed to this trend. Thus, due to the simplification of hate speech, it is increasingly common for the persons behind the attacks to no longer hide behind anonymity. At the same time, social media technology companies are increasingly shirking their responsibilities by using automated content moderation and permitting hate speech as freedom of expression.

One example is the wave of discursive violence against transgender people, mainly through social media, but also via traditional media and by certain organisations. The approval of the so-called "Trans Law" in the Spanish Congress of Deputies, which aims to protect some transgender rights, has placed the trans community at the centre of public debate and provoked increasingly hateful messages towards them and transphobic attacks, harassment and assaults offline.

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<sup>787</sup> <https://www.elperiodico.com/es/barcelona/20230308/8-m-caos-trafico-barcelona-manifestaciones-diagonal-,eridiana-84265496>

<sup>788</sup> <https://www.madriario.es/coche-arrolla-grupo-ciclistas-bicicritica>

<sup>789</sup> <https://elpais.com/espana/madrid/2023-05-05/el-numero-dos-del-pp-de-los-santos-de-la-humosa-arrastra-por-la-plaza-de-toros-a-una-activista-antitaurina.html>



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Another example are the hate campaigns against migrants which has multiplied on social media and been fuelled by disinformation by some media outlets and certain political profiles and parties. This takes place in a context where far-right parties, such as Vox, Aliança Catalana or Frente Obrero, have tried to distort information to create discriminatory narratives that scapegoat migrants for all problems. The coordinated attack on the headquarters and premises of migrants' associations that took place in Barcelona at the beginning of December is an example of these hate campaigns.

Women and LGBTIQ+ rights movements also face police violence, attacks and hate crimes. Throughout 2023, more than 50 activists from these groups have faced repressions for participating in mobilisations and more than half of them were arrested. Most of the cases have been in the context of protest. This was the case during the feminist strike in the Basque Country where at least seven activists were arrested and around thirty were identified by the police.<sup>790</sup> Police initiated a court case against LGBTIQ+ activists who protested in Barcelona against the presentation of a transphobic book.<sup>791</sup>

The Spanish legislation is ambiguous when it comes to tackling hate speech which makes it difficult to prosecute certain incidents. However, in 2023 there was some progress in terms of jurisprudence. For example, seven people in Malaga were convicted for spreading online hate speech against unaccompanied migrant minors.<sup>792</sup>

These physical, verbal and online attacks, assaults and harassment as well as criminal records and disproportionate fines evidently cause psychological and financial burdens for civic actors. It contributes to demobilisation and creates a chilling effect on civil society. However, mutual support groups and platforms and organisations have emerged in Spain with the aim to provide psychosocial support and protection to human rights and environmental defenders.

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<sup>790</sup> <https://www.elsaltodiario.com/euskal-herria/piquetes-donostia-cuidados-huelga-general-feminista>

<sup>791</sup> <https://elpais.com/espana/catalunya/2022-05-16/los-mossos-cargan-contra-activistas-que-querian-paralizar-la-presentacion-de-un-libro-critico-con-la-teoria-queer.html>

<sup>792</sup> <https://www.publico.es/sociedad/condenan-prision-siete-personas-incitar-violencia-menores-migrantes-melilla-traves-facebook.html>

# Funding for civil society

The excessive bureaucratisation and the reduction in economic resources allocated to civil society organisations continue to pose significant barriers to the effective participation of civic actors in upholding the rule of law. Those working more autonomously without state funding, whether organisations or social movements, find themselves increasingly overwhelmed by the social and economic challenges facing the country.

## Civil dialogue and the right to participation

During 2023, the trust in the civil society sector has been high which has led to continuing political and social advocacy processes that were not considered in previous years. Despite this, civil dialogue has been insufficient and opaque. Some legislative processes have been carried out without consulting civil society, exclusively through negotiations between political parties. One example was the missed opportunity to reform the Gag Law. Civil society organisations defending human rights had very few opportunities to engage in open public dialogue with the government to express their demands.

Overall, the institutions have not been pioneering in strengthening civic space. One of the few positive measures was the new mechanism for citizen participation inaugurated by Barcelona City Council in 2023 under the name "Decidim.Barcelona". This is a system to promote civil society initiatives and neighbourhood proposals which, after collecting a certain number of signatures, are directly included on the agenda of the city council's meetings. Although it is an innovative initiative, it has not been widely implemented and it is too early to assess its impact.

The last session of the first Citizens' Climate Assembly (ACC) organised by the Spanish government was held in May 2022. In some regions it has been more extensive, as was the case in Barcelona,

where the Citizens' Climate Assembly process began in April with the selection of participants and twelve face-to-face participatory sessions were held between September 2022 and January 2023. The process ended with recommendations which were handed over to the City Mayor and representatives of the political groups. Catalonia has had a Citizens' Assembly since 2023. It is made up of 100 citizens chosen by lot who analyse, discuss and draw up proposals on how to address and adapt to tackle climate change.<sup>793</sup> They tackled two specific challenges: renewable energy and agriculture. After the process, the Assembly will hand over recommendations to the Generalitat, which will evaluate them.

# Civil society resilience

During 2023, the trust in the civil society sector has been high which has led to continuing political and social advocacy processes that were not considered in previous years. Despite this, civil dialogue has been insufficient and opaque. Some legislative processes have been carried out without consulting civil society, exclusively through negotiations between political parties. One example was the missed opportunity to reform the Gag Law. Civil society organisations defending human rights had very few opportunities to engage in open public dialogue with the government to express their demands.

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<sup>793</sup> [https://www.eldiario.es/catalunya/pablo-migrante-29-anos-sera-voz-lucha-cambio-climatico\\_1\\_10731224.html](https://www.eldiario.es/catalunya/pablo-migrante-29-anos-sera-voz-lucha-cambio-climatico_1_10731224.html)

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# Recommendations

## Targeted recommendation:

- 🔍 Urgently reform of the Penal Code to guarantee the exercise of the right to peaceful assembly and to ensure that it cannot be investigated and prosecuted under the indirect attribution of crimes of terrorism or of criminal organisation and to guarantee the protection of the freedom of expression.
- 🔍 Ensure that civil society, communications and journalism professionals, human rights observers, activists, and human rights organisations, among others, can record and monitor the conduct and actions of the security forces and bodies of the state with public order functions, which include the recording of police conduct in the context of protests.
- 🔍 Refrain from the use of excessive force against protesters, journalists and marginalised groups and respect the right to peaceful assembly

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<sup>794</sup> [https://www.eldiario.es/catalunya/pablo-migrante-29-anos-sera-voz-lucha-cambio-climatico\\_1\\_10731224.html](https://www.eldiario.es/catalunya/pablo-migrante-29-anos-sera-voz-lucha-cambio-climatico_1_10731224.html)

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- Guarantee 360-degree identification of all police officers, with public order (anti-riot) management functions of the Security Forces and Corps (FCS) by ensuring that the identification number is easily remembered and visible – both in terms of typography, numbering and size – from all angles, placing it in front and behind the visible parts and on the sides of the helmet.
- Stop police infiltration and the use of spyware against social movements, human rights and environmental defenders, journalists, lawyers and political opposition and urgently hold police officers to account for infiltration.
- Urgently carry out independent, exhaustive and effective investigations into the seven uncovered cases of police agents infiltrating social movements in the State.
- Take necessary measures to guarantee a restorative and effective process for the people and movements affected by infiltration operations and guarantee that these types of operations are not repeated in the future.
- Implement the recommendations of the PEGA Committee of the European Parliament on the use of spyware against civil society actors by Spanish authorities and adopt an appropriate legal framework for its use.
- Refrain from using anti-terrorism legislation to persecute and repress civic actors. Immediately drop the charges of terrorism for human rights and environmental defenders charged at the moment.
- Develop an internal instruction for both police and prosecutors through which the interpretation of terrorist crimes is adapted to state and international jurisprudence, as well as international human rights law. This modification should avoid the categorization of “terrorism” or “criminal organisation” of social or political movements along with different expressions of the right to protest.
- Urgently reform 2015 Penal Code which allows for an exceptional and disproportionate expansion of these crimes “terrorism” or “criminal organisation” for legal operators.
- Carry out a reform of the Penal Code in all those articles (article 525 & 578) that threaten freedom of expression.
- Prohibit the use of rubber bullets by the State Security Forces, taking into account their harmful potential, their uncontrollable and indiscriminate nature and their lack of traceability which puts the exercise of fundamental rights and integrity at risk.



- 🔍 Create an investigative commission to clarify the cases related to the people affected by these projectiles and to evaluate the impact caused on civil society, in addition to activating the appropriate remedial measures.
- 🔍 Prohibit the use of foam bullets by the Mossos d'Esquadra, the Ertzaintza and the Navarra Foral Police.
- 🔍 Adapt the transparency policy of police forces to international standards on the matter, guaranteeing that protocols for the use of force are published and accessible to allow civil society to supervise their use.

# About the author

NOVACT defends rights and freedoms in the Euro-Mediterranean region to promote a fair and lasting peace. The organisation strengthens an ecosystem of social change that confronts authoritarianism by accompanying movements and human rights defenders through nonviolence. The work is based on a holistic approach, emphasising social environmentalism and gender justice, which fosters coordination and community building for fundamental rights. NOVACT strengthens and supports the role of civil society as a key actor in conflict prevention. The organisation is committed to a strategy based on nonviolence and human security that focuses on preventing authoritarianism, extremist violence, and negative polarisation, building social cohesion, and contributing to conflict transformation.

Òmnium Cultural is one of the main civil society organisations in Spain and a relevant cultural association in Europe, with more than 190,000 members and 60 years of history. It has been, and continues to be, a pillar for the promotion of Catalan language and culture, as well as a key defender of civil and human rights. One of Òmnium's goals is to find broad consensus to favour social cohesion, with an increasing involvement at both the European and global level. The organisation carries out cultural projects, supports social cohesion through education and promotes the Catalan language, literature and arts.





## Civic Space Report 2024

# WESTERN BALKANS



BALKAN CIVIL SOCIETY  
DEVELOPMENT NETWORK



# Key trends

- 🔍 Legislative initiatives aimed at stigmatising CSOs as “foreign agents”.
- 🔍 LGBTQI+ and gender rights groups face hostilities marked by continuous smear campaigns and attacks on activists.
- 🔍 deteriorating relationship between governments and civil society limits CSOs' involvement in public dialogue and policymaking processes.

# Summary

Throughout the past year, civil society in the Western Balkans has operated in a narrowing civic space, especially in Serbia and Bosnia and Herzegovina.<sup>795</sup> Legislative initiatives aimed at stigmatising CSOs and curbing dissent have emerged, including the reintroduction of criminal defamation penalties and the 'foreign agents' law in Republika Srpska. In Serbia, CSOs focusing on democracy and rule of law issues have faced threats, while LGBT+ and gender groups encounter a hostile environment marked by continuous smear campaigns and attacks on activists. Across the region, SLAPP cases targeting journalists and activists have risen, posing a further threat to freedom of expression. Anti Money Laundering and counter terrorist financing (AML/CFT) legislation and practice still creates major administrative burdens for CSOs, while the inconsistent implementation of tax and fiscal legislation poses limitations to the operations and development of civil society, starting from dysfunctional tax incentives to non-transparent and ineffective public funding systems. The deteriorating relationship between governments and civil society across the region poses a threat to democracy and limits CSOs' involvement in public dialogue and policymaking processes. These challenges highlight the

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<sup>795</sup> According to the CIVICUS Monitor ratings: Albania is rated as “narrowed”, Bosnia and Herzegovina is rated as “Obstructed”, Kosovo is rated as “narrowed”, Montenegro as “narrowed”, North Macedonia is rated as “narrowed” and Serbia is rated as “Obstructed”, see more: <https://monitor.civicus.org/>

urgent need for sustained efforts to uphold democratic principles, protect fundamental rights, and create an enabling environment for civil society to thrive in the Western Balkans.

# Institutional, political and socio-economic landscape

In the past year, civil society in the Western Balkans has faced numerous challenges within the institutional landscape, which has impacted on the functioning of the rule of law, democracy, and access to fundamental rights. According to Freedom House, democratic institutions in the region continued to falter in 2022, positioned in the grey zone between democracy and autocracy<sup>796</sup> (hybrid regimes), while the biggest decline in freedom in 2023 is noted in Serbia and Bosnia and Herzegovina.<sup>797</sup>

The use of legislative initiatives to target and stigmatise CSOs, stifle dissenting voices, and attack fundamental freedoms is alarming. Examples included the reintroduction of criminal penalties for defamation and the adoption of a draft 'foreign agents' law in Republika Srpska (RS), Bosnia and Herzegovina. Additionally, the RS Parliament's declaration regarding the inapplicability of decisions by Bosnia's Constitutional Court<sup>798</sup> has exacerbated the institutional crisis, undermining the country's unity and further limiting judicial independence. The landscape for civil society operations in Serbia has also been under threat particularly for CSOs working on democracy and rule of law issues.

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<sup>796</sup> <https://europeanwesternbalkans.com/2023/05/24/freedom-house-democratic-institutions-in-the-western-balkans-continued-to-falter-in-2022/>

<sup>797</sup> [https://freedomhouse.org/sites/default/files/2024-02/FIW\\_2024\\_DigitalBooklet.pdf](https://freedomhouse.org/sites/default/files/2024-02/FIW_2024_DigitalBooklet.pdf)

<sup>798</sup> <https://balkaninsight.com/2023/06/28/bosnias-serb-entity-passes-law-rejecting-constitutional-courts-authority/>

LGBTQI+ and gender rights groups across the region are navigating a progressively hostile environment. In addition to a discriminatory legislation targeting LGBTQI+ organisations in RS, Serbia has witnessed major attacks on LGBTI activists without adequate legal actions or judicial proceedings to investigate and prosecute perpetrators, highlighting deficiencies in protecting marginalised groups and concerns about access to justice. In North Macedonia, the involvement of the Orthodox Church in anti-LGBT protests and anti-gender movements further complicates efforts to promote human rights and underscores ongoing challenges in addressing gender inequalities and violence against women, indicating the persistence of systemic issues. Amid a worrying rise of femicides in the region, Albania introduced the 'Femicide Observatory' initiative, first of its kind, aimed to improve policies and mechanisms to prevent the killing of women and girls.<sup>799</sup> On the other hand, in Albania, the lack of independent media has been a significant human rights issue, with political pressure, corruption, and self-censorship hindering freedom of speech.

Across the region, with the exception of Kosovo, the deteriorating relationship between governments and civil society has resulted in limited involvement in the public dialogue and policy-making processes, which threatens to undermine democracy and restrict civil society's ability to advocate for social change. On the other hand, public discourse in Kosovo has been hijacked by the Kosovo-Serbia dialogue, stalling ongoing discussions on good governance, while heightened tensions and violence, particularly in the northern region, have escalated amid political and social unrest. Despite Kosovo and Serbia reaching an Agreement on the Path to Normalisation in the spring of 2023, the Banjska event of 24 September represented the gravest escalation in recent years.<sup>800</sup>

Pending elections have blocked major processes in North Macedonia, while in Serbia, concerns over manipulated elections in December 2023 have intensified civic activism. Civil society advocacy activities seem to have yielded results as the European Parliament adopted a resolution calling for an investigation into election irregularities<sup>801</sup>. However, this has also triggered more attacks on the country's pro-democracy and pro-European-oriented civil society. These developments highlight the urgent need for sustained efforts to uphold democratic principles, protect fundamental rights, and create an enabling environment for civil society to thrive.

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<sup>799</sup> <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/shqipria-ndrmerr-nismn-observatori-i-femicidit-997/>

<sup>800</sup> [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_695\\_Serbia.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_695_Serbia.pdf)

<sup>801</sup> <https://europeanwesternbalkans.com/2024/02/08/ep-adopted-resolution-on-serbia-calling-for-an-investigation-into-december-elections/>



# Civic freedoms: regulatory environment and implementation

The Western Balkan countries face ongoing challenges in upholding the fundamental freedoms of association, assembly, and expression. These freedoms, while enshrined in law, encounter restrictions and violations in practice, particularly related to freedom of expression. Recent years have also seen a notable rise in obstacles to freedom of peaceful assembly and association.<sup>802</sup>

Legal reforms affecting civil society, especially regarding the freedom of association, have been either delayed or problematic in several countries. For example, North Macedonia in 2022 saw the introduction of controversial changes regarding the use of historical names by CSOs without consulting civil society, while Albania's new law on NPO registration, despite some improvements, brought about issues such as excessive sanctions for administrative breaches. Advocacy efforts in Albania led to the Constitutional Court revising these sanctions<sup>803</sup>, highlighting the importance of civil society's role in legislative processes. Moreover, CSOs also raised concerns that the new templates for electronic registering of NPOs still reflect the prevalent ambiguities and confusion surrounding NPOs.<sup>804</sup> Long-expected revisions of the main CSO laws in Montenegro and North Macedonia are still being delayed.

State interference in the internal affairs of CSOs is increasing. In BiH, a series of bills have been introduced to silence dissent, including amendments to the Republika Srpska (RS) Criminal Code that re-criminalise defamation, and the recently adopted draft "foreign agents law" which targets and stigmatises foreign-funded organisations, thus going beyond the usual "foreign agents" narrative used by politicians against civil society towards a legal proposal. A draft law on financing CSOs in Federation of Bosnia and Herzegovina (FBiH) is another potentially dangerous law for civic space,

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<sup>802</sup> <https://balkancsd.net/novo/wp-content/uploads/2023/04/62-3-MM-Regional-Report-2022.pdf>

<sup>803</sup> <https://politiko.al/english/e-tjera/gjykata-kushtetuese-u-jep-te-drejte-organizatave-jofitimprurese-per-liri-i496240>

<sup>804</sup> <https://www.partnersalbania.org/News/7085/>

currently under very limited and questionable pre-consultations. Not only do these laws pose a threat to CSOs, activists, and critical media, but their hurried adoption, without thorough consultations with civil society, directly undermines democratic principles and curtails citizens' rights.

In September 2023, the RS parliament adopted in the first reading a draft law on the Special Registry and Publicity of Non-Profit Organisations' Work, referred to as the "foreign agents" law, that imposes onerous reporting and compliance requirements on all CSOs in RS receiving foreign funding.<sup>805</sup> While proponents of the law argue that it will better regulate the sector and enhance transparency, there is a significant potential for misuse and wide interpretation. The draft law prohibits non-profits from carrying out 'political activities' vaguely defined to encompass all forms of advocacy, and introduces sanctions including closure and criminal prosecution, as well as an inherently stigmatises "NPO mark" required to be displayed on any materials they publish, raising concerns about further stigmatisation of civil society in an already hostile environment. While not formally adopted yet, the threat of its eventual resurfacing persists as authorities continue to use various mechanisms to oversee the work of CSOs and exert pressure over them, for example through excessive inspections which increasingly target "vocal" or outspoken organisations.

Legal frameworks on anti-money laundering and terrorism financing further challenge CSOs, including through restricted banking access, enhanced due diligence processes, unfeasible reporting requirements or inapplicable beneficial ownership registration provisions. While this is linked to the limited understanding of policymakers and relevant stakeholders about the core principles of civil society, as well as a lack of targeted and risk-based approach, efforts are being made across Albania, BiH, Montenegro, and Kosovo to address these challenges through risk assessments and small, but mostly positive, legislative reforms.<sup>806</sup>

Freedom of peaceful assembly is legally guaranteed in the region, generally respected and mostly in line with international standards. However, there are some outstanding issues to be addressed in Serbia, Montenegro and BiH. In terms of specific forms of assemblies, online or digitally-mediated assemblies are not recognised in legislation and this bears an inherent risk of restrictive interpretation of the general rules of assemblies, privacy and data protection.<sup>807</sup>

In practice, freedom of peaceful assembly has been mostly restricted in Republika Srpska, including a ban on LGBT events<sup>808</sup>, and in Serbia, where criminal sanctions were issued against protesters.

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<sup>805</sup> <https://balkaninsight.com/2023/10/24/bosnian-serbs-push-ahead-with-controversial-foreign-agents-bill/>

<sup>806</sup> <https://balkancsd.net/novo/wp-content/uploads/2023/09/112-4-FINAL-Policy-Paper-AMLCFT-Regulations-and-Implications-on-Civil-Society-in-WBT.pdf>

<sup>807</sup> [https://myla.org.mk/wp-content/uploads/2023/01/DIGITALLY-MEDIATED-ASSEMBLIES-en-FINAL-web.pdf?fbclid=IwAR2QtSp\\_002C-9IkPc4hngOn3Q\\_JbfLFVy1X7vLmM4b0ypp4wwPlcnh904Q](https://myla.org.mk/wp-content/uploads/2023/01/DIGITALLY-MEDIATED-ASSEMBLIES-en-FINAL-web.pdf?fbclid=IwAR2QtSp_002C-9IkPc4hngOn3Q_JbfLFVy1X7vLmM4b0ypp4wwPlcnh904Q)

<sup>808</sup> <https://apnews.com/article/bosnia-serb-lgbt-assault-2bd5a4836f047fe88ff039ee2f190af7>

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CSOs in Serbia have also reported cases of verbal attacks by politicians and the media on participants, police intimidation before protests, police and private security violence and worrying brutality against protesters. Several 'Serbia Against Violence' protests, which started in May 2023 following two mass shootings and called for the resignation of top officials and a crackdown on promoting violence in the media<sup>809</sup>, were met with aggressive rhetoric and harsh condemnation by the government and the pro-government media.<sup>810</sup> Separately, instances of police brutality were also reported during protests against the undemocratic election conditions and reported election fraud, with several people and journalists injured.<sup>811</sup>

Backsliding has been noted with regards to freedom of expression across the region. Legal changes in the Criminal codes in BiH and Serbia related to slander are worrying, while changes in Montenegro and North Macedonia seem to provide a stronger protection of journalists. Recriminalisation of defamation and insult in the Criminal Code of Republika Srpska (BiH) represents a severe setback of over two decades.<sup>812</sup> The law has serious potential to stifle freedom of expression and media independence, potentially leading to self-censorship, arbitrary judicial proceedings, or fines of up to 25,000 EUR that could threaten the survival of some media outlets. In addition to this, a new Law on media in RS has been announced, but the draft has not been made public yet, nor has it entered the Parliament procedure, while in the Sarajevo Canton amendments to the local public order laws that would penalise the spread of 'fake news' and criticism of state authorities were introduced<sup>813</sup> but later withdrawn for modifications due to the public outcry it caused. In Albania, the introduction of laws prohibiting the publication of leaked documents has further threatened freedom of information and speech, creating potential grounds for censorship.<sup>814</sup>

Violations to freedom of expression have been noted in almost all WB countries, to a different extent. Threats, intimidation, and violence against journalists and activists have been reported, which creates a chilling effect, especially in view of ineffective institutional responses and investigations in bringing perpetrators to account. Online harassment and verbal attacks continued, especially on social media, with an increase in cases – online and offline – against female journalists in Bosnia and Herzegovina,

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<sup>809</sup> <https://europeanwesternbalkans.com/2023/05/18/the-wave-of-mass-shootings-in-serbia-sparks-political-turmoil/>

<sup>810</sup> <https://europeanwesternbalkans.com/2023/06/17/just-another-protest-or-the-beginning-of-the-end-of-vucics-reign/>

<sup>811</sup> <https://www.gradjanske.org/en/police-brutality-against-citizens-must-stop/>

<sup>812</sup> <https://seenpm.org/new-red-line-law-against-freedom-of-expression-in-republika-srpska/>

<sup>813</sup> <https://balkaninsight.com/2023/05/11/bosnian-cantons-move-to-penalise-fake-news-worries-critics/>

<sup>814</sup> <https://ipi.media/albania-media-must-not-face-criminal-prosecution-for-public-interest-reporting/>

North Macedonia<sup>815</sup>, and Serbia. 2023 was also a challenging year for journalists and media workers in Kosovo, notably related to escalating tensions between Kosovo and Serbia.<sup>816</sup>

A notable defamation case in North Macedonia led to a disconcerting verdict against a journalist and a prominent investigative media outlet, that set a dangerous precedent allowing severe limitations on the exercise of both freedom of association and expression due to the judge's personal and wrongful interpretation of the Law on Associations and Foundations.<sup>817</sup> Strategic Lawsuits Against Public Participation (SLAPPs), as such, are not specified by the laws that apply in any of the WB countries, and the existing legal framework that regulates the issue of defamation can be abused in the same way, for the purpose of limiting freedom of expression.<sup>818</sup> Environmental associations in the Federation of BiH have submitted a law to the parliamentary procedure aimed at protecting citizens, activists, and journalists from SLAPPs and to create a legal framework safeguarding individuals involved in environmental activism. If adopted, this law could offer protections against legal actions aimed at suppressing public engagement.<sup>819</sup>

## Safe space

Throughout the past year, numerous attacks have been carried out against civic actors, yet authorities consistently failed to respond promptly and effectively. A significant deterioration of the civic space in 2023 was observed in Bosnia and Herzegovina and Serbia. The ongoing political crisis in BiH has intensified pressures on civil society and the media, materialising in controversial regulations that severely restricted the activities of civic actors. Particularly in Republika Srpska (BiH),

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<sup>815</sup> <https://glasprotivnasilstvo.org.mk/reaktsija-na-platformatata-za-rodova-ednakvost-zakanite-po-zhivot-ne-se-sloboda-na-izrazuvane-solidarnost-so-aktivistkata-i-novinarkata-rita-behadini/>

<sup>816</sup> <https://rm.coe.int/annual-report-2024-platform-for-the-safety-of-journalists-web-pdf/1680aeb373>

<sup>817</sup> <https://www.occrp.org/en/40-press-releases/presss-releases/18225-dangerous-judicial-ruling-against-occrp-member-center-in-north-macedonia-erodes-protection-for-independent-media>

<sup>818</sup> <https://ndnv.org/2023/10/slapp-tuzbe-u-bih-sve-dok-je-nase-pravosude-u-raljama-politike-nama-su-progoni-presudeni/>

<sup>819</sup> <https://objavi.ba/anti-slapp-u-fbih-predlozen-prvi-zakon-protiv-strateskih-tuzbi-u-europi/>

political leaders' inflammatory rhetoric and persistent attacks have heightened the vulnerability of civil society, while in the Herzegovina-Neretva Canton, CSOs have faced repeated and excessive inspections. Activists in BiH addressing issues such as anti-corruption, environment, women's rights, and LGBTQI+ rights have been subjected to continuous threats, abuse, physical assaults, and legal harassment.<sup>820</sup>

In Serbia, the systematic misuse of media to tarnish the reputation of CSOs has become alarmingly common. Organisations like Belgrade Center for Security Policy<sup>821</sup> or CRTA<sup>822</sup>, which address sensitive social issues and often critique government policies,<sup>823</sup> are frequent targets of such attacks. These assaults, coupled with ongoing intimidation tactics against outspoken civic actors<sup>824</sup>, underscore a deliberate attempt to undermine civil society.<sup>825</sup> The pre and post-electoral periods have exacerbated these challenges, with smear campaigns<sup>826</sup> directed at CSOs<sup>827</sup>, activists<sup>828</sup>, and journalists<sup>829</sup>. Instances of physical violence and excessive force have occurred during protests against electoral fraud<sup>830</sup> and environmental issues.<sup>831</sup> Despite these threats, there has been a lack of appropriate institutional response, leading to an escalation of violence, derogatory and inflammatory rhetoric. The rise of nationalistic and far-right movements has further fuelled attacks on anti-fascist activists<sup>832</sup> and on organizations promoting peace and reconciliation, such as Women in Black, which has been attacked on several occasions.<sup>833</sup>

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<sup>820</sup> <https://apnews.com/article/bosnia-serb-lgbt-assault-2bd5a4836f047fe88ff039ee2f190af7>

<sup>821</sup> <https://eukonvent.org/nacionalni-konvent-o-evropskoj-uniji-osudjuje-kampanju-protiv-beogradskog-centra-za-bezbednosnu-politiku/>

<sup>822</sup> <https://n1info.rs/vesti/helsinski-odbor-organizovana-i-opasna-kampanja-protiv-crte/>

<sup>823</sup> <https://n1info.rs/vesti/helsinski-odbor-organizovana-i-opasna-kampanja-protiv-crte/>

<sup>824</sup> <https://bezbednost.org/en/call-to-address-volatile-and-violent-rhetoric-targeting-a-human-rights-defender/>

<sup>825</sup> <https://bezbednost.org/en/call-to-address-volatile-and-violent-rhetoric-targeting-a-human-rights-defender/>

<sup>826</sup> <https://www.gradjanske.org/en/three-freedoms-under-the-magnifying-glass-march-8-march-21-2024/>

<sup>827</sup> <https://europeanwesternbalkans.com/2023/12/21/serbia-tabloids-accusing-germany-of-fuelling-violent-protests-in-serbia-dw-denies-any-involvement/>

<sup>828</sup> <https://www.univerzitetskiodjek.com/drustvo/nikola-ristic-nikome-na-politickoj-sceni-ne-odgovara-da-se-glas-mladih-cuje>

<sup>829</sup> <https://www.cins.rs/en/attempts-to-infiltrate-instagram-profile-of-cins-journalist-who-reported-on-call-center/>

<sup>830</sup> <https://n1info.rs/vesti/izbori-2023/video-policija-tukla-demonstrante-prve-informacije-ima-uhapsenih-i-povredjenih/>

<sup>831</sup> <https://monitor.civicus.org/explore/new-clashes-against-police-and-environmental-activists-in-%C5%A1odro%C5%A1/>

<sup>832</sup> <https://www.slobodnaevropa.org/a/crni-ovan-napad-kafic-novi-sad/32639549.html>

<sup>833</sup> <https://www.slobodnaevropa.org/a/napad-na-prostorije-nvo-zene-u-crnom-beograd/31940160.html>



Additionally, in 2023, the Serbian government resorted to using state-sponsored spyware to target critics challenging its authority. Serbia's main intelligence agency has a track record of deploying spyware and other digital surveillance tools, such as Cytrox's Predator, Circles, Cyberbit, and FinSpy.<sup>834</sup>

In Montenegro, high-level politicians have openly disparaged CSOs critical of the government, although such attacks occur sporadically rather than systematically. Additionally, 2023 witnessed a surge in anti-gender movements, particularly noticeable in North Macedonia. These movements, comprising both formal and informal groups, actively engage in propaganda campaigns and political mobilisation against organisations advocating for gender equality, LGBTQI+ rights, and women's rights. Moreover, institutional forces at the local level increasingly support anti-gender actors and implement policy restrictions that further limit the space for civil society resistance and hamper advocacy efforts. The anti-gender movement, fuelled by religious justifications and right-wing populism, poses a significant threat to activists, who continue to face hate speech and hate crimes.<sup>835</sup>

The persistent use of various tactics to stifle dissent has brought to light the alarming rise of SLAPPs across the entire region. According to the CASE Coalition, Serbia and BiH rank among the highest in the Western Balkans for SLAPP cases, with journalists, media organisations, activists, and CSOs being primary targets.<sup>836</sup> Environmental defenders especially find themselves frequently targeted, facing lawsuits and harassment. Notable cases include the lawsuit against young activists for their environmental photo exhibition<sup>837</sup>, and another aimed at silencing an activist critical of a mining company's operations in Vareš.<sup>838</sup> However, SLAPP cases are not exclusive to these two countries in the region. In Albania, environmental activists<sup>839</sup> and journalists<sup>840</sup> have also faced defamation charges by private companies. Unfortunately, SLAPPs fall outside the limited protections provided by existing media laws and remain inadequately addressed in judicial systems across the region.

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<sup>834</sup> <https://balkaninsight.com/2023/12/08/pro-democracy-forces-in-serbia-targeted-with-spyware/>

<sup>835</sup> <https://mhc.org.mk/wp-content/uploads/2023/12/the-policy-ang-final-1.pdf>

<sup>836</sup> <https://www.gradjanske.org/case-koalicija-srbija-10-u-evropi-po-broju-slapp-tuzbi/>

<sup>837</sup> <https://monitor.civicus.org/explore/youth-environmental-activists-face-slapps-protests-over-election-outcome-in-serbian-republic-entity/>

<sup>838</sup> <https://civilnodrustvo.ba/saopcenje-za-javnost/>

<sup>839</sup> <https://citizens-channel.com/2023/12/22/ne-gjyq-per-mbrojtjen-e-vlores-aktivisti-strategji-tipike-per-te-shtyre-procesin/>

<sup>840</sup> <https://birn.eu.com/news-and-events/albania-court-hears-judges-lawsuit-against-birn/>

# Funding for civil society

Across the Western Balkans, CSOs are navigating a complex landscape of regulatory changes, bureaucratic inefficiencies, and financial uncertainties. While some progress is noted in enhancing operational conditions for non-profits, significant hurdles in the tax framework, public funding reforms, and transparency remain.<sup>841</sup>

VAT exemption continues to pose a challenge for CSOs in Albania and Montenegro. While the introduction of a new directive for VAT exemption of foreign donor grants marks a pivotal development for Albania's non-profit sector, the directive's ambiguities have hindered the effective implementation for foreign aid programs. Namely, the tax-liability of non-profits for VAT purposes and the complexities surrounding the electronic tax declaration submission system, have led to the accumulation of VAT as ineligible cost for the non-profit sector. CSOs have therefore requested a transitional solution to reimburse accumulated VAT until the exemptions are fully operationalised. The VAT exemption process in Montenegro is also hindered by bureaucratic uncertainty, with CSOs struggling to identify the responsible authority to implement the EU obligations. The systemic issues within Montenegro's regulatory framework is compounded by anticipated pending legal reforms to restrict CSOs abilities to engage in economic activities and the potential elimination of the long-fought-for minimum percentage of public funding for CSOs.

In Kosovo, CSOs have expressed concerns both with the content and with the drafting process of the Draft Law for the allocation for use and exchange of municipal immovable property<sup>842</sup>, which was approved by the government in December 2023. Despite their active contribution to an important reform of the use of municipal properties for the public good during the preparation of the Concept note in 2022 and 2023, CSOs and their comments were ignored in the law drafting process. Challenges remain also in ensuring that government policies on volunteering are, too, aligned with CSO needs and contributions. Furthermore, efforts are underway to establish a more transparent financial reporting system for CSOs, aimed at combating accusations of financial mismanagement and to increase public trust, as well as to improve access to banking services, such as e-commerce solutions for online donations.

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<sup>841</sup> <https://balkancsd.net/novo/wp-content/uploads/2023/04/62-3-MM-Regional-Report-2022.pdf>

<sup>842</sup> <https://kcsfoundation.org/en/news/leter-nga-kcsf-per-kryeministrin-kurti/>

On the other hand, despite long-standing expectations, North Macedonia faces setbacks in state funding reforms.<sup>843</sup> The persistent boycott of the Council for Cooperation<sup>844</sup> - a platform for dialogue between the government and civil society- further impedes progress toward equitable and transparent funding practices. Like the rest of the countries, allocation of state funds very often lacks transparency – there is a lack of clear and fair criteria, recipient names or fund utilisation details are not disclosed, raising concerns about potential misuse and corruption.<sup>845</sup> Significant cases of misused funds and non-transparent open calls continue to be recorded in Serbia<sup>846</sup>, in addition to allocating public money to religious organisations through open calls for CSOs, as well as to phantom organisations or organisations established only prior to the call, without any previous experience in the topic they receive funding for.

Overall, due to lack of harmonisation of tax and NGO legislation, and of inadequate implementation mechanisms, very few cases of tax benefits are reported in practice in most countries. Similarly, individual and corporate giving is poorly practiced in the region. Finally, although human resources are an important aspect of CSO sustainability, legislation neither impedes nor encourages volunteering and employment in the civil society sector in most countries.

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<sup>843</sup> <https://mcms.mk/en/news-and-publicity/news/2486-samo-4-e-udelot-na-drzhavnoto-finansiranje-vo-prihodite-na-gragjanskite-organizacii-za-2022.html>

<sup>844</sup> <https://rcgo.mk/en/news/the-organisations-asked-the-government-to-restore-the-dialogue-and-the-transparency-of-state-funding-for-csos/>

<sup>845</sup> <https://www.radiomof.mk/opshtinskite-pari-za-gragjanski-organizacii-rechisi-celosno-zavrshuvaat-vo-sportski-klubovi-pokazhuva-novo-istrzhuvanje/>

<sup>846</sup> <https://www.gradjanske.org/javni-konkursi-u-srbiji-izvlacenje-novca-kroz-fantomska-udruzenja/>

# Civil dialogue and the right to participation

There are many drawbacks in the frameworks and practices for cooperation between civil society and the government across the WB countries, leading to a lack of systematic, genuine and meaningful cooperation. While strategic documents are long in place in all countries, and are currently being revised in Albania, BiH and Kosovo, their implementation is generally unsatisfactory, and effective monitoring frameworks are missing.

The worsening intersectoral cooperation and trust is noted in several countries, especially in Montenegro and North Macedonia, where the Councils for Cooperation have not been functional for over two years. In Montenegro, six attempts to appoint members of the Council representing CSOs have been unsuccessful, undermining the dialogue between the government and civil society.<sup>847</sup> CSOs in North Macedonia that are part of the Council for Cooperation between the Government and Civil Society have expressed strong concern against the attitude of the Government towards the Council and towards civil society in general, noting a deterioration in the cooperation and absence of substantive and even formal communication and dialogue. Claiming that the work of the Council was made impossible by the government's ignoring of its key recommendations and conclusions, CSOs began boycotting the Council in March 2022, and continue to do so, two years later.<sup>848</sup>

A stalemate in the work of the Councils is also noted in Albania, Kosovo and Bosnia and Herzegovina. On the other hand, in Serbia, although the relationship between the government and the civil society sector has deteriorated following increased harassment and attacks on CSOs from both the legislature and the executive, after ten years in the making the newly established Council for Cooperation and Civil Society Development, may gradually restart civil dialogue and ensure that civil society is included in decision-making.

Although institutionally aligned with European standards, public participation in decision-making is often a formal rather than a meaningful exercise in all countries. Only in Kosovo, civil society continues to actively participate and contribute to policymaking and monitoring processes. In other

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<sup>847</sup> [https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169\\_en?filename=SWD\\_2023\\_694%20Montenegro%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf)

<sup>848</sup> <https://balkanicsd.net/macedonian-csos-alarming-about-governments-attitude-towards-civil-society/>

countries, the trend of “tick-box” consultations and the use of fast-track procedures is still pervasive, as consultations are implemented without any or proper opportunity for wide engagement of those affected, while at the same time allowing for GONGO activities and influence.

According to the WeBER Monitor, governments in the Western Balkans struggle with low public availability of information, particularly in Albania, North Macedonia, and Kosovo. Moreover, CSOs perceive government decision-making as lacking transparency, with limited use of evidence from external sources and inconsistent inclusion of civil society input in policy development processes.<sup>849</sup>

## Civil society resilience

While governments in the Western Balkans have for years utilised various tactics to suppress critical voices and impede the work of CSOs, significant developments showcase the resilience of civic actors in fostering democracy, the rule of law, and fundamental rights. The initiation of joint advocacy efforts by CSO coalitions, exemplified by initiatives like Civilka<sup>850</sup> at national level or those facilitated by BCSDN at regional level<sup>851</sup>, have created a stronger regional voice and more effective advocacy efforts to address threats to civic space and protect fundamental freedoms.

Cooperation, networking, and coalition-building within the civic sector have shown positive developments, with CSOs collaborating both within and across thematic fields of work. Despite the high competition among CSOs largely due to heavy donor dependence, organisations providing horizontal support, together with donors that have been already sensitised about civic space challenges, have initiated concrete and proactive efforts, including financial support, to promote stronger coalition building. Such examples are the Swiss-funded Civica Mobilitas programme in North Macedonia<sup>852</sup> and the regional Engaged Democracy Initiative by the European Fund for the

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<sup>849</sup> <https://cep.org.rs/wp-content/uploads/2023/06/Regional-PAR-Monitor.pdf>

<sup>850</sup> <https://civilnodrustvo.ba/civilka-2023-civilno-drustvo-ne-smije-bit-projekt-na-industrija/>

<sup>851</sup> <https://balkancsd.net/novo/wp-content/uploads/2023/11/129-4-Workshop-Notes-Report-1.pdf>

<sup>852</sup> <https://civicamobilitas.mk/en/civica-mobilitas/>



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Balkans<sup>853</sup>. Additionally, partnerships between CSOs and other sectors, including trade unions, journalists, academia, and National Human Rights Institutions, have strengthened collective efforts to defend civic space. These collaborations have facilitated knowledge sharing, resource pooling, and coordinated advocacy efforts, enhancing the effectiveness of civil society.

However, the level of public trust in civic actors, including human rights defenders, social movements, CSOs, and grassroots organisations, varies across the region. While many people trust and support these actors for their advocacy and service delivery, instances of smear campaigns and intimidation have eroded trust in some cases. This underscores the ongoing challenges faced by civil society in gaining and maintaining public trust amidst government hostility.

Despite these challenges, civil society has implemented various good practices to address and overcome threats to civic space. For example, CSOs have adopted constituency-led accountability<sup>854</sup> approaches to build stronger ties with their constituencies and combat smear campaigns and misinformation. Initiatives focused on media literacy, fact-checking, and civic education have empowered citizens to discern and challenge disinformation narratives, thus playing a crucial role in combating the spread of fake news and disinformation. These efforts contribute to a more informed and engaged public, enhancing resilience against manipulation and falsehoods propagated through various channels.

In terms of good practices at the national or regional level, donor support and advocacy have played crucial roles in safeguarding civic space. Donors have provided flexible funding, expertise, and capacity-building assistance to independent CSOs, enabling them to navigate hostile regulatory environments and continue their essential work. These examples highlight the importance of multilateral cooperation and solidarity in defending democracy and fundamental rights in the face of growing threats.

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<sup>853</sup> <https://www.balkanfund.org/engaged-democracy-initiative>

<sup>854</sup> <https://www.balkanfund.net/novo/wp-content/uploads/2022/05/Constituent-Led-Accountability.pdf>

# Recommendations

## Targeted recommendation:

- 🔍 Prioritise reforms essential for advancing along the EU accession pathway, including the Rule of Law (RoL) process, which not only fosters regional integration but also underscores a steadfast commitment to democratic principles, human rights, and the rule of law.
- 🔍 Embark on comprehensive reforms to cultivate an enabling civic space.
- 🔍 Address the underlying causes of challenges faced by CSOs, such as revising restrictive legislation, ensuring the protection of fundamental freedoms, and ceasing harassment against activists and organizations.
- 🔍 Prioritise genuine engagement with civil society in policymaking processes to foster a culture of dialogue and mutual respect.
- 🔍 Ensure that any policy enacted is in line with international standards and best practices and supports the functioning and development of the sector.
- 🔍 Ensure a supportive tax and fiscal framework.
- 🔍 Allocate sufficient resources and support mechanisms for CSOs in a transparent and accountable manner, and establish effective mechanisms for CSO-state collaboration.
- 🔍 As part of the preparatory work in crafting the Enlargement Package, ensure that the RoL monitoring process operates not in parallel but in concert with this initiative, thereby reinforcing and augmenting its objectives.
- 🔍 Ensure greater clarity and transparency in the monitoring process, in order to facilitate substantive engagement and input from civil society actors in the Western Balkans.

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- 🔍 Bolster the monitoring and scrutiny mechanisms pertaining to civil society and civic space issues to systematically identify and address challenges and trends affecting it. Such measures are indispensable for fostering an environment conducive to meaningful dialogue, collaboration, and progress towards shared democratic aspirations within the region.

# About the author

Initiated in 2001 and formalised in 2009, BCSDN is a regional network uniting 12 CSOs from 9 Balkan countries with a focus on promoting civil society development. We are particularly proud of the work we have achieved in the field of monitoring the enabling environment for civil society through our Monitoring Matrix methodology and our evidence-based advocacy. BCSDN supports regional civil society cooperation towards protecting and expanding the civic space in the Western Balkans, and advocates for financial support to civil society to be responsive to civic space challenges and support the development of a strong civil society.





**Civic Space Report 2024**

**ESCALATING RESTRICTIONS  
ON ORGANISATIONS AND  
INDIVIDUALS EXPRESSING  
SOLIDARITY WITH THE  
PALESTINIAN PEOPLE**





# Key trends

- 🔍 Disproportionate measures enforced on protests, including pre-emptive banning based on risk to “public order” and “security”
- 🔍 Protesters subject to intimidation, harassment, and arbitrary detentions
- 🔍 Legitimate criticism of Israeli authorities conflated with antisemitism and “apology for terrorism”; and used to silence Palestinian and Jewish activists and organisations

# Summary

Following the new dramatic escalation of violence in Israel and Palestine, people in Europe expressed solidarity, concerns, their opinions, their demands, hope, anger and grief collectively in numerous ways. Several member states have imposed undue restrictions on the right to peaceful assembly and freedom of expression on those standing in solidarity with the Palestinian people, in violation of international human rights standards, the EU Charter of Fundamental Rights and rule of law principles. These developments have contributed to further polarisation in society, leading to an increase in hate speech and hate crimes targeting both Jewish and Muslim communities in Europe. Rights’ restrictions have also disproportionately affected Palestinians, people of Arab descent and Muslim people and those perceived as such with cases of racial profiling to justify curtailment of rights. Additionally, while the restrictions were often justified in the name of fighting anti-semitism, Jewish organisations and activists critical of Israeli policies have been silenced and marginalised, and at times been accused of not being representative of Jewish people in Europe. In the context of the ruling of the International Court of Justice (ICJ) on 26 January, which found it plausible that Israel’s acts could amount to genocide, and the new tragic developments on the ground in Gaza and across Israel/Palestine, ensuring accountability and justice is extremely urgent.

# Introduction

Following the new dramatic escalation of violence in Israel and Palestine, many people, reflecting the diversity that constitutes our societies in Europe, want to express their concerns, their opinions, their demands, hope, anger and grief collectively in demonstrations. They continue to call on their governments and international institutions to take responsibility and action to ensure the protection of civilians and the respect of human rights and dignity. They are urging the international community to act for peace and justice.

Everyone has the right to peaceful assembly and to free speech as outlined in [international law](#). In addition, states have an obligation to respect and ensure peaceful protest without discrimination.<sup>855</sup>

The right to peaceful assembly and protest are crucial means for political participation. According to the [OHCHR General Comment on the right of peaceful assembly](#), “states must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities.”<sup>856</sup>

It is even more crucial in times of conflict that society benefits from a fully functioning civic space, fundamental rights and democracy. However, over the last month there have been many breaches of these international standards as people across Europe have expressed solidarity against the dramatic escalation of violence in the Middle East.

While fears of incitements to hate, antisemitism and islamophobia are fully legitimate and should be addressed with the legal tools that ensure that perpetrators are held accountable, according to human rights standards the authorities have a duty to facilitate and guarantee freedom of expression and freedom of peaceful assembly. In line with these standards, in case of violent demonstrators, the police’s action should be aimed at removing those enacting or inciting violence in order to enable the peaceful protesters to continue exercising their right.

It is important to note that some protests took place without interference in several member states, including in European cities, such as Belfast, Stockholm<sup>857</sup>, across Belgium and Spain, Innsbruck,

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<sup>855</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

<sup>856</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

<sup>857</sup> <https://www.aa.com.tr/en/europe/thousands-attend-pro-palestine-rally-in-sweden/3044914>

## RESTRICTIONS ON PALESTINE SOLIDARITY

Amsterdam<sup>858</sup> and many more<sup>859</sup>. However, in several countries, authorities enforced disproportionate measures such as pre-emptive banning of protests based on risk to “public order” and “security”, and the use of excessive force and detention of protesters as well as the conflation of legitimate criticism of Israeli authorities with antisemitism, leading to a chilling effect. In several cases, the bans were appealed, and courts intervened against banning protests in solidarity with Palestine.

International human rights standards state that placing blanket bans on all demonstrations is considered a serious and disproportionate attack on the right to demonstrate. Authorities have a duty to facilitate the exercise of the right to peaceful assembly and, during the assembly, to ensure that if individuals commit such acts, they are excluded and, if necessary, appropriate action is taken addressing potential punishable acts. In order to restrict or ban a public demonstration, the police have an obligation to demonstrate that the specific assembly creates a real and significant risk to public safety.

Covert investigations, as well as the close monitoring and spying on organisations supporting Palestine, are other worrying developments. In addition, the right to freedom of expression has also been restricted. On social media, organisations and individuals showing support for the Palestinian cause have reportedly been shadow-banned<sup>860</sup>. In countries like France and Germany, ministers of state have called for their governments to revoke visas for foreign nationals with suspected links to ‘radical ideologies’ or to deport *en masse* persons, inciting hate and division, even though these policies and the context of their implementation create risks of discrimination against Muslim Arab migrants.<sup>861</sup>

Since October 2022, the European Legal Support Centre (ELSC) has documented **at least 1,146** incidents of repression on the Palestinian solidarity movement or individuals advocating for Palestinian rights. Of these, at least 836 incidents were recorded after October 2023<sup>862</sup> of which 281 took place in Germany, 244 in the UK, 87 in the Netherlands, 79 in France, 58 in Italy, 20 in Switzerland, 17 in Austria and 50 in other European countries. These incidents range from threat of legal action to harassment, intimidation, violence, threats to citizenship or residency status, smear campaigns, cyber-attacks and surveillance.

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<sup>858</sup> <https://nltimes.nl/2023/10/30/multiple-pro-palestine-protests-peace-marches-netherlands>

<sup>859</sup> <https://www.reuters.com/world/pro-palestinian-protesters-demand-gaza-ceasefire-european-marches-2023-11-04/>

<sup>860</sup> <https://www.hrw.org/report/2023/12/21/metas-broken-promises/systemic-censorship-palestine-content-instagram-and>

<sup>861</sup> <https://www.hrw.org/news/2023/10/26/israel-palestine-hostilities-affect-rights-europe>

<sup>862</sup> Unpublished data provided to ECF by the ELSC. The ELSC Monitor team collects incidents of repression through the following avenues: There are five sources of incident collection on our incident list: I) Report Form II) Mass Media III) Social media IV) Fieldwork V) Private Communication. Each documented incident can affect several people. ELSC registers incidents per location or event. An incident can include multiple restrictions, for example harassment, detention, violence etc.

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In some countries, the slogan “from river to the sea, Palestine will be free” chanted during protests has come under scrutiny of authorities. Case law in different countries found that criminal intent cannot be affirmed in an individual case without concrete evidence.<sup>863</sup> Authorities in **Austria, France, Germany, Netherlands** have made a generalised interpretation of the chant and proposed that it be criminally prosecuted or prevented protests on the basis of it. According to international standards, everyone should have the right to freedom of expression; including the freedom to seek, receive and impart information and ideas of all kinds. Restrictions on this right must be “provided by law and necessary”, on grounds of rights or reputations of others and for the protection of national security or of public order (*ordre public*), or of public health or morals. In addition, any propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited by law.<sup>864</sup> The Rabat Plan of Action related to restrictions on the basis of incitement to national, racial, or religious hatred, authorities “suggests a high threshold for defining restrictions on freedom of expression, incitement to hatred, and for the application of article 20 of the International Covenant of Civil and Political Rights (ICCPR). It outlines a six-part threshold test taking into account (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence.”<sup>865</sup>

Below is a non-exhaustive summary of the latest restrictions reported by civil society in EU member states.

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<sup>863</sup> <https://civicspacewatch.eu/alert-continued-restrictions-against-the-peaceful-expression-of-solidarity-with-the-palestinian-people-continue-across-europe/>;  
[https://www.justiz.nrw.de/nrwe/ovgs/vg\\_muenster/j2023/1\\_L\\_1011\\_23\\_Beschluss\\_20231117.html](https://www.justiz.nrw.de/nrwe/ovgs/vg_muenster/j2023/1_L_1011_23_Beschluss_20231117.html);  
<https://www.ceska-justice.cz/2023/12/zruseni-prosincove-demonstrace-na-podporu-palestiny-bylo-nezakonne-rozhodl-soud/>

<sup>864</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>865</sup> <https://www.ohchr.org/en/freedom-of-expression>

# Methodology and acknowledgements

This analysis compiles evidence from various sources to provide a non-exhaustive summary of the restrictions reported by civil society in EU member states concerning the right to freedom of peaceful assembly, association, and expression in the context of the escalating violence in Israel and Palestine.

Data Collection:

1. **Contributions from national civil society organisations:** Information for this analysis was mainly<sup>866</sup> gathered from national civil society organisations contributing to the country chapters of the annual European Civic Forum (ECF) civic space report.
2. **Desk Research:** Additional data was collected through comprehensive desk research by ECF secretariat, which involved analyzing reports, articles, and publications from reputable media sources. Social media monitoring was also conducted to capture developments and reactions.
3. **Interviews:** Insights and firsthand accounts were obtained through interviews with additional stakeholders, including representatives from *Jüdische Stimme, Een Andere Joodse Stem/Another Jewish Voice*, and the European Legal Support Centre (ELSC). These interviews provided nuanced perspectives on the impact of recent events on civil liberties and human rights in the region.

\*This analysis was first published on in April 2024<sup>867</sup> and had since been updated.

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<sup>866</sup> All national country contributors, with the exception of Germany and Austria.

<sup>867</sup> <https://civic-forum.eu/press/solidarity-protests-with-palestinian-people-banned-in-at-least-12-eu-countries-finds-new-analysis-six-months-on-from-the-horrific-hamas-attack-on-7-october>



# Austria

When it comes to the right to protest, authorities carried out individual assessments of each demonstration on a case-by-case basis. There were several peaceful protests recorded, including 14 October<sup>868</sup>, 15 & 16 October<sup>869</sup> by the organisation “Palestine Solidarity Austria” in Vienna.

According to official numbers there were: 70 police reports during pro-Palestinian demonstrations, of which 50 were related to the use of the slogan “From the river to the sea - Palestine will be free”; 400 administrative reports; 10 arrests, and 13 prohibited assemblies<sup>870</sup>.

According to Amnesty Austria<sup>871</sup>, on 11 October, the Vienna police banned<sup>872</sup> a pro-Palestinian protest for public safety reasons as it was due to coincide with a pro-Israel memorial event held for the victims of Hamas attack<sup>873</sup>. According to media reports, while the protest went ahead, protesters were kettled and only released after providing their IDs<sup>874</sup>. 304 people were fined under the Criminal Code, the Assembly Act and for other administrative offences.<sup>875</sup>

The slogan “from the river to the sea” has also been heavily debated as the head of Vienna’s police force, has characterised it as a “call to violence”. Vienna police later communicated that “according to the current jurisprudence, “From the river to the sea, Palestine will be free!” does not constitute incitement to hatred. However, it stated a report was sent to the public prosecutor’s office regarding slogans chanted. It added that “there has been no clear reason to break up the demonstration under the Assembly Act. However, in recent days, there have already been reports of incitement and

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<sup>868</sup> <https://www.derstandard.at/story/3000000191155/keine-vorfaelle-auf-pro-palaestina-demo-in-wien;>  
<https://www.sn.at/panorama/oesterreich/pro-demos-wiener-innenstadt-146929558>

<sup>869</sup> <https://www.derstandard.at/story/3000000191182/zwei-pro-palaestina-kundgebungen-in-wien-geplant>

<sup>870</sup> <https://www.diepresse.com/17831334/70-anzeigen-bei-pro-palaestina-demos-in-oesterreich-seit-nahost-eskalation;> [https://assets-global.website-files.com/6364ebb4927fbc4330221d8f/65ca2961b51afebfe28f00c3\\_s2NQDyQaMHPL50j-08TZPk7nmHVBe4eaJEsPWYLFXAc.pdf](https://assets-global.website-files.com/6364ebb4927fbc4330221d8f/65ca2961b51afebfe28f00c3_s2NQDyQaMHPL50j-08TZPk7nmHVBe4eaJEsPWYLFXAc.pdf)

<sup>871</sup> <https://cdn.amnesty.at/media/11748/amnesty-jahresbericht-2023.pdf>

<sup>872</sup>

[https://twitter.com/LPDWien/status/1712150030939754630?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Eetweete%7Ctwterm%5E1712150030939754630%7Ctwgr%5E43a265916f4a0f4325677e883fb1bbb7f344f68c%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.meinbezirk.at%2Fwien%2Fpolitik%2Ffive-ticker-zur-untersagten-mahnwache-am-stephansplatz\\_a6316667](https://twitter.com/LPDWien/status/1712150030939754630?ref_src=twsrc%5Etfw%7Ctwcamp%5Eetweete%7Ctwterm%5E1712150030939754630%7Ctwgr%5E43a265916f4a0f4325677e883fb1bbb7f344f68c%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.meinbezirk.at%2Fwien%2Fpolitik%2Ffive-ticker-zur-untersagten-mahnwache-am-stephansplatz_a6316667)

<sup>873</sup> <https://www.reuters.com/world/from-river-sea-prompts-vienna-ban-pro-palestinian-protest-2023-10-11/>

<sup>874</sup> <https://wien.orf.at/stories/3227875/>

<sup>875</sup> <https://kurier.at/chronik/wien/nach-berlin-auch-in-wien-werden-pro-palaestina-demos-untersagt/402628067;> <https://www.derstandard.de/story/3000000190812/mehr-als-300-anzeigen-bei-untersagter-pro-palaestina-demo-in-wien>

dangerous threats due to clear statements by individual participants in the rally.”<sup>876877</sup> On 14 October, a protest was banned in Graz by the police, after “From the river to the sea, Palestine will be free” was cited on invites to the protests. Protesters defied the ban and 30 people protested peacefully before the police dispersed them.<sup>878</sup>

On 20 October, another protest was banned in Graz by the police for “expected threats to public order and security”. Nevertheless, 70 to 80 demonstrators gathered to protest. No incidents were reported.<sup>879</sup>

# Belgium

Flemish Minister-President and Minister of Culture Jan Jambon (N-VA) announced during a parliamentary Q&A that the media organisations De Morgen and NGO vzw, located in Ghent, will be inspected to determine if their subsidies from the Ministry should be terminated, in response to their coverage of Israel and Palestine<sup>880</sup>.

During a planned silent march protest in February 2024, to coincide with the Brussels light festival, police prevented a group of protesters from proceeding with the planned march. They kettled, harassed and identified protesters before allowing them to disperse<sup>881</sup>.

As part of the wider trend of restrictions on protests, Jewish activists taking part in solidarity actions with the Palestinian people have faced repressions by the police, including arbitrary checks of personal belongings justified by “security reasons”, as well as bans of political signs in protests and the use of Palestinian *Keffiyeh* scarfs.<sup>882</sup>

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<sup>876</sup> <https://www.reuters.com/world/from-river-sea-prompts-vienna-ban-pro-palestinian-protest-2023-10-11/>

<sup>877</sup> <https://twitter.com/LPDWien/status/1714249244725359026>

<sup>878</sup> <https://steiermark.orf.at/stories/3228350/>

<sup>879</sup> <https://www.kleinezeitung.at/steiermark/graz/17756078/palaestina-demonstration-in-graz-findet-trotz-polizeilicher-untersagung>; <https://www.krone.at/3145894>

<sup>880</sup> <https://civicspacewatch.eu/belgium-brussels-based-ngos-are-audited-following-their-israel-palestine-coverage/>; <https://investigation.net/lode-vanoost-en-flandre-la-n-va-veut-intimider-ceux-qui-denoncent-les-crimes-israeliens/>; [https://m.nieuwsblad.be/cnt/dmf20231019\\_97417753](https://m.nieuwsblad.be/cnt/dmf20231019_97417753)

<sup>881</sup> Incident reported to ECF on 15 February 2024.

<sup>882</sup> Interview with Een Andere Joodse Stem/Another Jewish Voice

# Czech Republic

In the Czech Republic, there were several protests in solidarity with Palestine. On 30 November 2023, the Prague municipality banned a planned protest in solidarity with the Palestinian people on the grounds that the slogan “From the River to the Sea, Palestine will be free” is “aimed at denying and restricting the personal and political rights because of their nationality, origin, political opinion and religious belief.” However, the municipal court in Prague annulled the decision and found that the phrase could have multiple meanings and does not carry a “univocally violent or even a genocidal message<sup>883</sup>.”

This sparked public interest in the Czech Republic for a more thorough analysis of the criminal law aspects of these expressions in the context of the Czech legal system and for the constitutionally protected freedoms of expression, peaceful assembly, and of political opinions. In November 2023, the Supreme Public Prosecutor's Office issued an opinion on the “legal assessment of hate speech in connection with the Hamas terrorist attack on Israel and the subsequent Israeli-Palestinian armed conflict”. The document highlighted the need for careful evaluation of individual cases, with consideration of the specific circumstances and the context of each act, to determine whether it constitutes a criminal offence.<sup>884</sup>

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<sup>883</sup> <https://www.ceska-justice.cz/2023/12/zruseni-prosincove-demonstrace-na-podporu-palestiny-bylo-nezakonne-rozhodi-soud/>

<sup>884</sup>

<https://verejnazaloba.cz/nasz/nsz-zverejnuje-text-stanoviska-k-projevum-ve-vztahu-ke-konfliktu-v-izraeli/>

# Denmark

There have been multiple accounts of the content of online activists being dramatically reduced in views (i.e. shadow banning) when posting about the escalating violence in Israel-Palestine.<sup>885</sup> In one example, the very popular activist account “Deltidsaraber”, posted content regarding issues related to racism and discrimination. The account reported that their Instagram stories went from typically receiving over 1,000 views within the first half hour to receiving below 20.<sup>886</sup> Many followers commented that the content of the account did not appear in their feed. This is supported by a recent report from Human Rights Watch, documenting systemic censorship of pro-Palestine content on Instagram and Facebook, which includes cases from Denmark.<sup>887</sup>

# Estonia

In November and December<sup>888</sup>, protests in solidarity with Palestinian people took place in cities such as Tallinn and Tartu. On 5 November, a demonstration was held in Tallinn, where protesters called for a ceasefire and for the Estonian government to condemn Israel's actions. Although the protest was peaceful, the Police and Border Guard Board removed five protesters from the demonstration for chanting slogans (including “From the River to the Sea”) that authorities considered anti-semitic. The protesters were fined between €120 and €160 and misdemeanour proceedings were taken

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<sup>885</sup> Lorentzen (2023). *Cybernormer #19: Palæstina, censur og shadowbans. Cybernauterne.*  
<https://cybernauterne.dk/podcast/cybernormer-19/>

<sup>886</sup> Deltidsaraber (2023). Instagram post from November 9<sup>th</sup>.  
[https://www.instagram.com/p/Czb1T7yM6ru/?utm\\_source=ig\\_web\\_copy\\_link](https://www.instagram.com/p/Czb1T7yM6ru/?utm_source=ig_web_copy_link)

<sup>887</sup> Human Rights Watch (2023). *Meta's Broken Promises. Human Rights Watch.* p. 7.  
[https://www.hrw.org/sites/default/files/media\\_2023/12/ip\\_meta1223%20web.pdf](https://www.hrw.org/sites/default/files/media_2023/12/ip_meta1223%20web.pdf)

<sup>888</sup> <https://www.delfi.ee/artikkel/120252328/video-ja-fotod-saan-aru-et-piiri-taga-on-ka-inimene-tartus-toimus-meeleavaldus-palestiina-toetuseks>

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against them. However, they are requesting that the supreme court annul the fines and assess whether specific provisions of the Penal Code are constitutional.<sup>889</sup>

As a result of this, a "silent rally in Support of Palestine and Palestinians" that was planned in another city, Tartu, on December 2nd was initially refused. The head of the PPA of the Tartu region said that they initially refused to register the event as they "thoroughly considered registering the meeting, but denied it on the grounds that, in our view, the organiser had not sufficiently thought through all the risks and had not acted to mitigate them," and that "in order to prevent such a situation and to make sure that the public meeting would be peaceful", referring to the use of the slogan and the fining of five individuals in Tallinn.<sup>890</sup>

Moreover, the PPA said "everyone in Estonia has the right to speak out, provided that doing so does not violate the rights of others."<sup>891</sup>

The rally was later registered by the police after discussions with the organisers about organisational issues and concerns<sup>892</sup>. Organisers of the event shared announcements to ensure that the rally is peaceful and does not incite hateful messages stating that "posters are also welcome, but police are asking to avoid river-to-sea messages and loud shouts. This is a peaceful assembly, anti-Semitic, Islamophobic and other expressions inciting hatred and intolerance are not welcome." The rally was peaceful and there were no incidents.

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<sup>889</sup> <https://humanrights.ee/en/2023/12/meeleavaldusel-osalened-leore-laksin-naitama-solidaarsust-kumme-minutit-hiljem-tosteti-mind-politseibussi/>

<sup>890</sup> <https://news.err.ee/1609187014/police-want-to-avoid-a-repeat-of-the-tallinn-pro-palestinian-protest>

<sup>891</sup> <https://news.err.ee/1609187014/police-want-to-avoid-a-repeat-of-the-tallinn-pro-palestinian-protest>

<sup>892</sup> <https://news.err.ee/1609187014/police-want-to-avoid-a-repeat-of-the-tallinn-pro-palestinian-protest>



# France

The Minister of the Interior has been curtailing the freedom of peaceful assembly and expression by issuing a round of orders banning demonstrations for peace in the context of escalating violence in Israel and Palestine.<sup>893</sup>

On 12 October 2023, in an administrative letter issued to all departmental prefects, the minister asked for a systematic ban on all demonstrations in support of the Palestinian people, explaining that these protests invite support for Hamas.<sup>894</sup> Despite the ban, the protest went ahead, and police responded with disproportionate force, including tear gas and a water cannon.<sup>895</sup> This came at the same moment when many in the international community were stressing the importance of putting forward a political solution and while the Israeli government was announcing its on ground offensive that would result in a significant number of casualties and injuries, mainly in Gaza, but also in the West Bank.

The local prefects followed the Minister's demand and almost systematically banned many gatherings throughout the country, which called for a ceasefire, for a just and lasting peace.

In an interim order dated 18 October 2023, the Council of State during an appeal against the Ministers' letter, recalled that it was up to the prefects alone to assess, on a case-by-case basis and under the supervision of the administrative judge, whether there were grounds for banning a specific demonstration.<sup>896</sup> The prefects could not legally decide to ban a demonstration solely by referring to the letter issued by the Minister or solely on the grounds that the demonstration in question was intended to support the Palestinian people.

Since then, a number of prefectures have continued to issue orders banning protests planned by the Association France Palestine Solidarité (AFPS) in support of peace and a ceasefire in Gaza.

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<sup>893</sup> <https://www.mediapart.fr/journal/fil-dactualites/121023/darmanin-ordonne-l-interdiction-des-manifestations-pro-palestiniennes-et-l-interpellation-des-org>;

<https://www.amnesty.org/en/latest/news/2023/10/ban-on-protests-supporting-palestinians-is-disproportionate-attack-on-the-right-to-protest-in-france/>

<sup>894</sup> [https://www.lemonde.fr/international/article/2023/10/13/malgre-les-interdictions-des-rassemblements-propalestiniens-a-paris-et-dans-quelques-villes-de-france\\_6194044\\_3210.html](https://www.lemonde.fr/international/article/2023/10/13/malgre-les-interdictions-des-rassemblements-propalestiniens-a-paris-et-dans-quelques-villes-de-france_6194044_3210.html)

<sup>895</sup> <https://www.reuters.com/world/europe/france-bans-pro-palestinian-protests-citing-risk-disturbances-public-order-2023-10-12/>; <https://www.theguardian.com/world/video/2023/oct/13/french-police-teargas-banned-pro-palestinian-protest-video>

<sup>896</sup> [https://www.francetvinfo.fr/monde/proche-orient/israel-palestine/le-conseil-d-etat-rejette-le-recours-depose-contre-l-interdiction-de-manifestations-pro-palestiennes\\_6129585.html](https://www.francetvinfo.fr/monde/proche-orient/israel-palestine/le-conseil-d-etat-rejette-le-recours-depose-contre-l-interdiction-de-manifestations-pro-palestiennes_6129585.html)

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Following this, LDH lodged several applications for interim relief on the grounds that the freedom of peaceful assembly was clearly being infringed, which enabled the courts to suspend the bans in Auxerre, Dijon, Laval, Nancy, Nîmes, Nice and Rennes.<sup>897</sup>

In Nice, the Prefect of Police issued no less than ten successive orders banning gatherings organised by the “Collective for a just and lasting peace between Palestinians and Israelis” (translated from French). All were suspended by the administrative court on the grounds of serious and manifestly illegal infringement of the fundamental freedoms of expression and peaceful assembly, and in one of its decisions (of 18 November 2023), the court pointed out the prefect's obstinacy in an approach that had already been ordered illegal. However, during a media interview in November 2023 Prefect Hugues Moutouh endorsed the ban on protests, where he stated: “For the past few weeks, I have decided to systematically ban demonstrations which, under the guise of defending peace and the Palestinian people, are incitement to hatred of Jews. This is part of an attack on intangible public order. There is no need for demonstrations to descend into violence.”<sup>898</sup>

Despite the systematisation of the bans on gatherings, the Council of State ruled that even with this repetition of bans there was no evidence to show that an administrative decision institutes a general and absolute ban contrary to fundamental freedoms, but merely a general guideline for maintaining public order for which the Prefect is responsible.

Since then, the Prefect of the Alpes Maritimes has tirelessly continued to ban the Collective's gathering every week, despite weekly censures by the administrative court.

## Curtailing freedom of expression

Palestinian women' rights activist Mariam Abou Daqqa, who is part of the Popular Front for the Liberation of Palestine (PFLP), which is an organisation classified as terrorist by the European Union<sup>899</sup>, was arrested on 16 October, put under house arrest in Marseille and threatened with expulsion for “disturbing public order” even though she arrived legally in France in September to host conferences.<sup>900</sup>

On 20 October, two leaders of the *Confédération Générale du Travail du Nord* (CGT), a major French trade union, were arrested at their home and placed in police custody for “*apologie du terrorisme*”,

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<sup>897</sup> <https://civicspacewatch.eu/ldh-the-general-ban-on-peace-gatherings/>

<sup>898</sup> <https://www.marianne.net/societe/manifestation-pour-gaza-a-nice-la-justice-suspend-l-interdiction-la-prefecture-oublie-de-retirer-son-tweet>

<sup>899</sup> [https://www.lemonde.fr/societe/article/2023/10/20/l-expulsion-de-la-militante-mariam-abou-daqqa-suspendue-par-la-justice-le-ministere-de-l-interieur-va-faire-appel\\_6195650\\_3224.html](https://www.lemonde.fr/societe/article/2023/10/20/l-expulsion-de-la-militante-mariam-abou-daqqa-suspendue-par-la-justice-le-ministere-de-l-interieur-va-faire-appel_6195650_3224.html)

<sup>900</sup> <https://france3-regions.francetvinfo.fr/provence-alpes-cote-d-azur/bouches-du-rhone/guerre-entre-le-hamas-et-israel-le-conseil-d-etat-valide-l-expulsion-de-la-militante-palestinienne-mariam-abu-daqqa-arretee-a-marseille-2869496.html>

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following a press release “In support of the Palestinian people in struggle<sup>901</sup>”. According to French law, “*l’apologie du terrorisme*” refers to “advocacy of terrorism and direct incitement to terrorism are crimes<sup>902</sup>”.

The Ligue des droits de l’Homme (LDH) issued a press release stating that the arrest of the leaders is “pure intimidation” and was done to set “an example since the two trade unionists were quickly released. The press release, which they are accused of writing without this being established, supports the Palestinian people, which in no way constitutes a “*direct provocation to acts of terrorism*” (unofficial translation from French). According to the NGO, this response shows the conflation by the public authorities of solidarity with the Palestinian people with support for the terrorist acts of Hamas.<sup>903</sup>

On 6 December 2023 the Paris town hall cancelled a public meeting entitled “Against anti-Semitism, its exploitation and for revolutionary peace in Palestine” where world-renowned American philosopher [Judith Butler](#) was meant to speak. According to the organisers the decision referenced “*disturbances to public order.*”<sup>904</sup>

# Germany

Between October 2023 and March 2024, the ELSC recorded 281 incidents of repression against the Palestinian solidarity movement or individuals advocating for Palestinian rights, with at least 75 cases of harassment, intimidation and violence.

According to media reports, peaceful demonstrations in solidarity with Palestine took place in Cologne, Frankfurt, Hanover, Karlsruhe, Münster and Stuttgart.<sup>905</sup>

On the contrary, in Berlin, the approach of authorities has led to a significant negative effect on expressions of solidarity. Several protests in solidarity with the Palestinian people have been pre-

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<sup>901</sup> <https://www.ldh-france.org/halte-a-lengrenage-des-atteintes-aux-libertes/>

<sup>902</sup> <https://www.service-public.fr/particuliers/vosdroits/F32512?lang=en>

<sup>903</sup> <https://www.ldh-france.org/halte-a-lengrenage-des-atteintes-aux-libertes/>

<sup>904</sup> [https://www.liberation.fr/idees-et-debats/annulation-dune-conference-pour-la-paix-de-judith-butler-la-ville-de-paris-invoque-le-risque-de-polemiques-20231204\\_UJBS4TPWENEY7JYM7RBCLPHNHU/;](https://www.liberation.fr/idees-et-debats/annulation-dune-conference-pour-la-paix-de-judith-butler-la-ville-de-paris-invoque-le-risque-de-polemiques-20231204_UJBS4TPWENEY7JYM7RBCLPHNHU/)  
<https://twitter.com/TSDKcollectif/status/1765866646835462274/photo/2>

<sup>905</sup> <https://www.dw.com/en/germany-thousands-march-in-support-of-gazans/a-67175536>

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emptively banned by authorities on the grounds of preventing threat to public safety and order, and antisemitism<sup>906</sup>. In doing so, reference is made to experience of criminal acts, including antisemitic acts, at some past assemblies. According to international standards, in order to restrict or ban a public demonstration, the police have an obligation to demonstrate that the specific assembly creates a real and significant risk to public safety. Instead, the decisions to ban the assembly link the assessed risk to previous demonstrations as well as the Hamas attack of 7 October, and effectively associates an entire demographic group with violence. The organisers of a banned protest in Berlin commented that the “alleged actions of a minority” were being used “to deny an entire community the right to freedom of expression<sup>907</sup>”.

Under international human rights law, the police and assembly authorities have a duty to facilitate the right to freedom of assembly and during the assembly to ensure that if individuals commit such acts, they are excluded and, if necessary, appropriate action is taken addressing potential punishable acts. The criminal acts of one individual should not prejudice the way the police responds to the entire assembly.

In some cases, the protests took place despite the bans. In those protests that took place, there have been reports on the use of excessive force by the police against peaceful protesters.<sup>908</sup>

🔍 On 13 October, Berlin’s public prosecutor **said** the slogan “from river to the sea, Palestine will be free” chanted during protests would be deemed a criminal offence. As a result, the punishability of the slogan would no longer be a question of individual cases but could now become criminally prosecuted in every instance and without any justification. As reported, until now because “*the meaning of the slogan is disputed and, according to the case law of the Federal Constitutional Court, criminal courts are obliged to take the non-punishable interpretations as a basis for ambiguous statements if they cannot rule them out for other reasons in individual cases*”. Intent cannot be affirmed in the individual case without concrete evidence. The legality of that decision is yet to be ruled in a German court and is currently the object of debate by public prosecutors. It has to be noted that a recent court ruling in the Netherlands, found the same slogan was not a criminal offence and rejected the claim that it incites “*hatred and violence against Jews*”<sup>909</sup>.

🔍 In an authorised protest in Berlin early November, police officers seized several banners as part of a mission to prevent any anti-Semitic speeches or signage. European Legal Support Center (ELSC) lawyers said that “*while the job of identifying illegal signs is difficult for police, their*

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<sup>906</sup> <https://www.rbb24.de/politik/beitrag/2023/10/palaestina-israel-nahost-demo-verbot-juden-berlin-polizei.html>

<sup>907</sup> <https://www.rbb24.de/politik/beitrag/2023/10/palaestina-israel-nahost-demo-verbot-juden-berlin-polizei.html>

<sup>908</sup> <https://www.article19.org/resources/western-europe-time-of-war-protect-right-to-protest/>

<sup>909</sup> <https://elsc.support/news/victory-from-the-river-to-the-sea-is-protected-speech-dutch-court-rules>

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*measures at protests have a “chilling” effect. [...] People now wonder if what they wear or say will get them arrested or even deported”.*<sup>910</sup>

- 🔍 Several Jewish activists have also been arrested on grounds of antisemitism. On 14 October, Jewish activist Iris Hefets, was arrested after she staged a solo protest and held a sign which read ““As an Israeli and Jew, stop the genocide in Gaza”.”<sup>911</sup> In February 2024, Rachael Shapiro was arrested in Berlin shortly after making a speech during a rally where she talked how equating of Judaism and Zionism is antisemitic.<sup>912</sup>
- 🔍 According to the organisation Campaign for Victims of Racist Police Violence (KOP) the extent of police brutality has been captured in various videos showing the use of pepper spray, deployment of police dogs, and physical aggression, which resulted in numerous injuries.<sup>913</sup>

In Frankfurt, police banned a protest on the grounds of public safety 12 minutes before the protest was due to start. Protesters, who had already gathered in the city centre, proceeded with the protest. It is reported that they were kettled by police who also used a water cannon. At least 300 protesters were detained, while 12 people were arrested. Some protesters had their IDs checked and their information taken.<sup>914</sup>

North Rhine-Westphalia’s anti-Semitism commissioner and former Federal Minister of Justice Sabine Leutheusser-Schnarrenberger called for a stricter interpretation of the right to freedom of assembly for foreigners. In an interview with the WDR TV magazine “Westpol”, she said that when an assembly is registered, *“it must be checked what the nationality is, because this is one of the few basic rights that only Germans are entitled to”.* This is a possibility *“to issue a ban in advance, which is otherwise difficult with our assembly law”.*<sup>915</sup> The proposal was criticised as inadmissible. Amnesty International Germany commented on Twitter recalling that *“The right to peacefully assemble is a human right and applies regardless of citizenship. All people have the right to protest and be part of a vibrant civil society.”*

In an open letter hundreds of Jewish intellectuals condemned the *“disturbing crackdown on civic life in the wake of this month’s horrifying violence in Israel and Palestine”* in Germany, including the

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<sup>910</sup> <https://www.aljazeera.com/news/2023/11/10/germany-gaza-protests-crackdown>

<sup>911</sup> <https://www.newarab.com/analysis/how-pro-palestine-jews-are-resisting-germanys-mccarthyism>

<sup>912</sup> <https://x.com/katharinagneis/status/1758065582308557121?s=20>;

<https://www.theleftberlin.com/police-brutality-at-palestine-solidarity-sit-in/>

<sup>914</sup> <https://www.middleeasteye.net/news/israel-palestine-war-germany-police-repress-palestine-solidarity-protests>; <https://www.rv.hessenrecht.hessen.de/bshe/document/LARE230005176>;

<https://www.hessenschau.de/gesellschaft/polizei-setzt-verbot-von-pro-palaestina-demo-in-frankfurt-durch-weitere-demo-verboten-v16,demonstrationen-frankfurt-100.html>

<sup>915</sup> <https://www.tagesspiegel.de/politik/grundrecht-steht-nur-deutschen-zu-fdp-politikerin-will-versammlungsfreiheit-fur-auslander-einschranken-10769047.html>

banning of public gatherings in solidarity with Palestine and the police “*harassing, arresting and beating*” people expressing support for the Palestinians or wearing symbols of Palestinian identity. The letter stresses that “*racial bias plays an important role in the targeting of suspects*”.<sup>916</sup>

This is not the first time that protests in solidarity with Palestinian people have been banned. We have raised this concern in our previous Germany rule of law report.<sup>917</sup>

## Developments on freedom of expression

In addition to curtailing protests in solidarity with Palestine, there have been several cases of curtailing free expression by education and cultural institutions<sup>918</sup>. Below are some examples:

- 🔍 The Frankfurt Book Fair cancelled an award ceremony for Palestinian writer Adania Shibli over fears of how such a ceremony might be perceived in the wake of the 7 October developments.<sup>919</sup>
- 🔍 Education authorities in Berlin gave schools the permission to ban students from wearing the Palestinian flag, Keffiyeh scarf, and displaying “free Palestine” stickers, which comprises a restriction of free expression and opens grounds to possible discrimination in school establishments.<sup>920</sup> International standards on peaceful assembly say that waving a flag – any flag – is a form of expression and freedom of political expression that should enjoy maximum legal protection and should not be restricted. Censoring the Palestinian flag risks denying the identity of the Palestinian people and contributing to tensions and violence.<sup>921</sup>
- 🔍 Udi Raz, a guide at the Jewish Museum was fired for calling Israel an “apartheid state” during a guided tour. Raz is an executive member of the Jewish Voice for a Just Peace in the Middle East. In a statement, the Museum stated that the decision was taken after extensive discussions with the guide on the basis that guides should not impose their opinions on groups, but rather enable them to form their own opinions.<sup>922</sup>

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<sup>916</sup> <https://www.nplusonemag.com/online-only/online-only/freedom-for-the-one-who-thinks-differently/>

<sup>917</sup> <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-GERMANY-European-Civic-Forum.pdf>

<sup>918</sup> <https://www.aljazeera.com/features/2023/10/26/complete-censorship-germanys-palestinian-diaspora-fights-crackdown>

<sup>919</sup> <https://www.theguardian.com/world/2023/oct/15/palestinian-voices-shut-down-at-frankfurt-book-fair-say-authors>

<sup>920</sup> <https://www.hrw.org/news/2023/10/26/israel-palestine-hostilities-affect-rights-europe;>  
[https://mediendienst-integration.de/fileadmin/Dateien/Informationsschreiben\\_Umgang\\_mit\\_Sto\\_\\_rungen\\_des\\_Schulfriedens.pdf](https://mediendienst-integration.de/fileadmin/Dateien/Informationsschreiben_Umgang_mit_Sto__rungen_des_Schulfriedens.pdf)

<sup>921</sup> <https://civicus.org/documents/ENG.KNOWYOURRIGHTS.pdf>

<sup>922</sup> <https://www.theleftberlin.com/firing-somebody-for-using-the-term-apartheid-is-really-gaslighting/>  
<https://www.tagesspiegel.de/berlin/verwendete-apartheid-waehrend-einer-fuehrung-judisches-museum-berlin-trennt-sich-von-guide-10696489.html>



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- 🔍 In December 2023, police raided anti-capitalist, antifascist women's organisations Zora who, according to a police press release, are accused of spreading propaganda on behalf of a banned terrorist organisation, in reference to the Popular Front for the Liberation of Palestine, or the PFLP. As part of the raid, left-wing Cafe Karanfil in Neukölln, which supports migrants, was also targeted. The raid is believed to be related to an Instagram post by Zora with the headline: "There can be no liberation of women without the liberation of Palestine", with a longer caption: "We know that Hamas has no interest in smashing the patriarchy", claiming it was therefore important "to strengthen forces such as the PFLP as part of the Palestinian resistance."<sup>923</sup>
- 🔍 On 12 April, about 950 police officers interrupted the Palestine Congress in Berlin, hours after it started, over concerns that the event and its speakers were antisemitic<sup>924</sup>. The event was cancelled by the police after. Several speakers who were due to attend the congress were prevented from entering Germany. Dr **Ghassan Abu Sittah**, a British Palestinian doctor, was denied entry into Germany to attend the event. Abu Sittah later learned that a Schengen wide travel ban was imposed against him after he was denied entry into France, where he was due to speak about Gaza at the French senate. He was also unable to attend an event at the Palestinian Embassy in The Hague in May 2024.<sup>925</sup> In May 2024, the Potsdam Administrative Court overturned the Schengen entry ban and declared it unlawful. It found that the federal police were unable to prove that Abu Sittah had committed or planned to commit a "serious crime"<sup>926</sup>. Greek politician Yanis Varoufakis, who was also due to make a speech at the congress, was banned from entering Germany.<sup>927</sup>

In an interview with the Guardian, Germany's antisemitism commissioner Felix Klein condemned the country's recent increase in anti-Jewish violence but also said that he was "*also worried about an erosion of basic rights as officials sought to crack down on expressions of support for the Palestinian people*".<sup>928</sup>

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<sup>923</sup> <https://www.exberliner.com/english-news-berlin/raid-on-cafe-karanfil-antifascist-womens-organisation-searched-by-police/>

<sup>924</sup> <https://www.aljazeera.com/news/2024/4/12/germany-cancels-pro-palestine-event-bars-entry-to-gaza-war-witness>; <https://novaramedia.com/2024/04/17/germanys-anti-palestine-crackdown-has-reached-a-new-low/>

<sup>925</sup> <https://www.hrw.org/news/2024/05/10/germany-british-palestinian-doctor-denied-schengen-entry#:~:text=Dr.%20Abu%20Sittah%20has%20in,Palestinian%20Embassy%20in%20The%20Hague.>

<sup>926</sup> <https://taz.de/Nachspiel-zum-Palaestina-Kongress/!6010953/>

<sup>927</sup> [https://www.democracynow.org/2024/4/16/germany\\_palestine](https://www.democracynow.org/2024/4/16/germany_palestine)

<sup>928</sup> <https://www.theguardian.com/world/2023/oct/24/rise-in-antisemitism-brings-germans-back-to-most-horrific-times>

# The balance between combating anti-semitism and protecting freedom of expression

Since 7 October, an increase of anti-semitic incidents have been reported in Germany. This includes threats against Jewish religious centres and organisations<sup>929</sup> which has led to great fear and, in some cases, self-censorship. As a result, national authorities have stepped up the fight against anti-semitism. Measures against hate speech and incitement of hatred may be legitimate restrictions on free speech, but they need to be carefully crafted, be necessary and proportionate and should be preceded by public deliberation.

On 17 November, the Bundestag discussed two draft laws proposed by the conservative political party CDU/CSU to combat anti-semitism.<sup>930</sup> On 12 April 2024, the Bundestag debated measures to combat anti-Semitism, which were rejected by a majority following the debate.<sup>931</sup> The first draft law aims at “amending the criminal code to combat anti-Semitism, terror, hatred and incitement”.<sup>932</sup> Among the proposals, someone who denies the “right of Israel to exist” is punishable by imprisonment of three months to five years. In particularly serious cases, the penalty is imprisonment from six months to ten years.<sup>933</sup> The use of criminal law to regulate freedom of expression risks producing a chilling effect against criticism of Israeli ethnonationalism and practices of forced displacement of Palestinians in the Occupied Palestinian Territories (OPT) and within Israel, as well as the debate over just peace in the region, with negative repercussions for civic space, media and academic freedom.<sup>934</sup>

In addition, on 21 December 2023, the Berlin Senate Cultural Administration decided that the awarding of funding would be subject to the condition that applicants sign an ‘antisemitism clause’.<sup>935</sup> The clause uses the working definition of antisemitism of the International Holocaust Remembrance Alliance (IHRA) and its extension by the German government, which legal experts warn risks

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<sup>929</sup> <https://www.dw.com/en/molotov-cocktails-thrown-at-berlin-synagogue-police/a-67134803> - :-:text=The%20attack%20occurred%20around%202023,broke%2C%20extinguishing%20the%20fire.%22

<sup>930</sup> [https://www.bundestag.de/dokumente/textarchiv/2023/kw46-de-antisemitismus-976606?fbclid=PAAabyPdDus2goHo-mZHyaSuj-OcpyCyzwj0JVJVhsjq3KMM2b8zRnhpKROc\\_w\\_aem\\_AUX6HJTAszIFS9N29XmIUzBhI8VF7f-w7udKJ7teVCijOrQ5i48JXk\\_TAKIQTWKI\\_0o](https://www.bundestag.de/dokumente/textarchiv/2023/kw46-de-antisemitismus-976606?fbclid=PAAabyPdDus2goHo-mZHyaSuj-OcpyCyzwj0JVJVhsjq3KMM2b8zRnhpKROc_w_aem_AUX6HJTAszIFS9N29XmIUzBhI8VF7f-w7udKJ7teVCijOrQ5i48JXk_TAKIQTWKI_0o)

<sup>931</sup> [https://www.bundestag.de/dokumente/textarchiv/2023/kw46-de-antisemitismus-976606?fbclid=PAAabyPdDus2goHo-mZHyaSuj-OcpyCyzwj0JVJVhsjq3KMM2b8zRnhpKROc\\_w\\_aem\\_AUX6HJTAszIFS9N29XmIUzBhI8VF7f-w7udKJ7teVCijOrQ5i48JXk\\_TAKIQTWKI\\_0o](https://www.bundestag.de/dokumente/textarchiv/2023/kw46-de-antisemitismus-976606?fbclid=PAAabyPdDus2goHo-mZHyaSuj-OcpyCyzwj0JVJVhsjq3KMM2b8zRnhpKROc_w_aem_AUX6HJTAszIFS9N29XmIUzBhI8VF7f-w7udKJ7teVCijOrQ5i48JXk_TAKIQTWKI_0o)

<sup>932</sup> <https://dserver.bundestag.de/btd/20/093/2009310.pdf>

<sup>933</sup> <https://dserver.bundestag.de/btd/20/093/2009310.pdf>

<sup>934</sup> <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>

<sup>935</sup> <https://www.berlin.de/sen/kultgz/aktuelles/pressemitteilungen/2024/pressemitteilung.1402065.php>

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conflating legitimate critique of Israeli government's policy with antisemitism.<sup>936</sup> In response to mounting pressure from artists and cultural workers, the Senate dropped the clause after one month of its introduction.<sup>937</sup>

Human rights organisations<sup>938</sup>, including Jewish organisations<sup>939</sup>, have cautioned against conflating advocacy on the rights of Palestinians with antisemitism which has often led to *"chill and sometimes suppress, non-violent protest, activism and speech critical of Israel and/or Zionism, including in the US and Europe. Such misuse has also been criticised by the former Special Rapporteur on Racism E. Tendayi Achiume.*<sup>940</sup> For example, the German antisemitism commissioner Dr. Felix Klein, [said](#) that applying the framework of apartheid to discuss Israel's treatment of Palestinians is "an antisemitic narrative". Amnesty International, Human Rights Watch and the Israeli human rights group B'Tselem have found that violations committed by Israel against Palestinians amount to a system of apartheid.<sup>941</sup>

Research by the European Legal Support Center (ELSC) shows that the *"reconceptualization of antisemitism focusing on criticism of Israel [...] known as the 'New Antisemitism'"* has resulted in *"severe chilling effect on free speech and curtails human rights advocacy, specifically around Palestinian rights and political speech about Israel."*<sup>942</sup>

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<sup>936</sup> <https://verfassungsblog.de/die-implementation-der-ihra-arbeitsdefinition-antisemitismus-ins-deutsche-recht-eine-rechtliche-beurteilung/>

<sup>937</sup> <https://www.berlin.de/sen/kultgz/aktuelles/pressemitteilungen/2024/pressemitteilung.1407434.php>  
<https://www.climatechangenews.com/2024/03/04/germany-uses-funding-to-pressure-climate-groups-on-israel-gaza-war/>

<sup>938</sup> <https://www.hrw.org/news/2023/04/04/human-rights-and-other-civil-society-groups-urge-united-nations-respect-human>

<sup>939</sup> <https://www.jewishvoiceforpeace.org/resource/zionism/>

<sup>940</sup> <https://www.ohchr.org/en/documents/thematic-reports/a77512-combating-glorification-nazism-neo-nazism-and-other-practices>

<sup>941</sup> <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>

<sup>942</sup> [https://res.cloudinary.com/elsc/images/v1685978238/The-Practice-of-Suppressing-Palestinian-Rights-Advocacy-FINAL-PP/The-Practice-of-Suppressing-Palestinian-Rights-Advocacy-FINAL-PP.pdf?\\_i=AA](https://res.cloudinary.com/elsc/images/v1685978238/The-Practice-of-Suppressing-Palestinian-Rights-Advocacy-FINAL-PP/The-Practice-of-Suppressing-Palestinian-Rights-Advocacy-FINAL-PP.pdf?_i=AA)

## Risks of discriminatory and stigmatising approach to anti-semitism

The second draft law to “end the residence and prevent the naturalisation of anti-Semitic foreigners” would make amendments to the residence, asylum and nationality law “to provide better protection against the further entrenchment and spread of anti-Semitism that has ‘immigrated’ from abroad”.<sup>943</sup> The latter provides for “*acquisition of German citizenship to be dependent on a commitment to Israel’s right to exist and a declaration that the naturalisation applicant has not pursued any endeavours directed against the existence of the State of Israel*”. The vague wording of the draft law, especially with regards to what constitutes “*commitment to Israel’s right to exist*” opens grounds for arbitrary interpretation in contrast with the rule of law principle of legal certainty.

German Vice Chancellor Robert Habeck, while condemning antisemitism, singled out Muslim associations to “clearly distance themselves from antisemitism so as not to undermine their own right to tolerance.” He also stressed that antisemitism incidents could be grounds for deportation.<sup>944</sup> Similarly, German President Frank-Walter Steinmeier called on Germans of Arab and Palestinian descent to take steps to distance themselves from anti-Semitism and the Palestinian group Hamas.<sup>945</sup> Singling out the Muslim community with threats of deportation and criminalisation in a context where antisemitism is sometimes conflated with legitimate criticism against Israel creates a climate of fear which is not conducive to freedom of expression.<sup>946</sup> Additionally, as explained by the Special Rapporteur on freedom of religion or belief “*Collective blame cast on Muslims for terrorist acts [...] have fuelled acts of discrimination, hostility and violence against Muslim individuals and communities*”.<sup>947</sup>

Amnesty International Germany, while calling on the state to step up its effort on combating growing anti-semitism, called out the focus on the Muslim community. It stated: “*There is no anti-Semitism-free space in any social milieu in Germany today. Figures on antisemitic attacks in 2021 and 2022 from the Research and Information Center on Antisemitism Berlin show that these occur in all milieus*

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<sup>943</sup> [Deutscher Bundestag Drucksache 20/9311 Gesetzentwurf der Fraktion der CDU/CSU Entwurf eines Gesetzes zur Beendigung des Aufenthalts und Verhinderung der Einbürgerung antisemitischer Ausländer](#)

<sup>944</sup> <https://x.com/BMWK/status/1720130870864998800>

<sup>945</sup> <https://www.aljazeera.com/news/2023/11/8/german-president-says-arab-citizens-must-distance-themselves-from-hamas>

<sup>946</sup> <https://www.rbb24.de/panorama/beitrag/2023/10/interview-israel-palaestina-berlin-katharina-galor-buchautorin.html>

<sup>947</sup>

[https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_30.docx#:~:text=Collective%20blame%20cast%20on%20Muslims,constructions%20of%20irreconcilable%20cultural%20differences](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_30.docx#:~:text=Collective%20blame%20cast%20on%20Muslims,constructions%20of%20irreconcilable%20cultural%20differences)

and are intertwined with other ideologies of inequality such as racism (RIAS Annual Report 2022). Attempts to blame anti-Semitic incidents primarily on Muslims or immigrants distract from anti-Semitism in all population groups and promote anti-Muslim racism. (unofficial German translation)<sup>948</sup>.

## Freedom of Association

During an interview, representative from the organisation *Jüdische Stimme* reported that Jewish organisations expressing solidarity with the Palestinian people have been denied spaces and venues for their events. Representatives of the organisations have been pressured not to speak at demonstrations on the grounds that they could be accused of anti-Israel hate speech, antisemitism or demonisation of the state of Israel<sup>949</sup>. The representative also highlighted that the threshold for law enforcement officials is much lower to intervene, detain and use excessive force and harsher measures are applied against people attending protests expressing solidarity with Palestinian people or opposing Israeli occupation and apartheid compared to other topics.

In March 2024, the bank account of *Jüdische Stimme* was frozen by a state-owned bank without any warning. The organisation considered the action to be politically motivated.<sup>950</sup> The bank used various legal arguments, such as the failure to provide certain administrative documents proving their non-profit status, but also arguments accusing them of anti-Israeli activities and involvement in pro-Palestinian activities. This is not the first time that the organisation was targeted, as in 2016 another bank requested the full list of the members because of the support of the Boycott, Divestment, Sanctions (BDS) movement.<sup>951</sup> The bank justified the measures on the grounds of transparency stating that it wanted to make sure that no member of the organisation was on the EU's terrorist list.

On 19 April 2024, the Friedrichshain-Kreuzberg district office announced the closure of the two girls' centers *Alia* and *Phantalisa* without prior notice by the youth welfare office.<sup>952</sup> *Frieda Frauen\*zentrum e.V.*, an association which supports these centres, was informed of the

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<sup>948</sup> <https://www.amnesty.de/informieren/aktuell/deutschland-novemberpogrome-gedenken-antisemitismus-rassismus>

<sup>949</sup> Interview with *Jüdische Stimme*, 10 April 2024

<sup>950</sup> <https://www.juedische-stimme.de/berliner-sparkasse-sperrt-konto-der-j%C3%BCdischen-stimme>

<sup>951</sup> <https://www.juedische-stimme.de/german-bank-for-social-economy-closes-account-of-jewish-peace-group>

<sup>952</sup> <https://www.berlin.de/ba-friedrichshain-kreuzberg/aktuelles/pressemitteilungen/2024/pressemitteilung.1439243.php>

"extraordinary termination with immediate effect."<sup>953</sup> In a press statement, Frieda Frauen\*zentrum e.V. stated that private social media profiles of their employees were monitored due to their participation in pro-Palestine demonstrations. The district office made three main allegations against the centres related to the political behaviour of the directors. The allegations relate to their participation in an October pro-Palestine protest, their private social media posts, which have been categorised as antisemitic, and their participation in the Berlin Palestine Congress.<sup>954</sup>

# Greece

On 18 October, 10,000 people took part in a demonstration in Athens organised by left-wing groups.<sup>955</sup> However, the riot police fired tear gas to disperse demonstrators that were marching towards the Israeli Embassy in Athens.<sup>956</sup> No arrests or injuries were reported, and the protest ended quickly afterwards. In November, the police arrested a Palestinian man for raising the Palestinian flag during a protest against Israel's escalating violence in Gaza. The police brought criminal charges against him, even though the grounds for the charges were unclear. It was later reported that the man was exposing the Greek state to the risk of reprisals or disruptions of friendly relations with an ally (article 141 of the Criminal Code).<sup>957</sup> Moreover, after the pro-Palestine demonstration in Athens on 10 February 2024, protesters organised a symbolic blockade of a store of a renowned fast-food chain, McDonalds. Police responded aggressively, resorting to stun grenades and indiscriminate force against demonstrators and journalists. Footage shows the police assaulting a magazine salesman and shattering the store windows, in front of people who were having lunch, to drag a protester outside. Three arrests were made, while four police officers claimed injury.<sup>958</sup>

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<sup>953</sup> <https://www.frieda-frauenzentrum.de/informationsschreiben-von-frieda-frauenzentrum-e-v-bzgl-der-ausserordentlichen-kuendigung-mit-sofortiger-wirkung-unserer-beiden-maedcheneinrichtungen-phantalisa-und-alia/>

<sup>954</sup> <https://www.rbb24.de/politik/beitrag/2024/04/bezirk-jugendamt-frieda-maedchen-kuendigung-cdu-antisemitismus.html>

<sup>955</sup> <https://www.ekathimerini.com/news/1222870/riot-police-quell-pro-palestinian-protest-in-athens/>

<sup>956</sup> <https://www.youtube.com/watch?v=xLjwaGXAmPw>

<sup>957</sup> <https://www.keeptalkinggreece.com/2023/11/07/palestinian-man-flag-arrest-reprisals/>

<sup>958</sup> <https://www.news247.gr/ellada/sintagma-xilo-kai-dakrigona-sti-diamartiria-iper-tis-palaistinis-vinteo/?amp>



# Italy

On 12 October 2023, young people staged a counter protest against a pro-Israel demonstration, convened by the Italy Israel Livorno association. They displayed two banners: one made a comparison between civilians killed in Palestine and those in Israel between 2008 and 2020, the other titled "Neither with Israel nor with Hamas: Free and independent Palestine". Police removed pro-Palestinian banners and flags, and detained students. They report experiencing racist slurs from both the authorities and the pro-Israeli demonstrators.<sup>959</sup>

Soon after, on 14 October 2024, millions of people all over Italy gathered on the streets to express their solidarity with the Palestinian people in the Gaza Strip. In Milan, the large-scale demonstration ended with holding a minute of silence for the victims of the war.<sup>960</sup>

Following the ICJ ruling, a public debate began on whether the concept of genocide should extend to the current context in Gaza as well as on how to utilise memory of the past to interpret the events of the present. Responding to the debate, the UN Special Rapporteur on the Occupied Palestinian Territories recalled that "what constitutes genocide is established by the Genocide Convention and international tribunals such as ICTY, ICTR, and ICJ, not by emotions, opinions, or painful personal experiences."<sup>961</sup>

On 27 January, Holocaust Remembrance Day, Jewish leaders in Rome and Milan urged the Italian government to prohibit scheduled pro-Palestinian demonstrations. The president of the Jewish Community of Rome Victor Fadlun stated that the marches, which he characterised as antisemitic, 'would "reopen the wound of the Holocaust".<sup>962</sup> The Ministry of Interior sent a circular inviting the public authorities "to assess, with regard to the initiatives organised in support of the Palestinian cause, the adoption, pursuant to Article 18 of the Consolidated Law on Police, of time prescriptions providing for their postponement to the following day or to another date, thus guaranteeing the freedom of demonstration which, in this case, must be balanced with the value attributed to the 'Day of Remembrance'.<sup>963</sup> Following this, in several cities, as a result of local authorities, scheduled pro-Palestinian marches and demonstrations on Holocaust Remembrance Day were postponed.<sup>964</sup>

<sup>959</sup> <https://www.infoaut.org/conflitti-globali/livorno-giovani-pro-palestina-repressi-violentamente-dalle-forze-dellordine>

<sup>960</sup> <https://www.open.online/2023/10/14/italia-manifestazioni-pro-palestina-video/>

<sup>961</sup> <https://news.un.org/en/story/2024/03/1147976>

<sup>962</sup> <https://www.wantedinrome.com/news/italy-jews-pro-palestinian-rallies-holocaust-memorial-day.html>

<sup>963</sup> <https://www.wantedinrome.com/news/italy-jews-pro-palestinian-rallies-holocaust-memorial-day.html>

<sup>964</sup> <https://www.ilfattoquotidiano.it/2024/01/26/cortei-pro-palestina-divieto-a-roma-per-il-giorno-della-memoria-verso-lo-stop-anche-a-milano/7423298/>

## Civic Space Report 2024

Despite the orders, in Milan, Rome and other cities in Italy, large-scale demonstrations took place. Activists emphasised that they were protesting against the genocide in Gaza, not against Jews. They have emphasised that historical memory should serve as an instrument to ensure that the Holocaust should not be repeated against anyone. On a poster during the pro-Palestinian rally, organisers published a quotation by Holocaust survivor and author Primo Levi from his memoir *If This Is a Man*: "If understanding is impossible, knowing is imperative, because what happened could happen again. Consciences can be seduced and obscured again: even our own."<sup>965</sup> In Milan, Italian police used batons to beat pro-Palestine demonstrators who had gathered despite an official ban on protests on International Holocaust Remembrance Day.<sup>966</sup>

Chef Rubio, a television presenter and supporter of the Palestinian cause was stopped by police while heading towards a pro-Palestinian gathering outside the foreign ministry in Rome, while later, demonstrators were barred from dyeing an Israeli flag red.<sup>967</sup> On the same day, in Milan, Italian police were recorded using batons to disperse pro-Palestine demonstrators calling for a ceasefire in Gaza.<sup>968</sup>

Moreover, on 27 January 2024, Anan Yaeesh, a Palestinian from Tulkarem in the West Bank, was arrested by the Italian authorities in L'Aquila in response to an extradition plea filed by the Israeli authorities. The arrest and extradition of Anan by Italy evokes significant concerns, as it appears to potentially conflict with established international standards.<sup>969</sup> According to Article 19 of the EU Charter of Fundamental Rights, "No one may be [...] extradited to a State where there is a serious risk that he or she would be subjected to [...] inhuman or degrading treatment or punishment." On 13 March 2024, the court of appeals declined to extradite Yaeesh to Israel, based on evidence from Amnesty International and Human Rights Watch regarding the conditions in Israeli prisons, fearing he might face human rights violations and inhuman treatment.<sup>970</sup>

Following the Sanremo Music Festival, several protests have erupted against the public broadcaster Rai hosting it and the reading of a statement in which RAI's managing director Roberto Sergio expressed unilateral solidarity with the people of Israel and not civilians in Palestine. The demonstrations erupted in several Italian cities have been met with excessive force leaving few protesters physically injured.<sup>971</sup>

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<sup>965</sup> <https://www.wantedinrome.com/news/italy-jews-pro-palestinian-rallies-holocaust-memorial-day.html>

<sup>966</sup> <https://www.aljazeera.com/program/newsfeed/2024/1/28/police-beat-pro-palestine-demonstrators-in-italy>

<sup>967</sup> <https://www.open.online/2023/10/14/italia-manifestazioni-pro-palestina-video/>

<sup>968</sup> <https://www.aljazeera.com/program/newsfeed/2024/1/28/police-beat-pro-palestine-demonstrators-in-italy>

<sup>969</sup> <https://www.osservatoriorepressione.info/no-alla-complicita-italia-israele-no-allestradizione-anan-yaesh-2/>

<sup>970</sup> <https://www.middleeasteye.net/live-blog/live-blog-update/italy-rejects-extradition-israel-palestinian-arrested-suspicion-planning>

<sup>971</sup> [https://www.instagram.com/nojusticenopeace\\_italy/reel/C3TD8RetWv\\_/](https://www.instagram.com/nojusticenopeace_italy/reel/C3TD8RetWv_/)

## RESTRICTIONS ON PALESTINE SOLIDARITY

The governing far-right party the League filed a bill in the Senate that intends to ban demonstrations expressing criticism of Israeli institutions. In Article 3 of the bill, in particular, the League inserts a special point against street demonstrations, giving the police headquarters the power to deny authorisation 'for reasons of morality' even in the case of 'potential risk' for the use of 'symbols, slogans, messages and any other anti-Semitic acts within the meaning of the operational definition of anti-Semitism adopted by this law'.<sup>972</sup> The proposal adopts the definition of anti-Semitism formulated by the Plenary Assembly of the International Holocaust Remembrance Alliance (IHRA), which is criticised by human rights organisations and legal experts for defining as anti-Semitic attitudes rather attributable to anti-Zionism.<sup>973</sup><sup>974</sup>

On 23 February 2024, during peaceful marches organised by students in the cities of Florence and Pisa, in solidarity with civilians in Gaza, police repeatedly blocked the marches and used force against under-aged and very young student protesters. The event provoked anger online, and caused dissatisfaction amongst young people, teachers, and politicians. After these incidents, pro-Palestine protesters from Milan highlighted the censorship and repression of dissent taking place and denounced the involvement of the right-wing Meloni government.<sup>975</sup>

Several associations and educational institutions, such as ARCI and Scuola Superiore Sant' Anna, voiced their support for the students. They called for immediate government action to clarify any potential wrongdoing, thorough investigation into the excessive use of force by police in the above-mentioned incidents, and for measures to be taken to protect the freedom of expression.<sup>976</sup>

Lastly, despite the widespread outrage across Italy, another incident unfolded on 11 March 2024, when Palestinian activists Ali Saji Ribhi Irar and Mansour Doghmosh were taken into custody in L'Aquila. The arrests occurred prior to the hearing of the Anan Yaeesh case, in the same city where Yaeesh was also arrested more than a year ago.<sup>977</sup>

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<sup>972</sup> <https://www.lindipendente.online/2024/02/16/la-lega-ha-presentato-una-proposta-di-legge-per-criminalizzare-qualunque-critica-a-israele/>

<sup>973</sup> <https://www.lindipendente.online/2024/02/16/la-lega-ha-presentato-una-proposta-di-legge-per-criminalizzare-qualunque-critica-a-israele/>

<sup>974</sup> <https://verfassungsblog.de/das-spannungsverhaeltnis-zwischen-staatsrason-und-grundrechten/>

<sup>975</sup> <https://www.ilfattoquotidiano.it/2024/02/24/corteo-pro-palestina-le-voci-da-milano-censura-e-repressione-del-dissenso-governo-meloni-complice-del-genocidio/7457851/amp/>

<sup>976</sup> <https://www.forumterzosettore.it/2024/02/23/acli-e-arci-contro-le-aggressione-agli-studenti/>; <https://www.santannapisa.it/en/news/no-use-violence-yes-dialogue-and-peaceful-manifestation-ones-ideas-statement-rectors-scuola>

<sup>977</sup> <https://www.palestinechronicle.com/palestinian-partisans-italy-arrests-activists-accuses-them-of-terrorism/>

# Netherlands

The Students for Palestine group, who staged a teach-in at the Wijnhaven building in The Hague on 9 November 2023, reported facing intimidation and harassment from private security. One student reported that security guards tried to confiscate his megaphone, while others were asked for identification and reported that the security guards attempted to follow them after the protest dispersed.<sup>978</sup>

During a pro Palestine sit-in at Groningen Central Station in December 2023, two protesters were arrested for insulting a police officer following an altercation between police and some protesters.<sup>979</sup> In February 2024, two Palestinian activists were arrested at the Hague during a sit in protest. The police arrested the activist by force on grounds that it was “forbidden to use a megaphone,” Multiple protestors were physically attacked by the police and then a second activist was arrested. Both activists are facing the possibility of fines.<sup>980</sup>

The Dutch House of Representatives passed a motion moved by the right-wing party JA21 which condemned the slogan ‘From the River to the Sea, Palestine Will be Free’ as inciting violence<sup>981</sup>. In August 2023 the Amsterdam Court of Appeal Confirmed that a Dutch activist had not committed a criminal offense when chanting the slogan ‘From the river to the sea, Palestine will be free’ during a speech at a Palestine solidarity rally in May 2021. The court’s decision is final and cannot be appealed.

Workers for Palestine, a group which advocates for the liberation of occupied Palestine from within art, social, academic and political institutions in the Netherlands, was placed on a so-called terror list put together by a pro-Israeli Meir Amit Intelligence and Terrorism Information Center. Several other activist groups are listed including Extinction Rebellion in the Netherlands, INTAL (an anti- imperialist and international solidarity movement) and Another Jewish Voice in Belgium.<sup>982</sup>

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<sup>978</sup> <https://www.mareonline.nl/en/news/how-a-pro-palestine-protest-turned-into-a-chase-and-a-flight-between-clothes-racks/>

<sup>979</sup> <https://northerntimes.nl/two-arrests-at-tense-pro-palestine-demonstration-at-groningen-central-station/>

<sup>980</sup> <https://donorbox.org/legal-aid-fund-for-palestine-activists-arrested-by-the-hague-police>

<sup>981</sup> <https://peoplesdispatch.org/2023/11/03/dutch-establishment-and-right-wing-tries-to-crack-down-on-the-slogan-from-the-river-to-the-sea-palestine-will-be-free/>

<sup>982</sup> <https://www.terrorism-info.org.il/en/support-for-amas-in-belgium-and-the-netherlands-since-the-outbreak-of-the-swords-of-iron-war/>

# Poland

Several protests in solidarity with Palestine and Israel have taken place in several cities across Poland without incidents. The mayor of Warsaw, Rafał Trzaskowski from the Civic Platform, tried to prevent the demonstration calling for a ceasefire for Gaza from happening (November 2023). However, after a complaint by the Helsinki Foundation, the decision was revoked by the court.<sup>983</sup>

The Israeli ambassador to Poland condemned an earlier protest in October 2023<sup>984</sup> for being “blatantly antisemitic” due to a poster held by Norwegian student, Marie Anderson, that said “Keep the world clean” alongside an image of the Israeli flag being thrown in a bin. The ambassador called on the authorities to investigate the student. Under Polish law, inciting hatred on the basis of religious, ethnic or national differences is a crime punishable by up to two years in prison. The ambassador also condemned the chanting of “genocide” and the slogan “from the river to the sea, Palestine will be free”. Polish President Andrzej Duda said he “strongly condemns the antisemitic slogans that appeared during [the] march in Warsaw”. Following this, the Medical University of Warsaw (WUM) suspended the student. Responding to the criticism against her poster, Anderson stated that her poster did not intend any hatred towards Jewish people. “My poster is about the Israeli government...and the ethnic genocide they are doing right now to the Palestinian people”. The university’s disciplinary officer has also been asked to conduct an investigation into four other students who were reported to have “posted legally questionable content on social media”.<sup>985</sup>

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<sup>983</sup> <https://www.amnesty.org.pl/kolejny-prewencyjny-zakaz-zgromadzenia-uchylony-przez-sad/>, <https://hfhr.pl/aktualnosci/opinia-hfpc-w-sprawie-odwolania-od-decyzji-prezydenta-warszawy-zakazujacej-organizacji,l:948771893>

<sup>984</sup> <https://notesfrompoland.com/2023/10/21/israeli-ambassador-condemns-blatant-antisemitism-at-pro-palestine-march-in-warsaw/>

<sup>985</sup> <https://notesfrompoland.com/2023/10/31/warsaw-university-suspends-norwegian-student-over-keep-world-clean-banner-at-palestine-march/>

# Spain

The Palestine solidarity movement has carried out hundreds of protests throughout Spain. Police have carried out identifications (some involving ethnic profiling), detentions, and prohibition of Palestinian symbols<sup>986</sup> such as flags, clothes or 'keffiyehs' (Palestinian scarves). Pro-Palestinian symbols have been banned in sports stadiums and schoolteachers have been targeted for speaking about the violence ongoing in Palestine. Some schools restricted demonstrations in solidarity with Palestine for fear of being accused of anti-Semitism by the authorities.<sup>987</sup>

Catalan media outlet El Nacional violated the privacy rights of three pro-Palestinian activists after the unauthorised dissemination of their images. The online newspaper published an article detailing protests they had participated in and displayed images of the activists' faces, citing internal police sources. The newspaper accused the activists of anti-Semitism, even before the police investigation had been concluded.

Political institutions have also censored symbols, banners or messages. In Sant Cugat del Vallès in Barcelona, the city council exercised censorship and forced the removal of a mural painted at a school by students and teachers in solidarity with civilians of Gaza.<sup>988</sup>

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<sup>986</sup> <https://blogs.publico.es/dominiopublico/56015/la-liga-y-el-peligro-de-prohibir-banderas-palestinas/>

<sup>987</sup> [https://www.eldiario.es/madrid/somos/israel-pide-prohibir-concentraciones-colegios-madrid-huelgas-estudiantiles-apoyo-pueblo-palestino\\_1\\_10679657.html](https://www.eldiario.es/madrid/somos/israel-pide-prohibir-concentraciones-colegios-madrid-huelgas-estudiantiles-apoyo-pueblo-palestino_1_10679657.html)

<sup>988</sup> <https://www.elperiodico.com/es/sant-cugat/20231207/sant-cugat-ordena-retirar-mural-palestina-95536177>



# Other country examples

In **Finland**, on 29 November 2023, police arrested 13 students at the University of Helsinki during a demonstration in support of the Palestinian people on the basis of the Police Act in order to protect against crimes and disturbances. Earlier in November, the University of Helsinki banned demonstrations related to the situation in Palestine in its premises on the basis of “neutrality”.<sup>989</sup>

In November 2023, Chalmers university of technology in **Sweden** announced a ban on all political expression to “safeguard the work environment and safety for our students and employees” and “to ensure a climate where people with widely differing views and origins can meet and work”.<sup>990</sup> The ban came as several students, professors and employees called on universities to cut ties with Israel and to stand in solidarity with the Palestinian people.<sup>991</sup>

In **Hungary**, the Minister of Interior issued a blanket ban on any demonstrations in solidarity with Palestinian people, a step criticised by human rights organisations.<sup>992</sup>

Between October to November 2023, in **Bulgaria** Sofia Municipality issued at least five bans<sup>993</sup> on peaceful demonstrations organised by the Palestinian people. This is significant compared to the four bans issued by the municipality between January 2020 to April 2023.<sup>994</sup> The bans were issued due to alleged possibility of hate speech at the demonstrations, the potential for the messages of the demonstration to provoke dissent, and that other events were taking place in the city at the same time. The justifications by the Municipality were in contradiction of both the domestic law as well as the international standards.

In **Romania**, protesters showing solidarity with Palestine have claimed that they were abusively called into police questioning for alleged anti-Semitism, advised not to participate in protests or to discuss the developments unfolding in Israel and Palestine.<sup>995</sup> Other activists reported abusive

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<sup>989</sup> <https://yle.fi/a/74-20062701>

<sup>990</sup> <https://www.chalmers.se/en/current/president-s-perspective/no-political-manifestations-on-chalmers-campus/>

<sup>991</sup> <https://fuf.se/en/magasin/vecka-46-chalmers-forbjod-politiska-manifestationer-skapade-kritikstorm/>

<sup>992</sup> <https://tasz.hu/cikkek/tuntetesek-tiltasa-a-gazai-konfliktus-kapcsan>

<sup>993</sup> Information received by BCNL from the persons who have submitted the notifications for the protests

<sup>994</sup> <https://rsf.org/en/index?year=2006>

<sup>995</sup> <https://www.libertatea.ro/stiri/exclusiv-politia-romana-ii-cheama-pe-palestinieni-si-pe-sustinatori-la-sediu-mi-au-cerut-sa-nu-ma-duc-la-miting-sa-nu-vorbesc-despre-razboi-si-sa-nu-postez-pe-facebook-cei-mai-mu-4705572>

searches and being repeatedly identified and taken to the police station and questioned, in what they perceived as an attempt to intimidate them.<sup>996</sup>

In **Latvia**, a planned protest in Riga February 2024 in solidarity with the Palestinian people was banned due to “security concerns”.<sup>997</sup>

# Recommendations for the EU

## Targeted recommendation:

🔍 Condemn, at the highest political level, unlawful restrictions on the right to freedom of peaceful assembly and expression; address these restrictions in the Annual Rule of Law Cycle and make recommendations to member states to respect the right to peaceful assembly at all times, as per international law.

🔍 Collect data and closely monitor restrictions on civic space as a direct impact of the violence in Palestine and Israel, with specific attention given to the disproportionate impact of these restrictions on racialised groups, especially Muslims and people of Arab-descent and Jewish people, and those perceived as such.

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<sup>996</sup> [https://www.libertatea.ro/stiri/dusi-la-sectia-de-politie-pentru-un-slogan-participantii-la-mitingurile-pro-palestina-acuza-un-abuz-din-partea-fortelor-de-ordine-4748462?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=tolo-page-post&fbclid=IwAR1K09ZAJYXB78xnWDtAKuTSUAVeL6ZoSOVIACiGUSBBMJT1GtueagCMXa0](https://www.libertatea.ro/stiri/dusi-la-sectia-de-politie-pentru-un-slogan-participantii-la-mitingurile-pro-palestina-acuza-un-abuz-din-partea-fortelor-de-ordine-4748462?utm_source=facebook&utm_medium=social&utm_campaign=tolo-page-post&fbclid=IwAR1K09ZAJYXB78xnWDtAKuTSUAVeL6ZoSOVIACiGUSBBMJT1GtueagCMXa0)

<sup>997</sup> <https://palestina.it/en/blogas/from-it-to-lv-with-love/>

## RESTRICTIONS ON PALESTINE SOLIDARITY

- 🔍 Develop an early warning mechanism to monitor the state of civic space and civic actors in Europe. Such an alert mechanism should lead to a rapid (re)assessment of the situation allowing for timely and concrete reaction at the EU level, such as recommendations, dialogue, sanctions and emergency funding when needed, the impact of which should be regularly reviewed.
- 🔍 Work with civil society to design a 'Rapid response system' (an EU protection mechanism building on the existing external EU human rights defenders mechanism) that can detect and act on first signs of attacks against civil society, including a helpline, legal assistance and temporary relocation. Such a system must be run by independent civil society organisations on behalf of and financed by the EU institutions.



### **About European Civic Forum**

European Civic Forum (ECF) is a pan-European network of more than 100 associations and NGOs across 30 European countries,

Founded in 2005 by our member organisations, we have spent nearly two decades working to protect civic space, enable civic participation and build civil dialogue for more equality, solidarity and democracy in Europe.



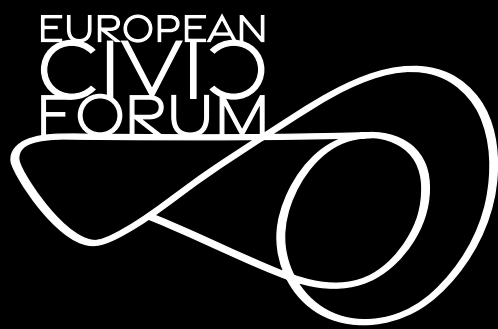
### **About Civic Space Watch**

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









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