



ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2019 - SUCCESS STORIES OF RESISTANCE

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Edito by Alexandrina Najmowicz, European Civic Forum Director

WHEN INJUSTICE BECOMES LAW, RESISTANCE BECOMES A DUTY!

25th November 2019

Activizenship is a magazine edited by the European Civic Forum, aiming to connect ideas and experiences, explore and capture current trends and transformations affecting civil society in Europe and beyond.

Activizenship brings together stories and analyses to shed light on the potential of civic activism on democratic, social, environmental, cultural and political issues to contribute to renewing, rethinking and reshaping a poetics of citizenship. In doing so, it contributes to giving civic actors the confidence they need to pursue their invaluable work in addressing peoples' needs and changing the world from grassroots up. This also means providing them with tools to louden their voice and make it heard by those they wish to convince and by institutions that should support their action and protect their space.

This fourth issue of Activizenship brings into the spotlight *success stories of resistance* against repression, political apathy, consumerism, exclusion, individualism and fragmentation, putting them into a wider perspective of socio-economic and political developments.

Sixty-two years ago, Europe grew as a promise of peace and a driver of economic progress. Our common heritage is based on struggles to overcome social exploitation, colonialism, patriarchy and racism, on victories against dictatorship and authoritarian regimes.

The fall of the Berlin wall thirty years ago opened many hopes towards a new age of democratisation and prosperity.

Today, this common heritage, together with our welfare models, is being eroded, as are many people's hopes and aspirations for a better way of life.

The road to freedom and prosperity for a lot of people from the Eastern bloc turned to a zero-sum game - someone's success must be at the cost of another's failure -, as structural adjustment programmes and policies having failed in the rest of the world found breeding ground for a facelift in the East.

The transition towards market economy happened at a time when the neoliberal model was booming during a decade of Thatcherism and "conservative revolution". Thirty years after, it failed to offer a real prospective for better future for so many people. Moreover, democratic consolidation itself is, in many countries, still a work in progress, or rather in decline.

Declining trust in democracy is a global trend and Europe makes no exception. The erosion of democracy goes hand in hand with the erosion of economic status or confidence in social progress. The universality of rights, which was at the heart of the post-war consensus, is being put under pressure by policies which produce competition for rights and victimhood, and by the rise of regressive, nationalist and exclusionary forces.

Democracy is under fire as well when governments don't seem to be bothered by powerful companies

exerting influence in the corridors of power, while gagging civic actors and campaign groups that promote common good over vested interests.

Democratic civic organisations and rights defenders point the fingers against political forces and narratives questioning the universality of rights, as well as against the inconsistency of a world system based on financial globalisation that has gone rogue, a global system destroying our planet.

They are increasingly facing the pressure of democratic backsliding and shrinking rights and freedoms in Europe today, by governments that increasingly use their repressive power, silence down dissent and even criminalise solidarity.

In the face of these worrying and contagious trends against rights and values, and against those who defend them, Europe is at risk of losing its normative authority and pride of being for decades a role model for the advancement of rights and democracy, solidarity and civic engagement.

While these challenges undermine civic space, they often galvanise resistance, solidarity and action against injustice.

The *success stories of resistance* we showcase in this publication illustrate some of the many ways in which civil society and citizens work together to create mutualism and solidarity and, as can be seen, win great victories that contribute to *making Europe great for all*.

These are stories from countries where civic space is under growing pressure, and for this reason, we want to give recognition to civil society for its daily work with examples from Estonia, France, Italy, Poland, Romania, Spain. Each story is contextualised through a case study on civic space in that country, written by a national watchdog.

Thanks to these experiences and case studies, Activizenship #4 wants to contribute to the understanding of the features and evolutions of the civic space for those who defend and act for rights on the ground.

Every time citizens challenge the realities they are confronted with, they enact a form of resistance or offensive. Resistance can take different shapes, attitudes and languages. The stories inside this magazine capture some of these nuances, and discuss then their transformative and emancipatory potential to step from resistance to positive systemic change.

In order to frame these stories in the wider European landscape, this issue opens with an analysis of key findings from Civic Space Watch, standing at the crossroads between a magazine and a report from the frontlines.

The good news is that grassroots activism is thriving even in gloomiest contexts of marginalised communities. To cite only a few examples, in Romania, in one of its biggest cities known as “The Silicon Valley”, where, by contrast, about 1500 people are facing a garbage mountain as their only horizon and source of leaving, a Roma activist is born, the first ever to head a list for European elections in the country...

In France, a country facing deep social turmoil and violent repression, a family from the suburban areas of Paris, where police violence is incubating for decades now, stood up against injustice, hostile media coverage, state violence, and succeeded to tear down a wall and give symbolic power to the powerless...

Finally, Mediterranean Sea became the battlefield for keeping effective universal rights and fundamental values in Europe and a handful of NGOs and committed people are the main protagonists that save the honour of the continent... ■

Out of forty inspiring stories that reached us through an open call in May 2019, the European Civic Forum Steering Committee selected six that present a fair territorial and thematic distribution of the various challenges and rights-related fights. We collected the interviews in July 2019, while the authors wrote the country case studies and the general analysis between August and October 2019. The data for the infographics were provided by the association Stowarzyszenie Klon/Jawor (Poland) and the national platforms of each country: Network of Estonian Nonprofit Organizations (Estonia), Le Mouvement associative (France), the Forum de terzo settore (Italy), Fundația pentru Dezvoltarea Societății Civile (Romania), Plataforma de ONG de Acción Social (Spain).

**LEARNING
FROM
CIVIC SPACE
WATCH**

ONE YEAR AND A HALF MONITORING CIVIC SPACE

Challenges for acting for rights are increasing but civil society is striking back

By Giada Negri

In recent years, the European Civic Forum¹ members have observed the increasing pressure on NGOs and social movements in the form of burdensome and limiting legislation; reduction, restrictions and constraints on financial resources; new barriers to influence the policy-making and accessing information; restriction to the freedom to protest, as well as a general pressure and decline in access to rights for all.

At the beginning of 2018, the ECF launched the Civic Space Watch platform (<http://civicspacewatch.eu>) to collect findings and analyses from actors in Europe on the conditions for civil society to operate. Its goal is to improve the sharing of information within civil society and between civil society and European institutions, as well as to trigger coordinated solidarity responses to organisations and movements in need.

¹ The European Civic Forum is a network of over 100 associations and NGOs across Europe, working to promote civic engagement for a Europe grounded on Equality, Solidarity and Democracy. We connect civil society actors transnationally and cross-sectorally to participate in dialogue with the institutions, to advocate and campaign in defence of civil liberties and fundamental rights.

In one year and a half, we collected through Civic Space Watch nearly 400 resources from a variety of civic actors: articles, reports, interviews, alerts on threats to fundamental rights but also initiatives aimed at counter-

ing these trends and a number of news on positive developments. These contributed to the work of the European Civic Forum for the CIVICUS Monitor – feeding into over 70 updates – and the annual survey on civic space by Civil Society Europe as well as other research and advocacy efforts. These resources hint at the fact that while pressures to contain its growth and impact are increasing, civil society is successfully expanding in new areas of action.

The fast reactivity and involvement of many NGOs into the Civic Space Watch initiative comes as no surprise. Civil society organisations know that each alone can hardly resist an attack by authorities. They understand that it is the values they have in common that are under threat: a society built on inclusivity, equality and solidarity. Whatever the mandate they have, whatever the sector put under threat, their whole universality is at risk. In the same way, civil



Giada Negri

society's struggles for rights are connected. Any success is a success of all.

Having this in mind, the following analysis builds on the findings of *Civic Space Watch* and follows up to the policy paper *Towards an enabling environment for civil society in Europe*² to showcase significant trends we observed in Europe over the last year (between June 2018 and June 2019)³. Together with Civil Society Europe, the European Centre for Non-for-Profit Law, and CIVICUS, we developed a list of threats we saw emerging in today's Europe. We use this list to categorise each resource based on developments, actors involved, and rights under attack. This helps to navigate the database of resources and cluster information in meaningful ways.

The first part of the analysis will focus on the challenges civil society faces along four elements we believe are crucial for civil society to enact its full potential⁴:

1. A conducive political, cultural and socio-economic landscape;
2. Respect of fundamental freedoms of expression, association and peaceful assembly;
3. A supportive framework for CSOs' financial viability and sustainability;
4. Meaningful dialogue between civil society and governing bodies.

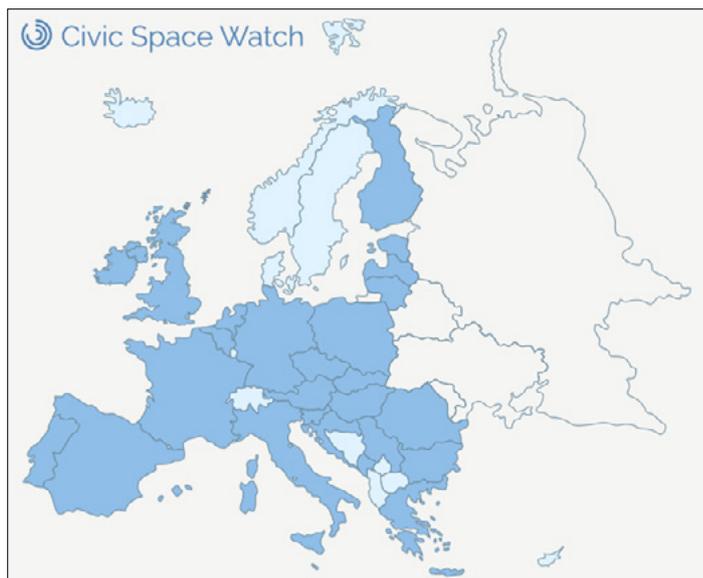
The following analysis will present how each of those pillars are today under pressure. A second part will look at some of the positive developments emerged during the analysed period.

² European Civic Forum, *towards an enabling environment for civil society in Europe*, <http://civic-forum.eu/publication/view/towards-an-enabling-environment-for-civil-society-in-europe>, December 2018.

³ While some of the developments discussed in the analysis below happened before June 2018 or after June 2019, the focus of the analysis will be on the resources collected between June 2018 and June 2019.

⁴ Read the policy paper *towards an enabling environment for civil society in Europe* for more details: <http://civic-forum.eu/publication/view/towards-an-enabling-environment-for-civil-society-in-europe>.

This analysis is authored by Giada Negri, Research and advocacy officer of the European Civic Forum. It was written with the support of Giorgia Gusciglio, Communication and event officer at ECF and the feedback of the editorial team. Special thanks to Katerina Hadzi-Miceva Evans, Vanja Škorić and Andrea Judit Tóth from the European Center for Non-for-Profit Law and Carlotta Besozzi of Civil Society Europe for their review and input in the second chapter of the analysis.



As of June 2019, the Civic Space Watch collected resources on 24 EU Member States

1. ADVERSE POLITICAL, CULTURAL AND SOCIO-ECONOMIC LANDSCAPE

THE NEOLIBERAL FRAME PAVING THE WAY TO DEEP DEMOCRATIC REGRESSIONS

Since the fall of the Berlin Wall in 1989, Europe has been a land of peace and prosperity. However, over the last decades, the consolidation of an economic system characterised by rising inequalities, concentration of wealth and shrinking social rights has resulted into a de-legitimation of democracy in the eyes of many who feel that the current democratic channels no longer ensure that

their needs are heard and addressed⁵. The 2008 financial crisis has speeded up a process of de-democratisation, with decision making shifting away from democratically-elected institutions and many facing new socio-economic barriers to the effective exercise of their rights. Entire sectors of public action have been excluded from the influence of voters or the scrutiny of civil society organisations. Definitely, even in its minimal definition, democracy has lost its substance, since partisan pluralism no longer has visible impact on major decisions affecting our living conditions.

Economic ultra-liberalism has paved the way to political illiberalism⁶ and power verticalism, at the expense of a genuine democratic functioning of institutions based on strong and respected counter-powers. A wide range of trends and practices aimed at insulating certain policies from democratic checks and balances emerge with different intensity all across Europe, not only in countries where regressive populists were able to gain executive powers. These practices include the tendency to favour direct relationships of leaders and institutions with individuals at the expense of intermediary bodies that are essential for strengthening people's voices; the centralisation of powers by the executive branch at the expense of parliamentary democracy or participatory mechanisms; the deployment of a range of legislative, judicial and coercive measures to shrink the space for democratic civil society and other social actors calling the state and market institutions to account (see chapter 2 'Growing restrictions of fundamental freedoms of associations, assembly and expression').

Security issues are used to downsize civil liberties. Economic targets are used to downsize social rights. Policies regarding climate change are only adopted when they do not hamper economic private interests. The Italian watchdog Osservatorio Repressione comments as follows on the repression of social movements it has observed in Italy since 2007: *"Public security has slowly replaced politics on the social level. [...] On the one*

*hand, politics have become meaningless, filled up only with the repressive universality of the category of public order. The condition of citizenship is no longer defined by the provision of services as a universal right, but as a function of being subject to rules. On the other hand, the apparent neutrality of the law is instead filled with politics, since the law (and the legal means that guarantee its respect) becomes the main instrument to face the different social emergencies."*⁷

In Hungary and Poland, reforms of the judiciary and media have raised concerns and criticism over the political control introduced, and its implication for fundamental rights. But also, episodes challenging the rule of law have emerged in well-established democracies. For example, public authorities prosecuting organisations (see the case of the German branch of Attac under "Targeting "political" actions and chilling effect on advocacy"), activists (see section "cracking down on solidarity") and peaceful protesters (see section "Criminalisation of protesters") are worrying signals not to be overlooked.

However, paradoxically, these challenging situations also create spaces and opportunities for civil society to step from resistance to emancipation⁸ (see chapter 5 "Challenges for acting for rights are increasing but civil society is striking back").

HIJACKING OF CIVIC SPACE BY ANTI-RIGHTS GROUPS

It is no surprise that at times when people question the value of democracy, we see anti-rights groups which promote a view of rights that creates competition between vulnerable groups or is exclusive of some groups on the grounds of identity, culture or sexual orientation gaining confidence to act. This emerges to an extent in all of the country case studies below. These groups build on the fears and anxieties present in our societies. They are often using human rights language and human rights tools to hijack the spaces and mechanisms traditionally occupied and used by democratic civil society.

Certain extremist groups – specifically neo-fascist ones – are using very confrontational tactics, such as physical attacks against the police, activists, vulnerable

⁵ For example, data from Varieties of Democracy (V-Dem) show a clear but complex relationship between inclusion in participation and levels of democracy. The initiative looked at the inclusion of four groups (socio-economic, social, geographic and gender) and found that in the macro-region of Eastern Europe and Central Asia, "exclusion of poorer citizens increased dramatically with the end of communism in the early 1990s, and democratization in the 1990s is only associated with improving conditions regarding the exclusion of social groups". See 2019 report, p. 46: https://issuu.com/v-dem/docs/v-dem_democracy_report_2019_high. Even in old democracies socio-economic, social and gender factors affect the effective exercise of rights and freedoms.

⁶ The link between socio-economic factors and illiberalism has been explored in the previous three issues of Activizenship.

⁷ Osservatorio Repressione, ITALY: A story of repression of social dissent, <http://civicspacewatch.eu/italy-a-story-of-repression-of-social-dissent/>. Published on Civic Space Watch on 9 July 2019.

⁸ See: Transnational Institute, Disrupting European authoritarianism. Grassroots organizing, collective action and participatory democracy during the Eurozone crisis, <https://www.tni.org/files/publication-downloads/tni-disrupting-european-authoritarianism.pdf>, May 2018.

groups and CSOs⁹ to gain increasing space in the media. Most European countries have legislation against these kinds of groups, but the authorities are failing to call them out, prosecute them and outlaw them. Around issues like migration or sexual and reproductive rights, these groups are increasingly present in the public sphere. As some governments and parties also pick up the topics and discuss them with similar narratives (see for example “cracking down on solidarity”), they provide some legitimacy to these groups¹⁰.

Despite the nationalist rhetoric they use, these groups are also interconnected at the European level and beyond. The World Congress of Families that gathered in March 2019 in Verona (Italy) was a clear example of this¹¹.

⁹ For updates see: <http://civicspacewatch.eu/perpetrator/extreme-right/>.

¹⁰ CIVICUS, Interview with the European Civic Forum, https://www.civicus.org/index.php/media-resources/news/interviews/4038-anti-rights-groups-they-want-to-stop-us-because-we-do-make-a-difference?fbclid=IwAR3CelRK4vfUerANl2WLeCGBD5OozSfQS9gnMcdq3fKB75mXDk4_Aax7Bk, 09 September 2019.

¹¹ Open Democracy, Revealed: dozens of European politicians linked to US “incubator for extremism”, <https://www.opendemocracy.net/en/5050/revealed-dozens-of-european-politicians-linked-to-us-incubator-for-extremism/>, 27 March 2019.

2. GROWING RESTRICTIONS OF FUNDAMENTAL FREEDOMS OF ASSOCIATION, ASSEMBLY AND EXPRESSION

In the European Union, freedom of association, peaceful assembly and expression are recognised by the Charter of Fundamental Rights of the European Union as well as in many national constitutions. Its member states have also committed internationally to protect these rights, for example as parties to the European Convention of Human Rights and the International Covenant on Civil and Political Rights. While the EU enjoys among the strongest safeguards of fundamental rights in the world, these are under increasing pressure across the region.

Civic space is shrinking everywhere but not evenly. As emerged by the contributions in Activizanship 3, the extent of the impact depends on historical and cultural factors as well as on geographies of power of the actors involved.¹² These elements critically affect not only how pressures are exerted, but also how well civil society and social movements are equipped to resist and respond. Moreover, in some countries the space

¹² The power relations depend on several factors, for example political capture of the judiciary and the media can crucially limit civil society's leverage. Another important issue is who are the actors involved. On this see for example the interview with Francesco Martone where he explained: “I have some problems with the concept of “shrinking civic space”. The first one is that in some cases this space is not shrinking, it is being denied from the very beginning. Look for instance at social actors that do not have access to the decision-making or the public space. For example, the Roma are put at the margins; they are criminalised, stigmatised, excluded. So I think that the concept of shrinking civic space does not fully capture all the different geographies of exclusion and marginalisation and also the different power relations within the space.” See: <http://civic-forum.eu/publication/view/activizanship-3>, (p. 52).

CIVIC SPACE IN THE 28 EUROPEAN UNION COUNTRIES



● Open (14)
 ● Narrowed (13)
 ● Obstructed (1)
 ● Repressed (0)
 ● Closed (0)

- Belgium
 ● Cyprus
 ● Czech Republic
 ● Denmark
 ● Estonia
 ● Finland
 ● Germany
 ● Ireland
- Lithuania
 ● Luxembourg
 ● Netherlands
 ● Portugal
 ● Slovenia
 ● Sweden
- Austria
 ● Bulgaria
 ● Croatia
 ● France
 ● Greece
 ● Italy
 ● Latvia
 ● Malta
 ● Poland
- Romania
 ● Slovakia
 ● Spain
 ● United Kingdom
 ● Hungary

more ratings at monitor.civicus.org

Infographics of the ratings of EU Member states on the CIVICUS Monitor as of fall 2019. (Since 2018, five countries have been downgraded while only one has improved the rating.)

for action of anti-rights groups seems to be expanding at the expense of democratic forces (see above “hijacking of civic space by anti-rights groups” and the country case studies). While it is not possible to generalise trends, the following chapter attempts at capturing certain themes that are recurring in the resources collected on the Civic Space Watch.

On top of the “hard” obstacles mentioned below, it is important to note that the number one category

linked with freedom of association in the resources collected between June 2018 and June 2019 is “smear campaign and vilification”. Records of negative statements against critical organisations and social movements have emerged all over the EU. While we decided not to dedicate a specific section of the analysis to this trend, to which we devoted the previous edition of *Activizanship* and which clearly emerges in all six case studies, this development is cross-cutting all the trends

below and it is an important indicator of the atmosphere in which civil society operates. It impacts the trust between CSOs and other stakeholders as well as the ability of civic actors to mobilise the general public on causes of general interest. Concerted attacks by public figures can also have distressing effects on people working on organisations or involved in groups targeted. In some cases, it contributed to creating an unsafe environment where individuals and organisations under the spotlight have been subjected to intimidations, threats and even physical attacks by anti-rights forces and their supporters.

2.1 TARGETING "POLITICAL" ACTIONS AND CHILLING EFFECT ON ADVOCACY

As discussed in the previous edition of this magazine, *Activizenship #3*, allegations of CSOs being "political" or engaging in "political activity" have emerged all across Europe in the attempt to delegitimise the sector and justify measures to hinder its actions. For example, Jolana Turnerova and Ryan Turner wrote that in the Czech Republic "smear campaigns depicting Czech NPOs/NGOs as economic parasites have been led by prominent political leaders, including Czech President Miloš Zeman, who regularly calls NPOs/NGOs "leeches (pijavice) of the state budget". He particularly targets organisations deemed "political", for working on issues uncomfortable for the authorities.¹³ Such statements have accompanied threats to substantially cut funding for the sector and particularly for those "political NGOs".^{14 15} At the beginning of 2019, the government budget for non-governmental organisations working on corruption was cut by over one-quarter.¹⁶

Accusations made against CSOs of being "political" are often aimed at discrediting civil society's causes as partisan in front of the public. However, it

¹³ J. Turnerová and R. Turner, *Fragility and resilience of civic sector in troubled waters – A Czech insight*, *ACTIVIZENSHIP # 3 Democracy under stress / Rebuilding trust / Rights for all*, <http://civic-forum.eu/publication/view/activizenship-3>, February 2019.

¹⁴ *Ibidem*.

¹⁵ CIVICUS Monitor, *CZECH REPUBLIC: Coalition party moves to cut funding to "political NGOs"*, <https://monitor.civicus.org/newsfeed/2018/08/21/coalition-party-cut-funding-political-ngos/>, 8 August 2018.

¹⁶ Radio Praha International, *Funding for NGOs cut despite government declared fight against corruption*, <https://www.radio.cz/en/section/business/funding-for-ngos-cut-despite-governments-declared-fight-against-corruption>, 15 April 2019.

also has wider repercussion on the understanding of the role civic actors play in a healthy democracy. As pointed out by Stefan Diefenbach-Trommer spokesperson of the German coalition *Rechtssicherheit für politische Willensbildung*¹⁷ speaking of the German context, "political' does not only mean longing for political power but also selfishly influencing the political debate. Civil society has a wide range of tools to influence politics: advocacy, campaigning, press releases, demonstrations ... These actions become political when civil society points at societal problems, bringing these problems to the public attention. [...] There is a thinking that politics is only the realm of political parties and public benefit organisations should not be allowed to influence politics. But I also think there is a generational struggle within parties with younger people understanding civil society differently than older ones".¹⁸ Civil society's action, regardless of the type of activity (advocacy, service provision, watchdog...), deals with the protection of common goods and values. It responds to societal problems and needs thus it might target topics that become high on the political agenda. In this regard, it is important to notice how a wide range of issues has been interpreted as "political" in different countries. But as the Council of Europe Expert on NGO Law highlighted: "The ability of NGOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and

¹⁷ Translated: Legal certainty for political advocacy.

¹⁸ ECF, GERMANY: ATTAC ruling could affect a thousand organisations – Interview with Coalition for Legal certainty for political advocacy, <https://civicspacewatch.eu/germany-attac-ruling-could-affect-a-thousand-organisations-interview-with-coalition-for-legal-certainty-for-political-advocacy/>, 29 April 2019.

POLITICAL ACTIVITY OF CIVIL SOCIETY

"The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25." – UN, Human Rights Council, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 1996 (para.26)

"The right to engage in any activities, including political activities as well as public policy is closely linked to the freedoms of expression, association and assembly. This right is an expression and manifestation of these freedoms." – Expert council on NGO Law of the Conference of INGOs of the Council of Europe, *Regulating political activities of Non-Governmental Organisations*, 2014 (para. 10)

to defend human rights of fellow citizens.”¹⁹ Indeed, the European Court of Human Rights also stated that allowing participation in public life and policy is one of the principal features of democracy—that is, to create the possibility for members of a society to resolve social and political problems through dialogue.²⁰

Moves targeting “political” actions of civil society have been observed in Germany, Ireland and the United Kingdom.

In February 2019, the German Federal Fiscal Court ruled that “*influencing political decision-making and shaping public opinion [...] does not fulfil a charitable purpose*”²¹ in relation to the public benefit status of the German branch of the Association Taxation of Financial Transactions and for Citizens’ Action (Attac). The organisation saw its status revoked in 2014 when the local tax authority found its campaigns on international taxation and tax justice too political to benefit from tax deductions. The decision puts at serious risk the financial sustainability and life of the association that has been unable to provide receipts for tax breaks for the last five years. According to the coalition “Rechtssicherheit für politische Willensbildung”, bringing together over 80 CSOs to advocate for a change of the charity legislation, this ruling will create a chilling effect on fights for human rights and democracy. The spokesperson of the coalition, Stefan Diefenbach-Trommer, said: “*The Supreme Federal Tax Court’s judgement in the Attac case will affect thousands of associations and foundations throughout Germany, and likewise influence the involvement of the many thousands of people who belong to them. Accordingly, many organisations are in great turmoil. [...] Many association boards are now discussing whether they should discontinue some of their efforts*”.²² Moves to target other CSOs deemed too involved in the policy-making have been anticipated by governing party CDU (see below the case of environmental NGO Deutsche Umwelthilfe under “Barriers to meaningful civil dialogue”).

In Ireland, the Electoral Act, as amended in 2001, bans donations to “third parties” campaigning for “political purposes” from abroad and limits donations up to €100 from anonymous sources and up to €2500 from

any source, beyond elections times. It also requires entities to open a separate bank account for donations for “political purposes”.²³ In 2017 and 2018, it was applied to advocacy work conducted by CSOs on human rights issues, including the right to access to education and the right to abortion, which were asked to return funding received from abroad or any significant donation. The Fundamental Rights Agency included this measure among the challenges that human rights CSOs face in the EU.²⁴ In the case of the controversy involving Amnesty International donation supporting the campaign to repeal the abortion ban, in July 2018, the Standards in Public Office Commission (SIPO), the regulatory body supervising the compliance with the Electoral legislation, accepted that the process leading to the adoption of the decision in November 2017 was “procedurally flawed”.²⁵ A “Coalition for civil society freedom” is currently campaigning to change the current wording of the Electoral Act. In a contribution to the public consultation on the electoral reform, it stated: “*Civil society advocacy is only one form of engagement with the political system and influence on public debate. It exists alongside other influences that the Government will not prohibit, and in fact will continue to support, such as commercial interests and political party activity. Civil society advocacy provides a vital counterbalance to these permanent influences on the democratic system, acting as a vehicle through which a wider range of people can access and contribute to public debate and the formulation of public policy and law*”.²⁶

In the United Kingdom, in 2013 the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 was passed amending previous electoral legislation. The law forced non-party campaigners, including civil society organisations, to register as such and declare expenditures to the Electoral Commission if their spending during one year preceding an election passes a certain threshold or if their activities could influence the result of the elections. Such provision can be applied retrospectively to the

¹⁹ Regulating political activities of Non-Governmental Organisations, 2015 (para. 10)

²⁰ United Communist Part of Turkey and Others v. Turkey, no 19392/92, 30 January 1998, paras 57-58

²¹ GERMANY: Regulating the political activity of civil society – the case of ATTAC (UPDATED), <https://civicspacewatch.eu/germany-regulating-the-political-activisty-of-civil-society-the-case-of-attac/>, published on CSW on 13 March 2019.

²² Ibidem.

²³ Coalition for civil society freedom, Statement on the electoral act, <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>.

²⁴ FRA, Challenges facing civil society organisations working on human rights in the EU, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf, January 2018, p.22.

²⁵ ECF on CIVICUS Monitor, Regulator settles dispute with Amnesty Ireland over foreign funding, <https://monitor.civicus.org/news-feed/2018/08/02/regulator-settles-dispute-amnesty-ireland-over-foreign-funding/>, 2 August 2018.

²⁶ Coalition for civil society freedom, Statement on the electoral act, <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>, p. 12.

spending of organisations, as it happened during the 2017 snap elections, when social care and housing charities had reported “being scared to speak out” during election campaign.²⁷ The former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association raised criticism concerning the “chilling effect” of the law on civil society, found it a “disproportionate impact” compared to the businesses and in-house lobbying activities.²⁸ While the government has denied any consequence for the sector, research by the Sheila McKechnie Foundation released in June 2018 found that the legislation had a severe chilling effect on the policy and campaign work of civic organisations. The network BOND reported that according to the research, “35% of campaigners said that they had avoided issues seen as too politically “live”, and 36% reported that they had watered down the language or tone of their communications. 34% of respondents said that the Act made them less agile and responsive, while 36% said that it had slowed down their decision making”.²⁹

²⁷ Anushka Asthana, UK: Charities “scared to speak out” during election campaign, <https://www.theguardian.com/society/2017/may/31/charities-scared-to-speak-out-during-election-campaign>, The Guardian, 31 May 2017.
²⁸ UN, HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 8 June 2017.
²⁹ Rowan Popplewellbond, 6 ways the Lobbying Act restricts campaigning and undermines democracy, <https://www.bond.org.uk/news/2018/06/6-ways-the-lobbying-act-restricts-campaigning-and-undermines-democracy>, BOND, 5 June 2018.

2.2 CRACKING DOWN ON SOLIDARITY

A very well documented trend which also emerges on the Civic Space Watch is the criminalisation of solidarity through a variety of formal (e.g. criminal persecution) and informal methods (vilification, intimidation and harassment).³⁰ To an extent, this trend can also be understood as an attempt to target “political actions” of citizens and civic organisations as solidarity has often filled and pointed at institutional gaps and hypocrisy, becoming the main playground for the fight for European values.

A 2018 report on the shrinking civic space for solidarity to migrants and refugees by the Transnational Institute summarises the different shapes this has taken by stating: “Europe’s “refugee crisis” triggered a wave of solidarity actions by both civil society organisations and ordinary citizens. Their efforts were part of a wave of compassion, as people organised convoys to refugee reception centres, warmly greeted arrivals at train stations and lined highways to provide food and water to those making the journey from Syria and elsewhere. Just a few years later those same activists are treated as criminals and humanitarian search and rescue missions are criminalised. The current onslaught originated in the intensification of the

³⁰ See: <http://civicspacewatch.eu/field-of-action/migration/>.

Map showing NGO ships involved in SAR operations in the Mediterranean Sea between 2016 and 1 June 2019
 SOURCE: FUNDAMENTAL RIGHTS AGENCY (<https://fra.europa.eu/en/publication/2019/2019-update-ngos-sar-activities>)



EU's restrictive approach to immigration policy from late 2014 and the EU's treatment of Italy and Greece, front-line states on the EU's migration routes. Today in Europe, solidarity with migrants and refugees can lead to arrest, legal troubles, or harassment. The actions of national police, judiciaries, political powers and far-right militants have created and compounded hostility to solidarity with refugees and migrants".³¹

A strong indicator of this process is the change of attitude towards search and rescue operations led by civic organisations and activists initially welcomed and rewarded and currently criminalised through criminal investigations as described in the interview with Alessandra Sciorba, spokesperson for Mediterranea (see below).

In the year under focus, in Italy (see case study) and Hungary, governments have further institution- alised this criminalisation through legislation. On the Hungarian case, the coalition Civilization wrote to the European Civic Forum:

"Immediately after the victory, the old-new government made clear that it will use its power first against Soros and "his network", and that it will keep up the anti-immigration hype, which many had thought was merely a campaign stunt. The new version of the Stop Soros law, submitted to Parliament at the end of May 2018, turned out to be markedly different from earlier drafts. Measures intended to directly restrict CSO operation and funding have been dropped, and indeed the new bill does not even mention CSOs directly. Instead, the bill seemingly aims at criminalising the provision of assistance to asylum seekers, including legal aid and the provision of information,

³¹ Transnational Institute, The shrinking space for solidarity with migrants and refugees, <https://www.tni.org/en/publication/the-shrinking-space-for-solidarity-with-migrants-and-refugees>, 6 November 2018.

STATES' OBLIGATIONS TO PROVIDE ASSISTANCE TO PEOPLE IN DISTRESS AT SEA

"Providing assistance to people in distress at sea (search and rescue – SAR) is a duty of all states and shipmasters under international law. Core provisions on SAR at sea are set out in the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 International Convention on Maritime Search and Rescue (SAR Convention), and the 1982 UN Convention on the Law of the Sea (UNCLOS). In general, the shipmaster (of both private and government vessels) has an obligation to render assistance to those in distress at sea without regard to their nationality, status, or the circumstances in which they are found." – Fundamental Rights Agency, NGO ships involved in search and rescue in the Mediterranean and criminal investigations, 2018

by threatening people giving such support with prison time. The probably intentionally opaque wording of the bill leaves much space for arbitrary interpretation, and of course the measures go against international law on several counts, including the right to a fair trial, to equal treatment and to seeking asylum."

In addition, the law introduced a 25% tax on organisations supporting migration (see section: Reduction and restriction of funding for civil society's activities).

A number of European and international institutions have expressed concern, including the CoE Commissioner for human rights³² and UN Special Rapporteurs³³. In July 2019, the European Commission referred Hungary to the European Court of Human Rights for criminalising activities in support of asylum seekers and opened an infringement procedure for the detention conditions in transit zones.³⁴

2.3 OVERREGULATING AND OVERBURDENING THE SECTOR

At least ten countries³⁵ announced, drafted, passed or entered into force anti-money laundering and transparency legislation between June 2018 and June 2019, all with the potential to hamper civil society sector. The following section, co-drafted with the European Center for Non-for-profit Law (ECNL), also thanks to the input of Civil Society Europe (CSE), will be split into two. The first part will deal with the transposition at national level of the 4th EU Anti-Money Laundering Directive conducive of overregulation of the sector; the second with other types of transparency legislation. While we appreciate the fact that the drivers and intentions behind the pieces of legislation described below are different, as further developed in the two sections, we observe they raise similar concerns and potential threats to the entire

³² CoE, Commissioner concerned about proposed additional restrictions to the work of NGOs in Hungary, <https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-proposed-additional-restrictions-to-the-work-of-ngos-in-hungary>, 15 Feb. 2018.

³³ OHCHR, UN experts decry Hungary's tough new measures against migrants and civil society, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23533&LangID=E>, 11 Sept. 2018.

³⁴ EC, Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones, https://ec.europa.eu/commission/press-corner/detail/en/IP_19_4260, 25 July 2019.

³⁵ Romania, Spain, Portugal, Greece, Italy, the Netherlands, Belgium, Germany, Denmark and Slovakia. Not all of these countries' initiatives moved forward.

REPORTING AND DISCLOSURE REQUIREMENTS FOR CSOs

“The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of association, 2015 (para. 104)

sector, beyond organisations at risk of money laundering and terrorism, including:

- ▶ Bureaucratic burden and obstacles for CSOs (such as double or disproportionately strict reporting requirements draining CSO resources);
- ▶ Disproportionate sanctions in case of non-compliance;
- ▶ Privacy concerns related to making publicly available information of individual donors and beneficiaries, including the names, financial data and places of residence.
- ▶ Ineffectiveness of the measures proposed, as creating additional layers of administrative burdens on the broader CSO sector and public administration that monitors will require vast resources on both sides that are much needed for targeted and focused oversight on the real channels of money laundering and terrorism abuse (including a minor part of the civic sector).³⁶

All in all, this kind of legislation contributes to negatively affecting all CSOs capacity to focus on their mission instead of targeting on the actors more at risk, including specific CSOs.

MISTARGETED ANTI-MONEY LAUNDERING LEGISLATION

The 4th EU Anti-Money Laundering Directive³⁷ (AML Directive) requires Member States to introduce registers of so-called “beneficial owners” of legal entities, trusts and similar legal arrangements and introduces various obligations to a variety of legal entities. Its implementation has caused uncertainty of what is actually required by national governments to ensure appropriate implementation.

The AML Directive states which legal entities should be obliged to fulfil the requirements laid out

³⁶ As an example, Netherlands coalition of notaries, main accountancy companies and non profit sector defined a draft of Transparency Law as “killing a mosquito with a cannonball”.

³⁷ Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

in the AML Directive.³⁸ Generally, CSOs as non-profit sector are not legal entities which engage in activities particularly likely to be used for money laundering or terrorist financing (which is AML Directive’s criteria) and would not fall under such obligations. The EU Directive requires countries to adopt measures after they have conducted an assessment of risk of the legal entities, and to ensure that those measures are proportionate to the risk.³⁹ A national risk assessment must include clear evidence of generalised misuse of CSOs for terrorist financing or money laundering.⁴⁰ However, some Member States included AML Directive’s obligations to civil society organisations without demonstrated rationale in national risk assessments or beyond what is required by the Directive.

In Romania, all associations, and in Spain, associations and foundations are considered as “obliged entities” which means that they have the same obligations as, for example, banks or money exchange offices. This clearly entails a disproportionate administrative burden and may not follow a risk-based approach required by the Directive. In Romania⁴¹, the legislation transposing the AML Directive imposes on associations unjustified reporting duties about their donors, supporters or “real beneficiaries” of their services and activities, or else risk immediate dissolution. In practice, this would mean that the associations would have to report the personal data of all children-beneficiaries, parents, journalists and supporters, which would limit donations, raise personal data use issues and deter citizens from associating with it.⁴² These obligations set in national law have been found all the more worrying in the context of the concerted smear campaigns by

³⁸ These include: Identify and verify the identity of their customers and of the beneficial owners of their customers; Monitor the transactions of the customers; Report suspicions of money laundering or terrorist financing to the public authorities; Provide training of personnel and the establish internal preventive policies and procedures.

³⁹ This means that only where national risk assessments clearly identify CSOs (or part of the CSO sector) at risk of being used for money laundering or terrorist financing, this would give Member States the mandate to extend the AML Directive’s scope to those parts of the CSO sector identified at risk.

⁴⁰ EU Commission response to the Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law, http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect

⁴¹ Civil Society Development Foundation, ROMANIA: The government is fighting terrorism with red tape, forcing NGOs to send thousands of TINs to ministries <http://civicspacewatch.eu/romania-the-government-is-fighting-terrorism-with-red-tape-forcing-ngos-to-send-thousands-of-tins-to-ministries/>; published on CSW on 22 August 2019.

⁴² European Parliament, Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law, http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect

the leaders of the former majority party (see the case study of Romania for more information on the national context and most recent developments of the law).

In Portugal⁴³, the law 89/2017 on the central registry for effective beneficiary does not make a distinction between the non-profit sector and other entities, creating uncertainty among civil society organisations on its implementation. To the knowledge of Portuguese NGDO Platform, associations and foundations were included in the scope of this law without first carrying out a risk assessment justifying the provisions set in the law as recommended by the EU standards. The law requires collecting information on “effective beneficiaries” of the CSOs, creating uncertainty among the civil society as it is nearly impossible to establish who all the “real” beneficiaries of CSOs are (e.g. the individual recipients of services or activities). Especially burdensome and worrisome is the requirement to register personal details of donors contributing with more than or equal to €100, including personal address, fiscal number, sustainability guarantee, etc. with severe implications for the privacy of donors. Whether this information will be of public domain remains so far unclear. Sanctions for not doing so range between €1.000 and 50.000.⁴⁴

In the case of Romania, the EU Commission clarified that “beneficial owner” refers to the natural person who ultimately controls/owns a legal entity or arrangement. It would imply that the beneficial owner does not refer/apply to the beneficiaries of services offered to others for charitable purposes⁴⁵, but still leaves a gap in terms of who are the controllers or owners of associations.

ECNL, CSE and the European Foundation Centre (EFC) raised concern that such misapplication shows lack of understanding of the functioning of associations, foundations and other non-profits and that such approaches result in Member States implementing the provisions beyond the EU requirements (so-called *gold plating*). In some countries, this results in direct interference with the right to associate. Civil Society Europe explained: “*While the EU Directives are a critical and welcome tool in countering money laundering and terrorism financing in Europe, in a number of*

cases, we noted misinterpretation of some of the provisions and also lack of knowledge of the realities of associations, NGOs and foundations.” ECNL, CSE and EFC called on the EU Commission to initiate action in case of disproportionate transposition, but also to better clarify with guidelines the provisions of the directive that are applicable to the sector in respect with the right to association, as well as to facilitate dialogue among all the relevant stakeholders⁴⁶.

DAMAGING CONSEQUENCES OF TRANSPARENCY LEGISLATION ON CSOS

Over the past few years, the issue of transparency of the civil society sector has been used by states as a reason for imposing additional requirements and restrictions on CSOs. Draft laws and policies started to appear that require CSOs to report more frequently on funding received or that oblige those organisations receiving funding from foreign sources to report extensively on any foreign-sourced funding (e.g., Hungary, Romania). Especially the latter requirements have come with enhanced state rhetoric against such civil society organisations, labelling them as “foreign agents”, or otherwise harassing them or accusing them of working against the interests of their own state. Moreover, according to some laws, any failure to comply with reporting obligations is met with sanctions, which may even result in the dissolution of an organisation.

In the Netherlands, a public register was proposed to improve oversight on all types of donations received by or CSOs over €15 000 during the same year⁴⁷, which would cause problems for CSOs due to disproportionate administrative burden and privacy issues of donors. In Germany⁴⁸, Belgium, and Denmark⁴⁹, authorities have called for legislative measures concerning the possibility of monitoring and possibly restricting foreign funding, but the initiatives did not move forward. In Italy, an anti-corruption law introduced in January 2019 for political parties included measures requiring any association and foundation to apply the same

⁴³ ECF, PORTUGAL: Problematic transposition of the EU directive against Money Laundering <http://civicspacewatch.eu/3192-2/>, 23 May 2019.

⁴⁴ Ibidem.

⁴⁵ EU Commission response to the Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law http://www.europarl.europa.eu/doceo/document/PETI-CM-637219_EN.pdf?redirect

⁴⁶ Joint letter of ECNL, CSE and EFC to the European Commission.

⁴⁷ European Center for Non-for-profit Law, NETHERLANDS: According to new Dutch draft act, CSOs would be obliged to publish personal information of certain donors, <http://ecnl.org/according-to-new-dutch-draft-act-csos-would-be-obliged-to-publish-personal-information-of-certain-donors/>.

⁴⁸ Initiative tabled on 3 August 2018 at the Bundesrat for initiative of the Minister President of Bavaria. See: <https://dipbt.bundestag.de/dip21/brd/2018/0358-18.pdf>.

⁴⁹ This information was collected during conversations with ECNL and CSE.

transparency procedures as political parties in addition to the ones specific for the sector. In particular, this included in-depth reporting on board members that had been involved in public authorities or parties in the previous ten years.⁵⁰ Following the strong opposition of the civil society, the measure was partially amended in April and now exempts organisations registered in the national register of the sector. The exemption excludes organisations that, for different reasons, are not registered as well as organisations that support “initiatives or individuals linked to the political world” for a sum above €5000 s⁵¹, an overly broad wording that might allow maneuver for discretionary decisions. Failure to comply leads to sanctions equivalent to 1% of the amounts, with a minimum of €2000. In Romania, according to a widely criticised 2018 draft legislation⁵² in the name of transparency all associations, foundations and federations would have needed to publish financial statements every six months in the Official Gazette detailing all donors and value of donations. The transparency argument was also linked as motivation of draft laws and regulations which impact public policy and advocacy activities of CSOs (e.g., Poland, UK, and Lithuania).

In addition, transparency legislation has raised concerns in a number of cases over intentions to restrict the independence or watchdog role of the sector or its capacity to act. This is evident in cases when the discussion on the transparency laws has been carried hand in hand with smear campaigns and vilification attempts, or in the aftermath of actions or demonstrations addressing the accountability of the public sector. For example, in fall 2018, Slovakia discussed the creation of a transparency register collecting a wide range of information on legal status, founders, size, etc. This came after mass protests across the country sparked by the murder of investigative journalist Jan Kuciak, and emerging evidence of responsibilities of the government in place, as well as vilification statements against critical NGOs allegedly being “foreign agents”. The register entered into force in January

⁵⁰ Vita, Spazzacorrotti: le conseguenze (irragionevoli) per il Terzo settore, <http://www.vita.it/it/article/2019/03/16/spazzacorrotti-le-conseguenze-irragionevoli-per-il-terzo-settore/150971/>, 16 marzo 2019.

⁵¹ Vita, Spazzacorrotti e Terzo settore, nel decreto crescita c'è la retromarcia, <http://www.vita.it/it/article/2019/04/26/spazzacorrotti-e-terzo-settore-nel-decreto-crescita-ce-la-retromarcia/151375/>, 26 aprile 2019.

⁵² Expert Council on NGO Law Opinion on the Romanian Draft Law 140/2017 on Associations and Foundations as adopted by the Senate on 20 November 2017, CONF/EXP(2017)3 para. 4 <https://rm.coe.int/expert-council-conf-exp-2017-3-opinion-on-the-romanian-draft-law-140-2/168076fc9d> and Venice Commission/ODIHR Opinion https://www.legislationline.org/download/id/7836/file/322_NGO_ROU_16March2018_en.pdf

2019, but thanks to the coordination of several civil society organisations, the legislation was at the end adopted in consultation with the sector.⁵³

2.4 RESTRICTING THE RIGHT TO PEACEFUL ASSEMBLY

Restrictive legislation against peaceful assemblies has been introduced during the time under examination in Hungary, Italy (Security Decree I and II – see the case study on Italy) and in France (Anti-rioters law – see the case study on France), while in Austria, civil society was concerned that stricter legislation would be introduced

⁵³ This information comes from discussions with officers from the Slovak NGO Via Turis.

RESTRICTIONS ON ASSEMBLIES MUST COMPLY WITH A THREE-PRONG TEST

“[A]n interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, whether legal or de facto, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during an act of assembly and those, such as punitive measures, taken afterwards.” – ECtHR, Gafgaz Mammadov v. Azerbaijan, judgement of 15 October 2015 (para. 50)

“The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation, nor loosely interpreted by the authorities. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims discussed in this section (as provided in the limiting clauses in Article 21, ICCPR and Article 11, ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, second edition, 2010 (para. 69-70)

“The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11. The Court stresses in this connection that the organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact” – ECtHR, Lashmankin and others v. Russia, judgement 7 February 2017 (para. 405)

under the former ÖVP-FPÖ government⁵⁴ due to controversial statements of FPÖ leaders.

In July 2018, the Hungarian Parliament approved the Law on freedom of assembly (Act LV of 2018) proposed by the government. According to the bill, authorities can ban a demonstration on the grounds of “threatening public order” or “violation of rights and freedoms of others”. Such broad concepts have been criticised by civil society for allowing too much discretion to the police. According to an analysis by the Hungarian Civil Liberties Union (TASZ), as the law widens the grounds to ban assemblies, providing broad discretionary powers to law enforcement authorities, the notification of gatherings de facto functions as an authorisation system. Moreover, the law disproportionately sanctions participants taking part in banned demonstrations with fines up to €450, a penalty turning into prison sentence if the crime is repeated three times within six months.⁵⁵

The Civic Space Watch also collected several episodes of measures banning or marginalising demonstrations alongside gatherings of international leaders. In January 2018, Poland had introduced a law on specific solutions related to the organisation of sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change banning all spontaneous gatherings in Katowice between November 26 and December 16 alongside the world climate summit.⁵⁶ Similarly, in France, all protests were banned in an “enlarged perimeter” around Biarritz during the G7 meeting in August 2019.⁵⁷

In Hungary, in October 2018, thanks to the above-mentioned law on assemblies, the police refused permission for an anti-Erdogan demonstration, while a “sympathy protest” held just a few metres from the site by the local Turkish community was approved

during the visit of Turkish President Recep Tayyip in the country.⁵⁸

In the United Kingdom, the police banned anti-Trump protests from marching past Downing Street connecting Trafalgar Square with Parliament Square ahead of the state visit of the American President in early June 2019.⁵⁹ In August 2018, organisers of a similar anti-Trump demonstration had experienced “an unprecedented lack of cooperation and obstruction” by the police for what should have been a straightforward arrangement of routes and logistics. For example, the police originally objected to the demonstration having stages and a sound system.⁶⁰ In Belgium, in July 2018, four people were arrested in Brussels for holding an anti-Trump banner during a NATO summit.⁶¹

2.5 HEAVY-HANDED POLICING OF PROTESTS

The top four categories linked with resources on peaceful assembly collected between June 2018 and June 2019 are: deviant police practices ranging from lack of cooperation to the disproportionate use of force; detention and imprisonment of protesters; legal intimidation or attack; harassment. The first part of this section discussing policing of assemblies⁶² will deal with disproportionate or unjustified use of force, intimidation and humiliation of protesters, while the second with criminalisation of protesters.

⁵⁴ ECF on the CIVICUS Monitor, Government official oversteps mandate threatening to fire reporters with state broadcaster, <https://monitor.civicus.org/newsfeed/2018/05/24/Government-official-threatens-fire-reporters-state-broadcaster/>, 24 May 2018.

⁵⁵ TASZ, New bill on the right to assembly, <https://hclu.hu/en/articles/summary-of-the-hungarian-civil-liberties-unions-analysis-of-the-new-bill-on-the-right-to-assembly>, 24 July 2018.

⁵⁶ Katharina Wecker, Government clamps down on environmental defenders ahead of UN climate talks, <https://www.dw.com/en/poland-clamps-down-on-environmental-defenders-ahead-of-un-climate-talks/a-43101293>, Deutsche Welle, 23 March 2018.

⁵⁷ Pauline Bock, A climate of repression during the G7, <https://www.newstatesman.com/world/europe/2019/08/climate-repression-how-france-undermined-human-rights-g7>, New Statesman, 27 August 2019.

⁵⁸ CIVICUS Monitor, Police in Hungary are already using a restrictive new law to ban protests, <https://monitor.civicus.org/newsfeed/2018/11/06/police-restrictive-law-ban-protests/>, 6 November 2018.

⁵⁹ The Guardian, Anti-Trump protesters to be kept away from Downing Street, <https://www.theguardian.com/uk-news/2019/may/31/anti-trump-protesters-kept-away-from-downing-street>, 31 May 2019.

⁶⁰ ECF on CIVICUS Monitor, UN Special rapporteur: anti-terror bill “falls short” of UK’s rights obligations, <https://monitor.civicus.org/newsfeed/2018/08/09/UN-special-rapporteur-anti-terror-bill-falls-short-international-rights-obligations/>, 9 August 2018.

⁶¹ RTL info, Ixelles: 4 personnes arrêtées pour cette banderole anti-Trump, <https://www.rtl.be/info/regions/bruxelles/ixelles-4-personnes-arretees-pour-cette-banderole-anti-trump-1039490.aspx>, 11 July 2018.

⁶² Hereby we are adopting a broad understanding of “policing” beyond the mere actions by the Police institution, in the attempt to include other set of institutions through which social order is created and protected. See Mark Neocleous, *The Fabrication of Social Order. A Critical Theory of Police Power*, 2000.

DISPROPORTIONATE OR UNJUSTIFIED USE OF FORCE, INTIMIDATION AND HUMILIATION OF PROTESTERS

Records of unjustified or disproportionate use of force against protesters were collected in several countries, including Romania, France, and Spain (see respective case studies). In Ireland and the United Kingdom, the aggression of the police has been observed alongside a growing role of private security actors: in the former, specifically during evictions; in the latter, during anti-fracking protesters in front of drilling site.

In Ireland, in fall 2018, large-scale housing protests started spreading across the country. Civil society feared that the demonstrations could lead to an escalation of force after the police failed to protect a group of peaceful protesters occupying an empty building in Dublin's city centre from the use of excessive force by private security guards wearing balaclavas on 11th September, when four people were hospitalised⁶³. While the tensions appear to have de-escalated in Dublin, worries around policing of evictions persist.

A preliminary report by the Irish Council for Civil Liberties – resulting from a national consultation with protest groups between 19 and 22 June 2019 – raised concern over the deployment of private security force during assemblies without sufficient clarity concerning the authority they act under. Another aspect as worrisome is the police use of intimidation and harassment against protesters, including housing activists

⁶³ ECF on CIVICUS Monitor, Police criticised for abetting the use of force to remove housing protestors, <https://monitor.civicus.org/news-feed/2018/10/24/police-criticised-abetting-forceful-eviction-housing-protestors/>, 24 Oct.2018.

PRINCIPLES GOVERNING THE USE OF FORCE

“Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. In the event of unlawful but non-violent assemblies, law enforcement officials must avoid the use of force or, where this is not possible, limit its use to the minimum”

“While the use of force is often indispensable to proper policing – in preventing a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders police officers must be committed to the principle that the use of force must be considered as an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective.” – OSCE Guidebook on Democratic Policing, 2008 (para. 65, 69)

and asylum seekers. For example, the report states that police officers *“intimidate and harass protesters by filming them in close quarters, recording vehicle registration numbers and misusing policing powers to target activists and protest leaders, including through the confiscation of mobile phones (and erasing content) and through stop-and-search procedures and strip searches in detention”*⁶⁴. The director Liam Herrick commented: *“While the government and An Garda Síochána [: police agents] are supportive of large protests taking place on the main thoroughfares of Ireland, when it comes to protesters living on the margins of society or protesting outside of the media spotlight, the Garda and state response can be much more heavy-handed”*⁶⁵. Evidence of victimisation of and retribution was also found during the detention of protesters, including *“the withholding of food and benefits and the excessive use of restraints against those seeking international protection who attempt to exercise their right to protest was reported”*⁶⁶.

In the United Kingdom, a number of repressive measures carried out by authorities and by extractive companies during anti-fracking protests has been reported⁶⁷, including the police dragging, pushing and kicking demonstrators⁶⁸ and targeting disabled and elderly protesters.⁶⁹ In early 2017, the National Police Chiefs Council promised to undertake a review of the guidelines on policing of fracking protests which – as of May 2019 – was continuously delayed.⁷⁰ In December 2018, anti-fracking campaigners from Lancashire, North Yorkshire and Nottinghamshire set up a project Protest Justice to collect incidents and complaints

⁶⁴ Irish Council for Civil Liberties, Preliminary report on the national consultation on the right to protest in Ireland facilitated by the Irish Council for Civil Liberties (ICCL) and supported by the International Network of Civil Liberties Organisations (INCLLO), <https://www.iccl.ie/wp-content/uploads/2019/06/190626-ICCL-National-Consultations-Preliminary-Report.pdf>, 26 June 2019.

⁶⁵ Irish Council for Civil Liberties, ICCL highlights urgent concerns for the right to protest following national consultation, <https://www.iccl.ie/news/iccl-highlights-urgent-concerns-for-the-right-to-protest-following-national-consultation/>, 26 June 2019.

⁶⁶ Ibidem.

⁶⁷ Read more: <http://civicspacewatch.eu/category/freedom-of-assembly/?tag=united-kingdom>.

⁶⁸ Network for Police Monitoring, Victory for campaigners as police chiefs concede on anti-fracking protest consultation, <https://netpol.org/2018/03/20/nppc-petition-consultation/>, 20 March 2018.

⁶⁹ Disability News Service, “Kicked, punched, knocked unconscious, tipped out of wheelchairs”: Campaigners describe repeated police targeting of disabled anti-fracking protesters, <https://www.disabilitynewservice.com/kicked-punched-knocked-unconscious-tipped-out-of-wheelchairs-campaigners-describe-repeated-police-targeting-of-disabled-anti-fracking-protesters/>, 13 December 2018.

⁷⁰ ECF on CIVICUS Monitor, UK anti-terror legislative and judicial steps threaten civil rights and freedom, <https://monitor.civicus.org/news-feed/2019/05/16/UK-anti-terror-legislative-and-judicial-steps-threaten-civil-rights-and-freedom/>, 16 May 2019.

of mistreatment during protests to support people in having justice. The first report released in May 2019 showcases many worrying incidents by police agents, private security forces and suppliers, including using vehicles as “*weapons to intimidate them*”.⁷¹ A split of the incidents collected between December 2018 and April 2019 found that 22% of those were aggression and violence carried out by the police, while 22% were aggression and violence carried out by private security staff. The report stresses that private forces have no jurisdiction outside the perimeters of the drilling sites and adds: “*Security staff, it seems, perceive themselves as “protected” by the police in some circumstances and it is reported that their aggressive or intimidatory behaviour escalates when the police is not present*”.⁷² Examples of this conduct are verbal abuse and intimidation as well as physical attacks against protesters and removal of objects (e.g. banners, personal belongings).

Further research on the use of private security forces in the context of demonstrations is needed.

CRIMINALISATION OF PROTESTERS

In recent years several countries have passed legislation toughening sanctions related to assemblies, including Hungary (see above under “Restricting the right to peaceful assembly”), France, Italy, Spain and Poland (see the respective case studies). These sanctions target different behaviours such as organising or attending unauthorised gatherings and wearing items impairing identification and might act as a deterrent to public participation. The use of administrative sanctions against peaceful protesters, a phenomenon known in Spain as *bureaurepression*, were reported in Romania⁷³ and Italy⁷⁴ and also emerges in some of the case studies below (see Spain and Poland).

Particularly worrying are episodes involving the use of excessive charges, specifically penal charges, against protesters or activists to discourage others from undertaking similar actions. This practice has substantial consequences on the psychological safety of people engaging with dissent.

In the United Kingdom, in December 2018 fifteen activists known as the #Stansted15 were found guilty

⁷¹ Protest Justice, Data analysis of incident reported to Protest Justice from December 2018 to April 2019 <https://protestjustice.org/incidents-reported-what-the-data-says/>, 14 May 2019.

⁷² Ibidem.

⁷³ Conversations with civil society researching on or involved in anti-corruption demonstrations.

⁷⁴ Osservatorio Repressione, ITALY: A story of repression of social dissent, <https://civicspacewatch.eu/italy-a-story-of-repression-of-social-dissent/>, 9 July 2019.

under the Aviation and Maritime Security Act for trespassing Stansted airport and chaining themselves to a chartered flight⁷⁵ thus impeding its departure. None of the Stansted 15 activists received prison time as the judge recognised they were motivated by “genuine reasons”.⁷⁶ Nevertheless, sharp criticism – including by UN experts⁷⁷ – found the use of the anti-terror law in connection to a peaceful protest unprecedented and disproportionate. In similar cases, activists were

⁷⁵ It is immigration removal flight with the aim to deport people from Britain.

⁷⁶ Independent and others, UNITED KINGDOM: Activists are being charged under terrorism laws for the first time in Britain – this sets a dangerous precedent (UPDATED), <http://civicspacewatch.eu/united-kingdom-activists-are-being-charged-under-terrorism-laws-for-the-first-time-in-britain-this-sets-a-dangerous-precedent/>, published on CSW on 18 March 2019.

⁷⁷ OHCHR, UK must stop disproportionate use of security laws after conviction of Stansted, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24141&LangID=E>, 6 February 2019.

ASSEMBLIES' PARTICIPANTS AND ORGANISERS SHOULD NOT BE SUBJECT TO SANCTIONS

“Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions could thus constitute an indirect violation of the freedom of peaceful assembly.” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, third edition, 2019 (para. 222 – This version may be subject to editorial revision)

“[T]he freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion.” – ECtHR, Kudrevicius and others v. Lithuania, Judgement 15 October 2015 (para. 149)

“Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty.” – ECtHR, Kudrevicius and others v. Lithuania, Judgement 15 October 2015 (para. 146)

“Civil disobedience, i.e., non-violent actions that, while in violation of the law, are undertaken for the purpose of amplifying or otherwise assisting in the communication of a message, may also constitute a form of assembly. If those who incite, or engage in, acts of civil disobedience are subject to legal punishment for their acts, this should always be proportionate. Sanctions shall take the nature of the unlawful conduct into account, but neither the offense nor the penalty must ever be increased due to the content of the expression or message that accompanies the unlawful conduct. Under no circumstances should a protestor engaged in civil disobedience be punished more severely than a person who committed the identical offense without expressive intent.” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, third edition, 2019 (para. 228 – This version may be subject to editorial revision)

only convicted of “aggravated trespass”. Their lawyer Raj Chada said: “*While we are relieved that none of our clients face a custodial sentence, today is still a sad day for justice. Our clients prevented individuals being illegally removed from the UK and should never have been charged under counter-terrorism legislation. We maintain that this was an abuse of power by the Attorney General and the CPS and will continue to fight in the appeal courts to get these wrongful convictions overturned.*” The ruling has been interpreted as an attempt to censor dissent and deter future actions challenging the government’s migration policy.⁷⁸

In Spain, Jordi Sanchez and Jordi Cuixart, the presidents, respectively, of the independentist civic organisations the Catalan National Assembly (ANC) and Omnium Cultural have been charged with sedition for organising protests in Barcelona on 20 and 21 September 2017. The charge refers to their call for people to peacefully gather in front of public buildings in Barcelona in order to obstruct the police operations dismantling the organisation of the referendum on the independence of Catalonia on 1 October, which had been ruled unlawful by the Constitutional Court. Without challenging the decision of the Constitutional Court, human rights organisations have expressed worries for changes of sedition, punishable with up to 10 years of prison.⁷⁹ They have been held in pre-trial detention for nearly two years, a measure that has been found an excessive and arbitrary deprivation of their liberty. The International Trial Watch, a network of civil society organisations observing the trial, stated: “*The criminal charges against Mr Sanchez and Mr Cuixart are intended to coerce their political opinions about the independence of Catalonia and inhibit them from continuing their claim in the political arena*”⁸⁰ In October 2019, the two civil society leaders were found guilty and sentenced to 9 years in prison. The sentence of the trial sets a dangerous precedent for freedom of expression and peaceful assembly in the country.

In December 2018, twelve Greenpeace activists were detained and denied bail awaiting trial for

peacefully protesting against coal mining in the Horná Nitra region of Slovakia by displaying banners demanding an end to coal. The activists faced criminal charges for “*intentionally endangering the operations of a generally beneficial facility/enterprise*” and the risk of imprisonment up to five years. They spent six to seven days in detention before the Slovak General Prosecutor’s ruled to release as there were “no grounds for detention”. In April 2019, the Regional Directorate of the Police Corps found that they had committed no crime⁸¹.

2.6 COVERING PROTESTS AND POLICE ACTIONS IS BECOMING INCREASINGLY DANGEROUS

A number of reports of interference of the police with journalists covering their actions have emerged in Germany, Belgium, Italy, Romania, France and Spain (for the latter three see case study). These interferences range from confiscations, to arrests, to physical assaults.

Mapping Media Freedom has reported several incidents of public services intimidating and confiscating properties of journalists filming police actions in Germany between 2016 and 2018. Notoriously, during demonstrations against the G20 summit in Hamburg in July 2017, thirty-two journalists had their accreditation revoked or not recognised by the police while others were pepper-sprayed and even beaten.⁸²

In Belgium, on June 2018, two reporters and three technical staff of the French-speaking public broadcaster RTBF were arrested after refusing to stop filming a demonstration against a new centre for refugees outside Brussels.⁸³ On 24 November, a local journalist was arrested – despite wearing an orange jacket with the label “Presse” while covering Yellow Vests protests in Charleroi. On 30 November, a video journalist from the French news website Brutwas was arrested while

⁷⁸ ECF on the CIVICUS Monitor, UK anti-terror legislative and judicial steps threaten civil rights and freedom, <https://monitor.civicus.org/newsfeed/2019/05/16/UK-anti-terror-legislative-and-judicial-steps-threaten-civil-rights-and-freedom/>, 16 May 2019.

⁷⁹ Amnesty International, SPAIN: Charges for sedition and pre-trial detention against Jordi Cuixart and Jordi Sanchez are excessive – says Amnesty International, <https://www.amnesty.org/download/Documents/EUR4173082017ENGLISH.pdf>, 18 October 2018.

⁸⁰ International Trial Watch, Human Rights Council – Universal Periodic Review – SPAIN, <https://internationaltrialwatch.org/wp-content/uploads/2019/07/1907-ITW-Shadow-Report-ENG.pdf>.

⁸¹ Greenpeace, SLOVAKIA: Greenpeace activists denied bail, facing months in jail awaiting trial (UPDATED), <http://civicspacewatch.eu/slovakia-greenpeace-activists-denied-bail-facing-months-in-jail-awaiting-trial/>, published on CSW on 2 December 2018, updated on 25 September 2019.

⁸² Index on censorship, GERMANY: Journalists facing conflict with emergency responders over filming https://www.indexoncensorship.org/2018/07/germany-journalists-facing-conflict-with-emergency-responders-over-filming/?utm_source=twitter&utm_medium=social&utm_campaign=social-pug, 31 July 2018.

⁸³ The Brussels Times, RTBF reporters arrested at refugee centre demo <https://www.brusselstimes.com/all-news/belgium-all-news/justice-belgium/49092/rtbf-reporters-arrested-at-refugee-centre-demo/>, 21 June 2018.

live-streaming the Yellow Vests protest in Brussels despite showing his press card to the police.⁸⁴ In March, a photographer, a collective of photographers, an association of media and a human rights association were sued by the Brussels police for organising a photo exhibition on the issue of censorship on recording of police actions. The pictures depicted actions of repression by the police against social movements and minorities.⁸⁵

In some countries, incidents have also involved citizens filming police operations (see for example under “Disproportionate or unjustified use of force, intimidation and humiliation of protesters”). In Ireland, in fall 2018, the Minister for Justice proposed outlawing the recording of police on duty after a police officer was

harassed for the aggressive removal of housing activists during an eviction in Dublin featured in a video.⁸⁶

Physical attacks or intimidation of journalists covering protests are particularly worrying. In Romania, violence by the police against a journalist was reported during the anti-corruption assembly of 10 August 2018 (see case study). In Italy, on 23 May during an anti-fascist protest in Genoa, a journalist was beaten by the police despite having identified himself as a journalist. Police officers later justified their actions stating they believed he was a demonstrator.⁸⁷ In France, a growing number of arrests and police assaults among journalists covering protests have been recorded (see case study). Twelve resources collected by the Civic Space Watch concerning violent incidents against journalists covering demonstrations have involved far-right actors in Greece, Italy, France, the UK, and Germany.

⁸⁴ CIVICUS Monitor, Hundreds arrested reported as clashes during anti-government protests, <https://monitor.civicus.org/news-feed/2019/01/25/Hundreds-arrested-clashes-reported-during-series-anti-government-protests/>, 25 January 2019.

⁸⁵ Collective ZIN TV, Les forces de police ne sont pas au-dessus des lois, <https://www.zintv.org/Les-forces-de-police-ne-sont-pas-au-dessus-des-lois>, 28 February 2019.

DUTY TO PROTECT AND FACILITATE THE WORK OF JOURNALISTS AND MEDIA PERSONNEL

“The media perform a pre-eminent role in a state governed by the rule of law. The role of the media as public watchdogs is to impart information and ideas on matters of public interest – information that the public also has a right to receive.

Media professionals, therefore, have an important role to play in providing independent coverage of public assemblies. [...] Furthermore, [a]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public.

[...] the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, second edition, 2010 (para. 206-208)

“Member States should assure to the maximum extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member States as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.” – Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis, 2017 (para. 2)

“The photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.” Venice Commission and OSCE/ODIHR, Guidelines on freedom of peaceful assembly, second edition, 2010 (para. 169)

2.7 USING ANTI-TERRORISM AND PUBLIC SECURITY LAWS TO SMEAR, SURVEIL AND SILENCE DISSENT

Records of misuse of anti-terror and public security legislation against activists and civil society have been collected from the United Kingdom, Spain and Poland. In the Netherlands, an anti-racism group Kick Out Zwarte Piet reported having faced negative repercussions, including being demonised in the media, after it was mistakenly included in a report on domestic extremism by the anti-terrorism agency.⁸⁸ In February 2019, the group filed a complaint to the Ministry of Justice and in May 2019, the counter-terrorism agency NCTV clarified that the group was never believed to be an extremist

⁸⁶ ICCL, ICCL statement on Minister for Justice, Charlie Flanagan’s statement regarding the recording of Gardai on duty, <https://www.iccl.ie/news/recording-gardai-on-duty/>, 17 September 2018

⁸⁷ ECF, ITALY: Police beats up and threatens protesters in Genoa and Florence, <http://civicspacewatch.eu/italy-police-beats-up-and-threatens-protesters-in-genoa-and-florence/>, published on CSW on 27 May 2019.

⁸⁸ Dutch News, NETHERLANDS: Zwarte Piet protestors make complaint about inclusion on terrorism list, <https://www.dutchnews.nl/news/2019/02/zwarte-piet-protestors-make-complaint-about-inclusion-on-terrorism-list/>, 8 February 2019.

⁸⁹ Dutch News, Anti-Black Pete activists “were never considered extremist”, <https://www.dutchnews.nl/news/2019/05/anti-black-pete-activists-were-never-considered-extremist/>, 24 May 2019.

or terrorist organisation and it is no longer listed in any future evaluation.⁹⁰

In the United Kingdom, in September 2017, leaked documents have revealed the use of the anti-terror strategy *Prevent* to monitor Muslim activism and charitable work, as well as activism including anti-war, anti-fracking, pro-Palestinian, anti-austerity, and animal rights campaigners.⁹¹ The Network for Police Monitoring has warned about the “increasing evidence that the police are categorising campaigners as “domestic extremists” because of their political opinions.” According to the group, such a label is not defined in the law, but has been used to smear, collect data and surveil legitimate dissent in the country, including protesters with no criminal record. For example, in January 2019, the European Court of Human Rights found that data of 94-year-old peace campaigner John Catt had been unlawfully collected and retained and the details on his political activism should be deleted from the database of “domestic extremists”. He had been a peace activist since 1948 and in 2010, found that he had been under surveillance during protests against an arms factory in Brighton between 2005 and 2009. The Court noted that he “had never been convicted of any offence and his risk of violent criminality was remote”. Catt’s lawyer, Shamik Dutta, commented: “This ruling sets an important precedent that it is unlawful for governments across Europe to label citizens engaged in peaceful protest domestic extremists and put them on a searchable database for a potentially indefinite period.”⁹² The former UN Special Rapporteur on the freedom of peaceful assembly and association has repeatedly expressed strong concern over the use of these practices in the UK.⁹³ Moreover, in December 2018, anti-terror law has been applied for the first time to peaceful protesters (see more under “criminalisation of protesters”).

In Poland, the 2018 security law to prepare the country to the climate summit (see more under “Restricting the right to peaceful assembly”) enabled authorities to “collect, obtain, gather, verify, process and use information, including personal data about persons posing a threat to public safety and order, including outside the borders of the

Republic of Poland”⁹⁴ without their knowledge and consent nor judicial supervision. The law did not specify the type of information that could be gathered, but civil society believed it was an attempt to surveil and intimidate environmental activists. Bartosz Kwiatkowski, director of Frank Bold Foundation, a Polish civil liberties group, commented: “From my perspective, there’s no terrorist threat or security threat to justify introducing such severe regulations. It’s a chance to collect data on NGOs”.⁹⁵ The law had a chilling effect on potential participants coming from countries where environmental activism faces safety risks.⁹⁶

Evidence of surveillance of activists, particularly related to their participation in protests against the

⁹⁴ The Intercept, Poland’s new surveillance law targets personal data of environmental advocates, threatening UN climate talks, <https://theintercept.com/2018/07/02/cop24-poland-surveillance-law/>, 2 July 2018.

⁹⁵ Ibidem.

⁹⁶ Katharina Wecker, Poland clamps down on environmental defenders ahead of UN climate talks, <https://www.dw.com/en/poland-clamps-down-on-environmental-defenders-ahead-of-un-climate-talks/a-43101293>, Deutsche Welle, 23 March 2018.

“EXTREMISM” AND “NATIONAL SECURITY” CANNOT JUSTIFY INTERFERENCE WITH THE RIGHTS TO EXPRESSION, PRIVACY AND OTHER HUMAN RIGHTS

“All countering and preventing violent extremism (CVE/PVE) programmes and initiatives should respect human rights and the rule of law, and contain specific safeguards against abuse in this regard. They should be independently reviewed on a regular basis to determine their impact on human rights, including the right to freedom of expression, and these reviews should be made public.

The concepts of “violent extremism” and “extremism” should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.” - UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, Joint declaration on freedom of expression and countering violent extremism, 2015 (para. 2.b, 2.c)

“[...] While it is common for States to seek to justify restrictions, especially targeted surveillance, on the bases of national security, the Special Rapporteur has found that this rationale should be limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime or power group (A/71/373, para. 18).” - Surveillance and human rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2019 (para. 24.c)

⁹⁰ Ibidem.

⁹¹ ECF on CIVICUS Monitor, Environmental protests continue as fracking companies seek court injunction, <https://monitor.civicus.org/news-feed/2018/07/02/Environmental-protests-continue-fracking-companies-seek-court-injunction/>, 2 July 2018.

⁹² NETPOL, Campaigners. Not extremists., <https://netpol.org/domestic-extremism/>,

⁹³ UN, HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 8 June 2017.

Polish government, has been reported in a 2018 report by Amnesty International. According to the organisation, in January 2016 an amendment to the Police Act made possible “operational” surveillance and collection of metadata beyond the context of a criminal investigation, without the obligation to notify the person under surveillance. Amnesty Poland stated: “A *direct consequence of the shift in the use of surveillance – and information derived from it – from regulated use within the context of criminal proceedings to measures taken in a more “preventive” posture by law enforcement agencies is the emergence of a climate of uncertainty in relation to surveillance. Inadequate safeguards and broad surveillance power mean that anyone – human rights defenders, opposition politicians, lawyers or activists – can be monitored by the police or other law enforcement agencies.*”⁹⁷

Further research efforts at national and European level on the issue of surveillance of activists are needed.

In Spain, a report by Amnesty International warned about the “exponential increase” of the use of anti-terrorism legislation against satire and dissent. According to the NGO, article 578 of the criminal code was used to charge three people in 2011, 39 people in 2017, and 70 people between 2018 and early 2019.⁹⁸ In an interview with the Civic Space Watch, Daniel Fernandez from No Somos Delito, a social movement and a platform bringing together activists who resist the gag laws in Spain, said: “*We progressively assisted to a shift from fighting terrorism to targeting other groups, e.g. Spanish artists. This is a clear case of bad legislation being taken and used out of contest. For example, people were fined for hate crimes against the police. Legislation against hate crime is meant to protect powerless people, which is definitely not the case of police in Spain, which in fact has huge powers and influence. The charges raised against them were of making “art violence”, glorifying terrorism, referring to several jokes which spread on social media but were also used as lyrics by the artists. They were only criticising the establishment, but they were put on trial for the content of their songs or for what they posted on social media.*”⁹⁹ Already in 2015, five UN Special Rapporteurs warned that excessively broad wording could lead to a crimi-

⁹⁷ Amnesty International, Report on the Right to Peaceful Protest in Poland, <http://citizensobservatory.pl/ustawa/the-power-of-the-street-protecting-the-right-to-peaceful-protest-in-poland-amnesty-international-report/>, Citizens Observatory, 25 June 2018.

⁹⁸ Sam Jones, Spanish anti-terror law has “chilling effect” on satire, says Amnesty International <https://www.theguardian.com/world/2018/mar/13/spanish-anti-terror-law-has-chilling-effect-on-satire-says-amnesty-international>, The Guardian, 13 March 2018.

⁹⁹ ECF, SPAIN: Interview with No Somos Delito, <https://civicspacewatch.eu/interview-with-no-somos-delito/>, published on CSW on 3 July 2019

nalization of behaviours that do not constitute terrorism and importunately restrict freedom of expression among other rights.¹⁰⁰

2.8 BUSINESS SECRECY AND CORPORATE'S SLAPP LAWSUITS THREATEN CIVIC ACTIVISM

In France and Germany, civil society reported fears that the transposition of the European Directive on business secrets could lead to a deterioration of freedom of expression. The EU Directive 2016/943 was passed in June 2016 to strengthen the protection of business information within private enterprises.

¹⁰⁰ OHCHR, “Two legal reform projects undermine the rights of assembly and expression in Spain” – UN experts, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15597>, 23 February 2015.

BUSINESS AND HUMAN RIGHTS

“Within their jurisdiction, member States have a duty to protect individuals against human rights abuses by third parties, including business enterprises. This includes their positive and procedural obligations under the European Convention on Human Rights, as applied and interpreted by the European Court of Human Rights. Such obligations consist of requirements to prevent human rights violations where the competent authorities had known or ought to have known of a real risk of such violations, to undertake an independent and impartial, adequate and prompt official investigation where such violations are alleged to have occurred; to undertake an effective prosecution, and to take all appropriate measures to establish accessible and effective mechanisms which require that the victims of such violations receive prompt and adequate reparation for any harm suffered.” – CoE Recommendation of the Committee of Ministers to member states, Human rights and business, 2016 (para. 15)

“Persons who work for a public or private organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law that are harmful to the public interest and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. In this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged both at European and international level.” – European Parliament, Resolution on the proposal for a directive on the protection of persons reporting on breaches of Union law, 2019 (para. 1)

In Germany, the European Centre for Press and Media Freedom stated that the draft proposal for the transposition of the law into national legislation (Federal Law 19/4724) presented crucial weaknesses, including the broad definition of “trade secret” and the fact that the law did not explicitly exclude journalists from its application. The managing director of the organisation Lutz Kinkel commented: “*The law is supposed to protect trade secrets, but it must not endanger investigative journalists and whistleblowers. Whoever wants an informed public, must permit critical reporting on enterprises. Whistleblowing is a basis for this*”.¹⁰¹ The formulation of the law could also force journalists to reveal the sources of their information, creating a chilling effect on whoever would want to step forward to provide information of public interest. Finally, the legislation was approved in the Bundestag in March 2019 integrating some of the proposals by civil society.

Similar concerns were raised by civil society and journalists in France concerning the Law on business secrecy (LOI n° 2018-670) approved in the Parliament on June 2018.¹⁰² In an editorial on the newspaper *Le Monde* signed by a coalition of associations of journalists of major newspapers, radio and television, the law was defined as a “*weapon of massive deterrence*”. The article stated: “*The breach of business secrecy would occur as soon as this information is obtained or disseminated and their disclosure would be punishable by criminal penalties. The derogations instituted by the text are too weak to guarantee the exercise of fundamental freedoms. Scandals like that of the pick or bisphenol A, or business like the Panama Papers or LuxLeaks may no longer be brought to the attention of citizens*”¹⁰³ (Translated from French).

Fears related to this legislation are justified by the number of lawsuits that have been carried out by corporations against journalists and NGOs attempting to keep them accountable. For example, according to the research centre CRID (Centre de recherche et d’information pour le développement) since 2009, the Bolloré Group, which is listed on the Paris Stock Exchange and is one of the 500 largest companies in

the world, sued over 40 people in over 20 lawsuits¹⁰⁴ in a systematic attack against freedom of expression. CRID is part of the collective *On ne se taira pas* (in English, We are not going to be silenced) which is calling for France to introduce legislation against Strategic Lawsuits Against Public Participation (SLAPPs).

Records of corporations using or threatening to use strategic lawsuits against civic actors and journalists to hamper civic participation and silent critics (SLAPP) have been collected also in the United Kingdom, Portugal and Estonia. In Portugal, an environmental activist, Arlindo Consolado Marques, has been demanded a compensation of €250 000 by the pulp industry CELTEJO. Since 2015, he has been recording videos disseminated on social networks to show the pollution state of the river Tagus, stating a strong suspicion that it was produced by the corporation.¹⁰⁵ In January 2019, the store Prisma threatened to file a complaint against the Estonian animal protection NGO, Invisible Animals, for its campaign asking the supermarket to ban “cage eggs” by 2025.¹⁰⁶ In the United Kingdom, the fracking industry has carried out a number of injunctions to prevent protests of “person unknown” in front of drilling sites.¹⁰⁷

¹⁰¹ European Centre for Press and Media Freedom, GERMANY: Draft “Trade Secret Protection Act” in Germany threatens whistleblowers and press freedom, https://mailchi.mp/ecpmf/press_release-15-02-2019, 15 February 2019.

¹⁰² RTL info, La loi controversée sur le secret des affaires obtient son feu vert constitutionnel, <https://www.rtl.be/info/monde/france/la-loi-controversee-sur-le-secret-des-affaires-obtient-son-feu-vert-constitutionnel-1043947.aspx>, 26 July 2018.

¹⁰³ ECF on the CIVICUS Monitor, Thousand of tear gas canisters fired as police clear anti-capitalist community, <https://monitor.civicus.org/newsfeed/2018/05/01/thousands-tear-gas-canisters-police-clear-anti-capitalist-community-ZAD/>, 1 May 2018.

¹⁰⁴ CRID, Les poursuites-baillons en France, <https://vimeo.com/292894838>, Vimeo.

¹⁰⁵ PPL, “We are all Arlindo Marques”, reaction to SLAPP by Celtejo, <https://ppl.pt/en/causas/somos-todos-arlindo-marques>.

¹⁰⁶ ECF on CIVICUS Monitor, Right-wing coalition members threaten media independence and freedom of expression, <https://monitor.civicus.org/newsfeed/2019/06/18/Right-wing-coalition-members-threaten-media-independence-and-freedom-of-expression/>, 18 June 2019.

¹⁰⁷ Legal Action Group, Fracking and the right to protest, <https://www.lag.org.uk/article/205728/fracking-and-the-right-to-protest>, Oct 2018.

3. REDUCTION AND RESTRICTION OF FUNDING FOR CIVIL SOCIETY'S ACTIVITIES

“Issues related to funding” is the second most frequent category on the Civic Space Watch concerning developments negatively affecting freedom of association.

A number of cases targeting funding for political activities of NGOs have been reported in the section “Targeting “political” actions and chilling effect on advocacy” above. In Hungary, in June 2018 the Parliament approved a special tax of 25% on any revenue aimed at supporting immigration. The Civilization coalition reported to the ECF in May 2019: *“In addition to the act penalising aid to refugees and asylum-seekers, a new 25% tax was introduced in August that can be imposed first on the donors of NGOs which „support immigration” and failing that on the NGO itself. Its wording is so opaque that nobody – including the tax authority – can tell whom it would apply to. The „primary suspects”: Helsinki and Amnesty have publicly declared that they will not pay this tax. In practice, so far no proceedings have been launched.”*¹⁰⁸ The measure has been understood as an attempt to silence and starve critical civil society. The Hungarian Helsinki Committee is currently challenging the provision in front of the European Court of Human Rights.¹⁰⁹

In July 2019, during an interview on the radio programme Good Morning, Hungary!, Prime Minister Viktor Orban stated that money from the EU budget should not support CSOs *“which are acting against the will of the majority”*.¹¹⁰ This statement is particularly

¹⁰⁸ Email exchange in June 2019.

¹⁰⁹ Hungarian Helsinki Committee, https://www.helsinki.hu/wp-content/uploads/Application_HHC_25_percent.pdf.

¹¹⁰ ECF, HUNGARY: Viktor Orbán states “no money should be provided to NGOs from the EU budget”, <http://civicspacewatch.eu/hungary-viktor-orban-states-no-money-should-be-provided-to-ngos-from-the-eu-budget/>, published on CSW on 19 July 2019.

ACCESS FINANCIAL RESOURCES AS A VITAL PART OF THE RIGHT TO FREEDOM OF ASSOCIATION

“The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.” – UN, HRC, Second thematic report on the freedom of peaceful assembly and association, 2013 (para. 8)

“Associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources.” – Venice Commission and OSCE/ODIHR, Guidelines on Freedom of Association, 2014 (principle 7)

worrying in the context of the opaque distribution of public funding, which prevents critical organisations from access, and the stigmatising campaign against NGOs receiving foreign funding, culminated with the 2017 Law on the transparency of organisations supported from abroad.

Also, in the Czech Republic (see “Targeting “political” actions and chilling effect on advocacy” above), Poland (see case study) and Austria civil society witnessed a shift in funding priorities affecting critical NGOs. In Austria, IGO – Interest Group of Public Benefit Organisation reported “unexpected and existence-threatening cuts in funding for well-established NGOs” during Sebastian Kurz’s government. These cuts particularly affected CSOs working on discrimination, migration and women’s rights.¹¹¹ These claims were confirmed by the 2019 Civil Society Index carried out by IGO in cooperation with the WU-University of Economics and Business of Vienna.¹¹²

In Croatia, the watchdog GONG reported that the process of drafting the Civil society strategy 2017-2021 is currently stalled due to the obstruction of the Ministry of Labour and Pension System (MoL), which administers several European Social Fund programmes. As a result: *“This delay hampers organisations’ ability to plan for the future and their financial sustainability. Call for*

¹¹¹ ECF on CIVICUS Monitor, As pressure on civil society grows, new coalitions are formed <https://monitor.civicus.org/newsfeed/2018/07/20/pressure-civil-society-formed-new-coalitions-form/>, 20 July 2018

¹¹² IGO, AUSTRIA: The situation of civil society has changed significantly under the current government – new report says, <http://civicspacewatch.eu/austria-the-situation-of-civil-society-has-changed-significantly-under-a-the-current-government-new-report-says/>, published on CSW on 24 April 2019.

*funding are opened without strategic planning: organisations do not know when and if the funding will be available for their area of work”.*¹¹³

In Italy, the reform of the third sector, approved in May 2016, remains inactive because only one-fourth of the regulations required for the implementation has been approved. Among the issues to be tackled by the regulations are self-financing and the Five per thousand (Cinque per mille), the law which allows taxpayers to allocate part of their income tax to non-profit organisations.¹¹⁴

In Latvia, the 2017 tax reform was perceived as a deliberate attempt to weaken the sector as it disincentivised tax breaks for companies donating to CSOs. A 2019 report by Civic Alliance Latvia showed a sensible reduction in donations as a result of the new regulation consisting of 38% or €24 million. In 2017 the sector had received €63.5 million, while in 2018 it had dropped to €39 million.¹¹⁵

4. BARRIERS TO MEANINGFUL CIVIL DIALOGUE

In a number of countries, the relationship between civil society and governments has seen a deterioration. The participation of civil society in the policy-making is affected on the one hand, by their internal capacities and resources; on the other hand, by barriers to a meaningful civic dialogue. Challenges include problems accessing information of public interest; opaque involvement in the decision-making process (see for example case study on Poland); restrictions to advocacy (see above “Targeting “political” actions and chilling effect

¹¹³ Gong, CROATIA: Civil Society Strategy in limbo puts at risk CSOs’ financial sustainability <http://civicspacewatch.eu/croatia-civil-society-strategy-in-limbo-puts-at-risk-csos-financial-sustainability/>, published on CSW on 6 June 2019.

¹¹⁴ ECF, ITALY: Third sector reform stalled – an attack on civil society <http://civicspacewatch.eu/italy-third-sector-reform-stalled-an-attack-on-civil-society/>, published on CSW on 14 May 2019.

¹¹⁵ Data provided by Civic Alliance Latvia in email exchange in June 2018.

on advocacy”); hurdles in accessing policy-makers and public consultations.

In Austria, Germany and Slovenia, governments have questioned environmental organisations’ involvement in public processes. In Austria, in October 2018, a last-minute amendment to the Environmental Impact Assessment Act was introduced by the Austrian People’s Party (ÖVP) and the Freedom Party (FPÖ) impeding organisations with less than a hundred members to take part in environmental impact assessments. According to Greenpeace, about two-thirds of the environmental NGOs in the country will not be able to fulfil the requirements under the new regulation.¹¹⁶ In Germany, during the party congress, the governing Christian Democratic Party, CDU, announced the start of an investigation on the public benefit status of the organisation Deutsche Umwelthilfe, an environmental protection organisation that fights against pollution in cities through legal actions to limit car traffic in cities. The party also called for a legislative change so that environmental organisations cannot go to court to ask the government to follow environmental standards.¹¹⁷ In Slovenia, in spring 2019, the association Društvo za preučevanje rib Slovenije (DPRS – Society for the Study of Fish of Slovenia) was smeared after the Administrative Court invalidated the environmen-

¹¹⁶ ECF on CIVICUS Monitor, Civil society space narrowing in Austria as CSOs face smear campaign and restrictions, <https://monitor.civicus.org/newsfeed/2019/04/25/Civil-society-space-narrowing-in-Austria-as-CSOs-face-smear-campaign-and-restrictions/>, 25 April 2019.

¹¹⁷ ECF, GERMANY: ATTAC ruling could affect a thousand organisations – Interview with Coalition for Legal certainty for political advocacy, <https://civicspacewatch.eu/germany-attac-ruling-could-affect-a-thousand-organisations-interview-with-coalition-for-legal-certainty-for-political-advocacy/>, published on CSW on 29 April 2019.

PARTICIPATION IN DECISION-MAKING PROCESSES

“In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.

This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government. In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made.

All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.” – Venice Commission and OSCE/ODIHR, Guidelines on freedom of association, 2014 (para. 183-184, 187-188)

tal permit for the construction of a hydropower plant project over accusations by the associations to have obstructed effective environmental assessment.¹¹⁸

5. CIVIL SOCIETY STRIKES BACK

In the last two years, through the Civic Space Watch, we have observed, among the trends, a number of positive developments in the civic space and witnessed to some important victories of civil society in Europe. Although this was not primarily the scope of Civic Space Watch, among the developments collected and categorised, the tag “positive development” is the second one for frequency. Under this tag fall new opportunities of dialogue with institutions, new means for acting for the effective access to rights, court cases that have scored positive resolutions for criminalised civic actors and successful resistance against restrictive legislation. A somehow reassuring feeling in these hard times, where governmental crackdown, restrictive legislation, closing the borders to those in need have become the new normal for too many people. The trends we will discuss below show how there are still actors, groups, assemblies of people successfully making their voices heard.

A WAKE-UP CALL: ORGANISED CIVIL SOCIETY RE-ORGANISES

A significant positive development is the fact that shrinking civic space has pushed CSOs to get better organised. As argued in the previous edition of *Activizenship*, the crackdown on civil society in Hungary and Poland came as a wakeup call for the sector to get up for the new

challenges and face heads up long-standing ones.¹¹⁹ This was true for CSOs in the targeted countries, but also across many EU countries. Since January 2018, when the Civic Space Watch was launched, we observed civil society’s awareness of civic space issues increasing together with the perceived need to discuss nationally what shapes the phenomenon takes and how to react. A number of formal and informal coalitions were formed in Hungary, Poland, Romania, Italy, France... In several circumstances this was supported by new funding opportunities encouraging diverse civil society actors to team up. An example is the philanthropic initiative *Civitates*, bringing together 16 foundations whose first grant operation supported coalition-building at the national level.¹²⁰ In most interviews below, civil society expressed a strong need for strengthening networking and collaboration also at the regional and European level to respond to the current pressures. Attempts to foster regional synergies have been observed in the year under analysis, including with the funding contribution of actors like the Iceland, Liechtenstein and Norway Grants which have traditionally been an important source of funding in the Central and Eastern European region.¹²¹

Another noteworthy development very well expressed in the interview with the Italian initiative *Mediterranea*, but emerging strongly also in other interviews and case studies below, is the renewed interest in the European and international laws and institutions. These supranational spaces and tools have become a real anchor for democratic forces when national governments implement illiberal policies and laws. The principles expressed allow civic actors to explain to citizens who still look up to them why they stand on the right side of justice and legality – even when the national political and legislative framework goes in the opposite direction. CSOs have re-discovered international and European channels like the Venice Commission, the UN Special Rapporteurs and European Court of Human Rights among others, to reclaim these principles, while the European Union institutions are expected to take a more proactive and ambitious role in the sense.

¹¹⁸ ECF on CIVICUS Monitor, CSO in Slovenia wins lawsuits, while cooperation between CSOs and state continues, <https://monitor.civicus.org/newsfeed/2019/05/29/CSOs-in-Slovenia-win-lawsuits-while-cooperation-between-CSOs-and-state-continues/>, 29 May 2019.

¹¹⁹ Read for example: Interview with Veronika Mora, Back to the roots to resist backslidings in democracy – A wake up call from Hungary, <http://civic-forum.eu/publication/view/activizenship-3>.

¹²⁰ <https://civitates-eu.org/in-a-nutshell/>

¹²¹ <https://eeagrants.org/topics-programmes/culture-civil-society-good-governance-and-fundamental-rights-and-freedoms/civil>

NEW OPPORTUNITIES FOR DIALOGUE BETWEEN GOVERNMENTS AND CIVIL SOCIETY

While we are well aware of the pressures that CSOs face because of governments in some realities (see chapter number 4 “Barriers to meaningful civil dialogue”), we have also captured a positive evolution of these relations in other countries.

In Latvia, between 2016 and 2018, civil society had witnessed a deterioration of dialogue with the government, which had carried out measures perceived as a “deliberated attempt” to weaken the sector. This challenge forced organisations to coordinate better and openly speaking about their role in society. Elections were held on October 2018, and the government formed in January 2019 immediately opened up dialogue with civil society.¹²² According to local Latvian partners, for the first time, the prime minister will have an external advisor on society integration, who will be the contact point for NGOs in the Prime Minister’s cabinet. In May, the new Parliament also approved amendments to tax law brought forward by CSOs to overcome the challenges posed by the 2017 reform (for more information see above chapter number 3 “Reduction and restriction of funding for civil society’s activities”).¹²³ While difficulties remain, these are important steps forward. An obvious issue is to get this trend to become immune to governments’ change.

In spring 2019, Lithuanian civil society was very active to make visible the causes they are defending as three elections took place in the country. Even before these events took place, the National NGO Coalition managed to get a memorandum/agreement signed by all the main political parties who committed to cooperate on strengthening civic participation and citizenship. Inga Aksamitauskaitė from the Lithuanian NGOs’ Information and Support Centre commented:

¹²² ECF on Civicus Monitor, As negotiations continue, Latvian CSOs look forward to good relations with new government, <https://monitor.civicus.org/newsfeed/2019/01/15/negotiations-continue-CSOs-look-forward-good-relations/>, 15 January 2019

¹²³ ECF on Civicus Monitor, Draft amendments to Public Benefit Law under discussion, <https://monitor.civicus.org/newsfeed/2018/08/08/Draft-amendments-to-Public-Benefits-Laws-Under-Discussion/>, 8 August 2018

*“It took time to negotiate with all political parties. Finally, on the last day before the elections (March 1, 2019) National NGO Coalition managed to convince all the main political parties to sign the Memorandum. One more task that other political leaders didn’t manage to implement recently, to gather all political parties at one table, was accomplished too. It’s a big milestone for the Lithuanian Civil Society. We believe that this Memorandum will become important guidelines for the productive government and civil society cooperation”.*¹²⁴

In Slovenia, although during the last elections anti-immigrant parties made progress, a minority government was formed keeping these forces out of the executive powers.¹²⁵ In early 2018, the country had seen significant improvements concerning civic space, largely as a result of a new NGO law passed by the Parliament on March 2018 and the promise of increased funding. Nevertheless, the implementation of the law relies for most only on the new government which shows openness to the sector and willingness to maintain previous commitments. Particularly positive is the improved relationship between the Minister of the Environment and Spatial Planning and environmental organisations which had previously experienced difficulties. The new Minister has stated the importance of opening dialogue with civil society and committed to building a constructive relationship with the sector. An outcome of this goodwill was the establishment of a council of cooperation with NGOs.¹²⁶

In Slovakia, following the killing of the investigative journalist Ján Kuciak in February 2018, civil society experienced great turmoil as the former government led by the then Prime Minister Robert Fico tried to shift the attention from responsibilities of public authorities towards critical NGOs, including through vilification statements (see also under “Damaging consequences of transparency legislation for CSOs”).¹²⁷ This also

¹²⁴ NGO Information and Support Centre, LITHUANIA: Civil Society Organizations Managed to Sign the Cooperation Agreement with all the Main Political Parties in the Country, <https://civicspacewatch.eu/lithuania-civil-society-organizations-managed-to-sign-the-cooperation-agreement-with-all-the-main-political-parties-in-the-country/>, published on CSW on 15 March 2019

¹²⁵ ECF on Civicus Monitor, Worry spate of attacks on journalists as new government formed in Slovenia, <https://monitor.civicus.org/newsfeed/2018/09/24/worrying-spate-attacks-journalists-new-government-formed-slovenia/>, 24 September 2018

¹²⁶ Ministrstvo za okolje in proctor, SLOVENIA: The government set up a council for cooperation with NGOs, <https://civicspacewatch.eu/slovenia-the-government-set-up-a-council-for-cooperation-with-ngos/>, published on CSW on 6 December 2018

¹²⁷ ECF, SLOVAKIA: Civil society to react to the murder of Ján Kuciak, <https://civicspacewatch.eu/slovakia-civil-society-to-react-to-the-murder-of-jan-kuciak/>, published on CSW on 27 February 2018

opened opportunities for civil society to draw public attention on certain issues. Milan Šagát, Executive Director of Slovakian NGO VIA IURIS summed up:

“Despite the turbulent times that Slovakian civil society faces, we have experienced some positive developments. In January, a new Law on Register for Non-governmental/ Non-profit Organisations came into effect. The draft resulted from a cooperation between civil society and the Government and the register poses no threat for CSOs. In March, Slovak presidential elections ended up with the victory of Zuzana Čaputová – a former environmental lawyer, civic activist and a former collaborator of VIA IURIS. Protection of democratic institutions and civil society is one of her priorities. Last but not least, in October, an umbrella organisation – Voice of Civic Organizations – has been launched. It aims to create a space for the cooperation of civic initiatives and CSOs and to support their activities towards the protection of civil society principles as elements of democracy in Slovakia.” Again, the progress needs to be sustainable which requires the long term engagement of all the democratic political forces.

COURTS SUCCESSFULLY UPHOLD FUNDAMENTAL RIGHTS

Some positive outcomes were recorded in courts when civic actors were criminalised as a consequence of their activism but won the judicial proceedings opened against them. In the United Kingdom, in October 2018, three anti-fracking protesters, Richard Roberts, Simon Roscoe and Rich Loizou, were freed after they had been sentenced to 16 months’ prison for “causing a public nuisance” during a four-day protest in front of a drilling site in Lancashire in July 2017. The activists stated after their release: “Today’s decision affirms that when people peacefully break the law out of a moral obligation to prevent things such as the fossil fuel industry they should not be sent to prison.” This outcome was achieved in a context where nearly 29000 people signed a petition condemning the crackdown against the opposition to the fracking industry¹²⁸, while the attention around the issue has been growing and opposition galvanised by the oppression.

¹²⁸ <https://you.38degrees.org.uk/petitions/hold-an-inquiry-into-the-declining-space-for-civil-society-to-oppose-the-uk-fracking-industry-1>

Thanks to similar disobedience actions, anti-fracking campaigners in the UK contributed to delay the beginning of the extraction operations for years. On March 2019, in a case raised by environmental campaigners, the high court ruled unlawful key aspects of the UK national planning policy for fracking as the government failed to take into account relevant scientific evidence concerning the environmental impact of the industry. Based on this sentence, civil society will be able to claim climate change as a reason to object to planning permission for fracking sites.¹²⁹

In Poland, in 2016 a new law of assemblies was introduced *de facto* banning counter-demonstrations against “cyclical” gatherings that are organised by the same organiser at the same place or on the same route at least four times a year or those that were organised at least once a year in the period of the last three years.¹³⁰ In response, a civic movement Citizens of Poland (in Polish “Obywatele RP”) was formed to engage in civil disobedience to this law to “stands firm against marches of radical, racists, xenophobic, antisemitic groups organised more and more often in different places of Poland” by ignoring the ban. The groups established a mutual support project (ObyPomoc) to connect all kinds of protesters criminalised by the police for taking part in mobilisations with pro-bono lawyers. In two years, ObyPomoc has monitored more than 200 court proceedings involving nearly 700 protesters. In 98% of the cases, the activists were acquitted based on the right to assembly enshrined in the Constitution.¹³¹ According to the group, these actions also helped establish jurisprudence on the matter thanks to which protesters are judged based on the constitution rather than the new legislation.¹³²

On the front of solidarity towards migrants, an emblematic victory for human rights defenders in France, and potentially all across Europe was achieved during a court case. Cedric Herrou had been sentenced to four months’ prison time by the Court of Appeal of Aix-en-Provence in August 2017 for having transported some two hundred migrants from the Italian border to

¹²⁹ Fiona Harvey, High court rules government’s fracking guidelines “unlawful”, <https://www.theguardian.com/environment/2019/mar/06/high-court-rules-governments-fracking-guidelines-unlawful>, 6 March 2019.

¹³⁰ Citizens Observatory, Law on Assemblies changed by the Law Amending Law od Assemblies of 13 December 2016, <http://citizensobservatory.pl/ustawa/amendments-to-the-law-governing-public-assemblies/>, 13 December 2016.

¹³¹ ObyWatele, The machine of repression – will it get fine-tuned or will it grind to a halt?, <https://obywatele.org/wp-content/uploads/2019/06/2-years-of-ObyPomoc-actions.pdf>, June 2019.

¹³² Application to ECF nomination

provide refuge in his home, and a similar case involved a teacher and researcher Pierre-Alain Mannoni, also sentenced by the Aix-en-Provence Court of Appeal to two months' imprisonment for accompanying three Eritreans to a safe place.¹³³ The Constitutional Council ruling abolished the so-called "offence of solidarity" that was at the root of the condemnations and recognised providing humanitarian assistance and care to people regardless of the regularity of their stay on the French territory "as in accordance to a constitutional principle of "Fraternité" (brotherhood) as these acts were accomplished without direct or indirect compensation".

La Ligue des Droits de l'Homme stated in this regard:

"Recalling that Fraternity is not just a word but a legal reality, the Constitutional Council comforts those who try to bring it to life for migrants. The LDH welcomes this reminder and hopes that the government, the prosecution and the courts will abide by the letter and the spirit of this decision by ceasing to wrongfully prosecute those men and women who implement the principle of solidarity."¹³⁴

Similarly, on the grounds of the international Sea laws for people in distress, Carola Rackete, Sea Watch captain, was discharged on July 2019 after being kept on house arrest by the Italian authorities for her refusal to comply with the ban on entering Italy's territorial waters.¹³⁵

CIVIL SOCIETY SCORES HARD VICTORIES

Groups working on sexual and reproductive rights are increasingly under pressure of the "anti-gender" narrative, exposing them to hatred and even to physical attacks. Nevertheless, in the year under discussion, they have scored significant victories.

In May 2018, a historical battle was won by Irish women which represented a momentum for women all over the world. An overwhelming majority of Irish citizens voted to repeal the country's ban on abortion

in a referendum.¹³⁶ The advocacy carried out by Irish civic organisations played a central role in pushing for the referendum on the repeal of the 8th amendment, a decision which also saw the involvement of a Citizens' Assembly. Afterwards, diverse groups of activists and several CSOs started campaigning with the slogan "Together 4 Yes". Ailbhe Smyth, from the coalition Together 4 Yes commented:

"*The Eighth Amendment to the Irish Constitution, inserted by referendum in 1983, banned abortion in all circumstances except to save a woman's life. In May 2018, the Irish electorate voted by a large majority (66.4%) to repeal it and thus to allow for the legal provision of abortion services in Ireland. This historic victory marked a seismic shift in the struggle for women's rights and equality, and between the forces of religious and moral conservatism and those of progressive liberalism in social policy. Together for Yes was the alliance of feminist, pro-choice organisations that came together to lead the repeal campaign. Key to the campaign's success were its focus on a clear goal (repeal); the building over several years of a cross-sectoral and cross-party civil society coalition; early strategic planning; savvy crowd-funding which also raised awareness and mobilised campaigners; succinct evidence-based messaging rooted in the findings of long-term research and primarily targeting "middle ground" voters; and the realisation that the emotional strength and honesty of personal testimonies and stories were vital to moving the electorate to vote in favour of a more generous, equal and compassionate Ireland.*"

The campaigners were able to mobilise Irish people living abroad who travelled back home to vote, using the hashtag #hometovote. They received support from all over the world: emblematic the case of women from the International Freedom Battalion from Rojava, showing a cardboard sign in Gaelic reading "Ní Saoirse go Saoirse na mBan" meaning "There is no freedom until the freedom of women".¹³⁷

In Poland, since 2016, massive strikes of tens of thousands of women and men dressed in black have mobilised all over the country, in big cities and small towns, against the repetitive attempt by the government to further restrict one of the already most restrictive legislation on abortion. Thanks to the mobilisation,

¹³³ ECF, FRANCE: Constitutional Council recognises humanitarian help and solidarity as legitimate, <https://civicspacewatch.eu/france-constitutional-council-recognises-humanitarian-help-and-solidarity-as-legitimate/>, published on CSW on 6 July 2018

¹³⁴ Ibidem

¹³⁵ Info Migrants - Deutsche Welle, Sea-Watch captain free after court order, <https://www.infomigrants.net/en/post/17912/sea-watch-captain-free-after-court-order>, 3 July 2019

¹³⁶ ECF on CIVICUS Monitor, Concerns over free expression rights and censorship emerge during abortion referendum, <https://monitor.civicus.org/newsfeed/2018/06/15/concerns-over-free-expression-rights-and-censorship-emerge-during-abortion-referendum/>, 15 June 2018.

¹³⁷ Irish Examiner: <https://www.irishexaminer.com/breakingnews/discover/ni-saoirse-go-saoirse-na-mban-there-is-no-freedom-until-the-freedom-of-women-753554.html>

in March 2018, the new restrictive bill was yet again put on hold.¹³⁸ However, it did not stop there. In the words of Marta Lempart from the Polish women's Strike: "The most recent polls say that when we started the fight, which initially was just about stopping the total ban, only 37% of people in Poland were pro-choice. Now 69% of the people in Poland want to legalise abortion. So, after each protest against the total ban, more and more people want to have the choice."¹³⁹

In Romania, on 6 and 7 October 2018 a referendum took place regarding the definition of the family in the Romanian Constitution aimed at excluding any kind of same-sex couples. The referendum followed a 2015 citizens' initiative initiated by *Coaliția pentru Familie* (the Coalition for Family) with the support of religious groups and political leaders. In just 6 months, the campaign collected roughly 3 million signatures with advocates going door to door collecting support and stressing the idea that traditional family values should prevail over LGBTQI rights. This campaign put a lot of pressure on the community and policy-makers contributed to spreading hate through controversial statements. The initiative intensified hate against the LGBTQI community and activists and could lead to becoming "a license to kill."¹⁴⁰ Nevertheless, civil society successfully mobilised to discourage people from taking part in the vote and, also thanks to extensive campaigning, the referendum failed to reach the 30% quorum needed.

In July 2018, in Portugal, an ambitious law was passed on Gender Identity and Sexual Characteristics guaranteeing full self-determination for trans persons of legal age and prohibiting genital mutilation at birth in the case of intersex children, a major victory for LGBTQI rights and civil society defending them.¹⁴¹

More generally, in some occasions, civil society was able to resist restrictive legislation. In late March 2018, in Poland, an amendment to the law on public collections which for its ambiguity would hinder the

fundraising ability for civil society was abandoned. The Minister of the Interior and Administration was forced into this decision thanks to a petition signed by citizens and the protests of NGOs.¹⁴² A similar case, although the law affected the taxation of the non-profit sector, involved Italy. In this case, the new legislation was aimed at replacing the preferential tax of 12 per cent for entities with solidarity purposes by the ordinary rate of 24 per cent. In January 2019, the procedure was blocked within the Italian parliament, after facing strong criticism from all the non-profit sector, especially the Catholic Church, which is one of the primary providers of social services and one of the biggest organisations relying on the preferential tax.¹⁴³

In Ireland, in May 2019 thanks to the conjunct effort of around 60 organisations coordinated by the Irish Council for Civil Liberties (ICCL), Amnesty International, The Wheel, Front Line Defenders, Transparency International Ireland and Uplift, a bill to reform the Electoral Act was launched in the attempt to overcome civil society's concerns on human rights campaigning (see under "Targeting "political" actions and chilling effect on advocacy").¹⁴⁴

CIVIC GROUPS AND MOBILISATIONS ARISE

From women's rights to environmental protection, from living standards to anti-corruption struggles, citizens have taken to the streets to hold the policy-makers and corporations accountable, showing that great civic energy is present in society. The massive mobilisations in the streets are the most visible manifestation of a revival of *ad hoc* activism and engagement in communities, as it also appears in all case studies below. Among the many exciting examples of civic engagement and activism is the use of crowdfunding and donations to support actions. An emblematic case is the Italian initiative *Mediterranea* which is entirely funded by small donations. In order to start and maintain the operations in

¹³⁸ ECF, POLAND: Show solidarity to Polish women calling the Parliament to reject bill to further limit abortion, rights <https://civicspacewatch.eu/poland-more-than-200-ngos-across-europe-call-the-parliament-to-reject-bill-to-further-limit-abortion-rights/>, published on CSW on 22 March 2018

¹³⁹ Interview with Marta Lempart - From "one-issue movement" to "human rights for all" narratives and mobilisations the case of the Polish Women's Strike <http://civic-forum.eu/publication/view/activizenship-3>

¹⁴⁰ ECF, ROMANIA: Hate speech on the rise against LGBT community and activists, <https://civicspacewatch.eu/romania-hate-speech-on-the-rise-against-lgbt-community-and-activists/>, published on CSW on 30 August 2018

¹⁴¹ Civicus Monitor, Civil society complaint on harmful speech receives state support, <https://monitor.civicus.org/newsfeed/2018/05/14/civil-society-complaint-harmful-speech-state-support/>, 14 May 2018

¹⁴² Civicus Monitor, State restricts protest on disability benefits, <https://monitor.civicus.org/newsfeed/2018/06/14/state-restricts-disability-protest-poland/>, 14 June 2018

¹⁴³ Il Post, ITALY: The government doubles taxes on non-profit sector (UPDATED) <https://civicspacewatch.eu/italy-the-government-doubles-taxes-on-non-profit-sector/>, posted on CSW on 28 February 2019

¹⁴⁴ Irish Council for Civic Liberties, Senator Lynn Ruane launches bill for reform of Electoral Act with backing of campaign groups, <https://www.iccl.ie/news/lynn-ruane-electoral-act/>, 16 May 2019

a hostile climate, the project was able to collect over 1 million Euro in less than one year¹⁴⁵, and crowdfunding has continued to support new missions.¹⁴⁶ As described by *Mediterranea's* Alessandra Sciorba in the interview below, supporting the project has become an opportunity for people to take a stand on fundamental rights. In several cases involving civic actors criminalised in court, crowdfunding was also used to support the legal costs for the defence in legal proceedings. For example, in June 2019 a campaign in support of detained sea captain Carola Rackete raised €500,000 within hours from its launch.¹⁴⁷ A general rise of individual donations to the sector was reported within some of the case studies below (see Estonia, Poland, Romania) in part as a consequence of organisations asking more directly for support in the face of growing difficulties and needs.

All these forms of association and mobilisations we witness present an opportunity for the sector as well as they raise new challenges. For example, as argued by Kai Klandorf in the case study on Estonia, there is an increasing trend towards *ad hoc* participation and pop-up activism in place of more permanent volunteer positions. One question for the sector is then how to channel this civic energy in an organised and permanent involvement to ensure both the mobilisation capacity of CSOs and the long-term sustainability of the actions led and the demands raised by these civic groups and movements. Another issue is how to bridge two souls of civic activism. Some movements show a *disruptive* nature that CSOs are sometimes unprepared to dialogue with. This approach often roots in the fact that *newborn* activists feel that there are no existing channels for their voices to be heard (see for example the interview with the *Comite for Adama Traore*). Another reason is that the emergency of the situation they deal with has to be expressed in the most striking way possible to wake up consciences. At the same time, facing similar pressures creates an opportunity for solidarity and new alliances between diverse actors that form the civic space. Once again, *Mediterranea* showcases well the coming together of very diverse organisational realities, a complex process that allows for the expression of great creativity in participation processes.

When looking at climate change mobilisations, hopes for a more sustainable Europe are fuelled by the thriving of environmental struggles occurring in many European countries, if not all. These movements have shown that their importance lies not only in the relevance and urgency of the issue they address, which has also become a key political topic, but furthermore in their ability to mobilise high numbers of people. All year long, demonstrations for climate have been organised by students and young people in the public squares of cities, coordinated by the movement FridaysForFuture.¹⁴⁸

At the core of some of these movements' strategy lies civil disobedience, as a non-violent act which deliberately violates the law with the aim of not only changing particular law or policy of the government but also highlighting systemic issues. For example, since 2015 the grassroots climate action group *Ende Gelände* has mobilised thousands of people from across Europe in a series of large-scale events in the Rhenish lignite mining area in Germany targeting coal plants and demanding for phasing out the industry. In June 2019, over 6,000 activists were involved in a three-days blockade alongside a mobilisation called by the FridaysForFuture movement involving a total of 40,000 people.¹⁴⁹ The global movement Extinction Rebellion (XR) has also been organising massive protests and city blockades, starting from the UK, where they shut down cities such as London¹⁵⁰ and Manchester¹⁵¹, calling for governments to announce climate emergency and forcing them to face the worsening climate change. Different generations have come together in solidarity for the same fight.

In France, since late 2018, the Yellow Vests movement has been sparked by the French government's tax reforms disproportionately affecting middle and low-income classes living in the periphery of big cities. More recently, the struggle for higher standards of living represented by the Yellow Vests has converged in different actions with social justice and environmental organisations. In an interview, Priscilla Ludosky, who was one of the individuals who ignited the Yellow Vests movements after launching a petition against

¹⁴⁵ Since October 2018: <https://www.produzionidalbasso.com/project/mediterranea-saving-humans/>

¹⁴⁶ <https://www.produzionidalbasso.com/project/per-tornare-in-mare-abbiamo-bisogno-di-voi/>

¹⁴⁷ Deutsche Welle, Celebrity appeal raises €500,000 for Sea-Watch captain, <https://www.dw.com/en/celebrity-appeal-raises-500000-for-sea-watch-captain/a-49420750>, 30 June 2019.

¹⁴⁸ <https://www.fridaysforfuture.org/events/map>

¹⁴⁹ https://en.wikipedia.org/wiki/Ende_Gel%C3%A4nde_2019

¹⁵⁰ BBC News, Extinction Rebellion activists end London protests, <https://www.bbc.com/news/uk-england-london-48058177>, 25 April 2019.

¹⁵¹ Manchester Evening News, Deansgate reopens as four-day Extinction Rebellion protest comes to an end, <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/deansgate-reopens-four-day-extinction-16855566>, 2 September 2019

the tax on fuel, told the European Civic Forum: *“On the ground, the Yellow Vests found themselves calling out the same people, the same institutions, the same corporations as the organisations fighting for the protection of the environment. Thus we converged with them on common actions on the ground. I think this is what elevated the fight: the convergence of struggles and the awareness that social and environmental rights are interlinked”*.

Similar struggles for socio-economic rights have also emerged in other countries, in particular for the right to decent housing in Romania (see the interview with Linda Greta Zsiga), Spain (see the case study), Portugal, Ireland, Hungary and elsewhere to oppose evictions and urging governments to revise their housing policies.

In Central Eastern Europe, political corruption has led people to the streets in unprecedented mobilisations. Romania was the first country to witness massive protests back in 2012, intensified in 2017 by the government’s attempts to weaken the punishments for corruption. On 10 August 2018, up to 100,000 protesters gathered in Bucharest and thousands in smaller cities, with Romanians abroad returning to join the mobilisation which was met with unprecedented force by the police (see Romania case study below). Victoria Stoiciu, from Friedrich-Ebert-Stiftung Romania and PhD. Candidate with a thesis on social movements in Romania explains:

“Romanian social movement emerged in 2012-2013 with a series of anti-system and anti-austerity protests, radically rejecting all political parties. After 2017 the anti-system rhetoric of those mobilisations, which reminds us of Occupy or Indignados movements, was abandoned and replaced with an anti-governmental one, criticising only the party in power (PSD). Contrary to previous protests, emerging around social or ecological issues, such as privatisation of health care, deforestation, cyanide gold mining or fracking, the mobilisations of 2017-2018 were triggered exclusively by corruption or justice reform issues. The anti-corruption demonstrations prove Romania has a vibrant civil society, with an exceptional mobilisation capacity; however, setting the anti-corruption rhetoric as the dominant frame of the protests is obscuring other struggles, rendering them invisible, if not impossible.” ■



ESTONIA

Civic space in Estonia is rated "open" on the CiViCUS Monitor.

The CSO sector in Estonia has been relatively stable and is one of the most sustainable in the region. In parallel to long-term forms of volunteering, ad-hoc activism is becoming more popular, providing both opportunities and challenges. However, in the past years, the legislative and financial framework has failed to adapt and keep up with the needs of CSOs. With the establishment of the conservative, right-wing government, some CSOs have raised concerns on the future of the sector, in particular for those working on human rights and inclusion (representing less than 1% of the sector), after verbal attacks against the organisations have become more frequent.

THE SECTOR IN NUMBERS

Population:

1.33 million (2019)

Number of CSOs/Not for profit/Association/
charitable organizations registered in the country:

34 081

SOURCE: THE 2017 CSO SUSTAINABILITY INDEX

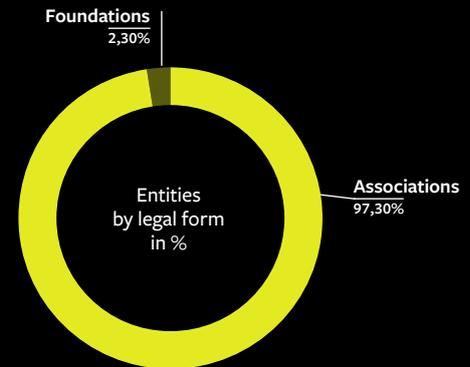
Number of employees:

**23% of CSOs have people employed
(2% of workforce)**

SOURCE: NENO, 2018

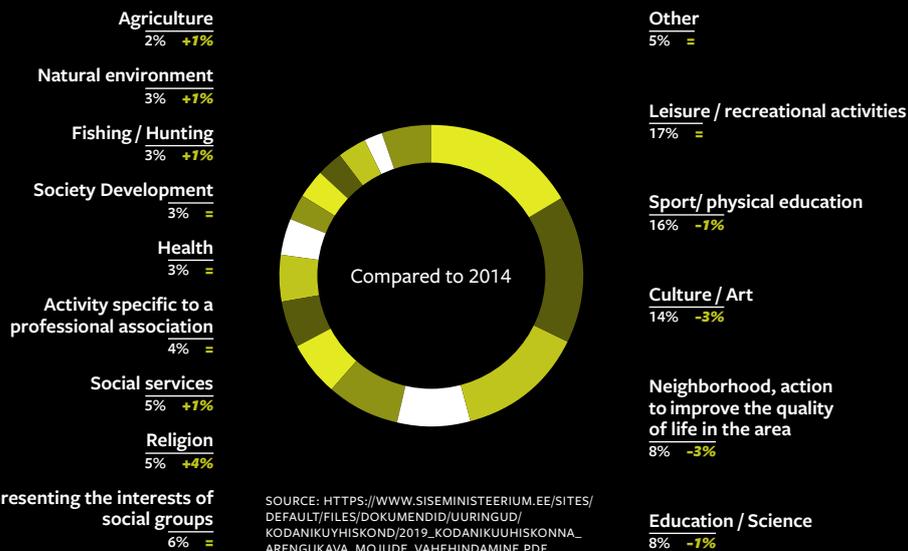
In 2016, **22%** respondents reported participating in
voluntary actions (+9% compared to 2015)

SOURCE: 2017 WORLD GIVING INDEX, VIA THE 2017 CSO SUSTAINABILITY INDEX



SOURCE: IDEM

DISTRIBUTION OF CSOS BY FIELDS OF ACTIVITY (2018)



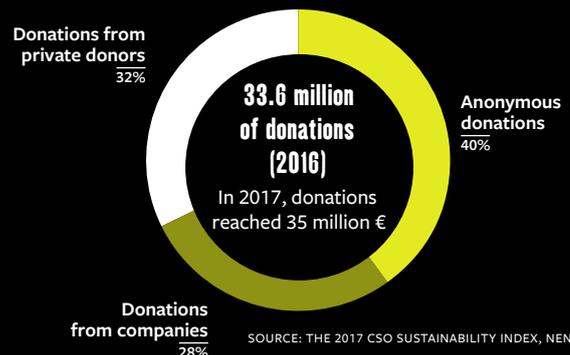
SOURCE: [HTTPS://WWW.SISEMINISTERIUM.EE/SITES/DEFAULT/FILES/DOKUMENTID/UURINGUD/KODANIKUYHISKOND/2019_KODANIKUUHISKONNA_ ARENGUKAVA_MOJUDE_VAHEHINDAMINE.PDF](https://www.siseministerium.ee/sites/default/files/dokumentid/uuringud/kodanikuyhiskond/2019_kodanikuuuiskonna_arengukava_mojude_vahehindamine.pdf)

THE ECONOMIC WEIGHT OF THE SECTOR

Public funding and availability of public funding for CSOs:

roughly 158 million euros

SOURCE: NENO, 2018



SOURCE: THE 2017 CSO SUSTAINABILITY INDEX, NENO

CHANGES IN THE POLITICAL LANDSCAPE AFFECT THE TONES, NOT THE LEGISLATION

Civil society sector remains stable

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By Kai Klandorf, Network of Estonian Nonprofit Organizations

Estonian civil society sector has had quite stable past years. There have been no fast developments that would have helped the sector to advance and, luckily, no larger coordinated attacks that have created the sector to shrink. However, we see that the global trends influencing the world are also present in Estonia. Luckily the impact it has had on civil society sector has not created any large-scale changes.

In spring 2019, the parliamentary election resulted in the right-wing conservative nationalist party EKRE becoming a member of the government. The coalition was formed, and the prime minister seat was taken by the Center Party who invited EKRE and right-wing party Isamaa to join, instead of the winning Reform party. Quite a lot of people saw that as undermining our current development towards a more open and equal society following the principles of solidarity. As a

result of this government change, we have observed a change of tones and a legitimization of uncivil actors. Nevertheless, the legislative framework has to date remained unchanged.

TRENDS OF CIVIC PARTICIPATION

Based on recent research, the areas where civil society organisations (CSOs) operate have remained basically the same compared with similar research carried out five years ago¹: roughly 17% of CSOs operate in organising recreational activities, 16% of CSOs are sports-related, and 14% is involved with culture. The majority of CSOs focus their activities on local level (82%) and about 30% of CSOs also carry out activities internationally.

¹ Balti Uuringute Instituut, Vabatahtlikus tegevuses osalemise uuring 2018, https://www.siseministeerium.ee/sites/default/files/dokumendid/Uuringud/Kodanikuyhiskond/2019_vabatahtlik_tegevus.pdf, 2019.

Organisations that have paid staff has also remained stable, in 2010 it was 25%, 2013 it was 21% and 2018 23%. Civic participation has grown during the past five years: in 2013 roughly 31% of the population contributed as volunteers, in 2018 that number has grown to 49%. One factor explaining such a significant increase is Estonia celebrating its 100th anniversary in 2018 with quite a lot of activities organised for the local communities. What has also changed in volunteering is that people

AS A RESULT OF THIS GOVERNMENT CHANGE, WE HAVE OBSERVED A CHANGE OF TONES AND A LEGITIMATION OF UNCIVIL ACTORS

are less interested in permanent volunteer positions and more interested in ad hoc participation. CSOs, however, find permanent volunteers more useful and are more interested in them.

At the same time, CSOs tend to recruit new members less frequently: only 28% of CSOs actively recruit members. The number of organisations with less than ten members have increased over time – they now form about 44% of CSOs. Therefore, we see the focus seems to be shifting from members to volunteers. Some civil society activists see that as a problem and state that involving fewer members impacts the inner democracy of organisations.

Civil society organisations and activists understand and even harness the fact that involvement is taking more and more diverse forms with CSOs searching for new ways of engaging communities. At the same time, we see that public policies and regulations are still focusing on membership. For example, youth organisations are funded based on a number of members.

One form of civic participation is donating to CSOs. The amount CSOs fundraise as donations has been continuously growing throughout the past ten years. Meaning both people and corporations are more and more interested in influencing society through CSOs. In 2017 CSOs collected €23.3 million in donations; if anonymous and foreign donations are added, the total sum reached €35 million.

LEGISLATIVE FRAMEWORK AND DEVELOPMENTS

The legal framework of Estonian civil society can be considered quite a positive example; it is fairly simple and supportive of CSOs. It is easy to form CSOs, and they are free to operate in any interested area. The legislative and regulatory framework also provides some tax incentives for public benefit organisations, regardless of the area of their activities.

One notable legislative change that did take place during the past year was the

CIVIL SOCIETY ORGANISATIONS AND ACTIVISTS UNDERSTAND AND EVEN HARNESS THE FACT THAT INVOLVEMENT IS TAKING MORE AND MORE DIVERSE FORMS WITH CSOS SEARCHING FOR NEW WAYS OF ENGAGING COMMUNITIES

Gambling Tax Act, which was amended in October 2018, abolishing the decision-making council, which was composed mainly of politicians. Especially in the education and social sphere, the change will enable ministries to find longer-term strategic partners. The Ministry of Education and Research selected its partners in a non-transparent decision-making process, while the Ministry of Social Affairs organised two public competitions in 2019. This change has caused some confusion for the CSOs during the transition period and has a negative impact on organisations that would not be included as strategic partners. In the social field, however, the possibility of smaller project grants remained and these are managed through the State Support Service.

At the same time, the legal environment governing civil society sector and the available funding have not been able to keep the pace of development and the growing need of funding. The budget of National Foundation of Civil Society (NFCS) has remained unchanged, the limits for tax benefits have been unchanged or even reduced over the years, and the available incentives do not encourage large donations or strategic philanthropy. In 2018, the Good Deed Foundation, the

first venture philanthropy fund in Estonia, established the Impact fund² and the education fund³ which were firsts of their kind. The funds help to launch and scale impactful initiatives that solve pressing problems concerning complex issues in education, social inequity, public health and environment. The Estonian legal framework does not, however, support innovative funding options, such as social investment bonds or investments in social enterprises.

SMEAR CAMPAIGN AND FREEDOM OF EXPRESSION

The political context impacts the civil society sector quite directly. There has been more slander against organisations advocating for minorities and human rights. Even members of parliament and government have attacked organisations and their funding openly. The current political climate has created tension among CSOs and has impacted funding. For some, the impact has been positive as each time a parliament or a government member threatens the funding of minority organisations, donations followed to some of organisations account. However, in general the attacks have created concern and tension. We can also see that ministries who fund activities

² See more: <https://www.heategu.ee/impact-fund>.
³ <https://heategu.ee/haridusfond>.

THE LEGAL ENVIRONMENT AND THE AVAILABLE FUNDING HAVE NOT BEEN ABLE TO KEEP THE PACE OF DEVELOPMENT AND THE GROWING NEED OF FUNDING

focusing on minority rights also feel the tension.

To some extent, we have observed a legitimisation of uncivil society as attacks from the right-wing politicians towards civil society organisations, human rights defenders, minorities, universities etc have been emphasised by the media and granted quite a large audience. The right-wing conservative populist party has been quite provocative and managed to create fear and attract attention to issues not really worth the debate – for example, fear of migration in Estonia is quite



THE AUTHOR

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**THE CIVIL SOCIETY
NEEDS TO WORK
TOGETHER MORE
EFFECTIVELY AND HELP
RESTORE A MORE
COHESIVE SOCIETY**

unwarranted because the number of refugees in Estonia is extremely small. That has helped the spread of anti-rights thoughts and organisations. Also, one of the largest media corporations Postimees assigned a new chief editor who is affiliated with people leading the right-wing conservative nationalist party EKRE. As a result, a liberal journalist left her position, and that created quite a heated discussion. There have been some public attacks against the national broadcasting company by members of EKRE party. Luckily no real changes in the company have followed. Therefore, it is safe to conclude that even if we have seen some examples of attempts to limit freedom of expression, they have not been successful.

FREEDOM OF ASSEMBLY

The freedom of assembly has luckily not experienced any changes and limitations over the course of past years. Protests and assemblies are usually not the preferred means to voice citizens' concerns in Estonia mainly because other means as representative advocacy organisations and channels as rahvaalgatus.ee⁴ are available. Protests are usually perceived as more emotional and remain limited. However, following the coalition talks for the new government big protest movements took the streets, including Koigi Eesti. The aim of Koigi Eesti was to remind the values of the people and the

direction of our countries policies since re-establishing our independence.

In general, civil society has been responding by organisations doing different initiatives. The Koigi Eesti movement did unite activist behind the values and motivated people to come together for the Koigi Eesti song concert. At the same time, there are quite a lot of activists who are focusing on uniting the people and even go as far as saying Koigi Eesti and other similar movements do not build bridges, but instead contribute to the polarisation of different minded people. Quite a lot of CSOs focus on bringing people together to a cohesive nation.

CONCLUSION

Estonian civil society sector is in general, quite stable. There are areas where CSOs are sustainable and strong and at the same time areas where organisational capacity needs further development. The current government has caused tension and emotional reactions among people and civil society organisations in general. There is a reason to be alert and pay attention to the steps the government is taking but not enough to cause panic. The civil society needs to work together more effectively and help restore a more cohesive society. ■

⁴ The Citizens Initiative Portal enables people to compile and send collective addresses – with at least 1000 digital signatures – to the parliament of Estonia.

*Estonia has an open civic space and for years, the country has been a good example of cooperation between CSOs and government and cases of smear campaigns against democratic organisations were isolated episodes. However, the elections in spring 2019 brought to power the Conservative People's Party of Estonia (EKRE), considered by some a far-right party, in a right-wing conservative government. Major protests were sparked by the decision of the second-biggest party, Centre Party, to turn down the offer by the winning Reform party to form a joint coalition and, instead, opening to EKRE and the conservative party Isamaa. We interviewed **Silver Tambur** from *Kõigi Eesti*, a group of people living in Estonia who successfully mobilised thousands online and offline to send a strong message of tolerance and inclusion in the face of growing hate speech.*

MOBILISING PEOPLE TO STAND UP FOR THE VALUES THAT UNITE US

Everyone can say "this is my Estonia too"

Interview with Kõigi Eesti

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How was Kõigi Eesti created, and why did you decide to call it like this (in English, "My Estonia too")?

I am actually a journalist and an editor. I edit a media outlet called Estonian World, where we write about Estonia in English. I started in 2012 in London, and I came back to Estonia in 2014. Already in 2015 when the refugee crisis happened in Europe, the far-right party called EKRE (Estonian Conservative People's Party) used that situation to their own advantage. That is when they started to increase their popularity. They set up their own media channel called Uued Uudised which is basically a fake news site. They started printing leaflets, newspapers sent to people's homes. They basically lied about those immigration numbers. At that time, Estonia agreed to take about 500 refugees. But of course, EKRE started spreading lies that there was mass immigration on its way. A lot of people here in Estonia still have a fear

of unknown – hence, they were an easy target; people who have not had experience with people from other countries. EKRE's popularity got a boost and was rising up until the 2019 election and has been more or less steady (17-20%) since. Throughout these years, I was monitoring or observing the rise of the far-right in Estonia. As a liberal and tolerant person, I think it is important that Estonia remains an open and tolerant country, part of the global world. I was observing with growing worry and concern what was happening in Estonia since 2015. So to me, the situation was not new. The specific trigger was when, after the parliament election on 3rd of March, the Center Party decided to invite EKRE to coalition talks. On 11 March when they announced they would start coalition talks, I was on social media, and I noticed so many people concerned. I started contacting them, and we immediately started a group – "Democratic Estonia" – a secret

Facebook group to gather those people together. In two days, the group gathered a couple of hundreds of people. There were start-up founders, designers, journalists, musicians, actors, civic activists... mostly Tallinn-based urban people. These are people who love Estonia, who are proud of their country but want Estonia to remain an open, free, democratic and tolerant country. Approximately 25 of us met on 13 March, and for the first hour and a half, we

THE SPECIFIC TRIGGER WAS WHEN, AFTER THE PARLIAMENT ELECTION ON 3RD OF MARCH, THE CENTER PARTY DECIDED TO INVITE EKRE TO COALITION TALKS



Silver Tambur

expressed our frustration about the situation. We did not come together to be against EKRE per se, or their members or their voters. What specifically concerned and worried us was the EKRE leaders' xenophobic, isolationist, sexist, intolerant, homophobic and bigoted rhetoric. Since 2013, they have offended so many people over the years: people with different skin colour, foreign students, single mothers, people from sexual minorities, journalists, judges... you name it. We had a real concern of what would happen if EKRE would be invited to be part of the government. That was a very real worry and concern.

After venting our frustration, with half an hour to go until the meeting's end, we decided to start a social media campaign and launch a Facebook platform: the chosen name was "Kõigi Eesti". The direct English translation would be "Our Estonia", but we then decided to use the [English] hashtag "My Estonia too" to say that people who live here and contribute to this country can say "this is my Estonia too". We set up a launch date - 17 March - and we started contacting a lot of influencers who have a large social media following, both on Facebook and Instagram. We told them: "We are a group of active folks who are gravely concerned by the current coalition talks between the Centre Party, Isamaa and the far-right EKRE party. The situation is threatening all the values Estonia holds dear.

As we do care about the future of our home, we would like to remind everyone about what is important here, that needs protecting and looking after. This has grown into a social media flash-movement, where everyone can express what is important to them and invite their friends and family along to do the same.

By bringing out the values that are important to us - regardless of gender, race, religion or other identifiers - we want to stress the positive ones that unite us. [...] Let's do it?

How:

1. On Sunday at 13:00 (1PM) let's all upload a photo of ourselves on Instagram and Facebook in a similar style. Include a message according to what you deem relevant.
2. For Facebook activism, we have created a more convenient way to participate. A white heart symbol that you can add to your profile photo to show unity.

This movement is for everyone - let's leave party affiliations behind the door and talk about values that are important and in danger."

And that is what they did: hundreds of influencers at the same time came out with all those messages, on grayscale style images. It was amazing. At the same time, we launched a Facebook page - our first post was our manifesto - and we invited everyone already involved as well as

influencers to share that page with everyone else.

Estonian media immediately took notice. Sunday was a very good choice because there is less news on that day. We did not say the action was against EKRE. What we did was to publish a manifesto on our Facebook page about what we stand for. We basically said that we cannot sit by and watch in silence while our country gets derailed. Today's political situation puts at risk values that are important to Estonia. We lined up what we stand for in terms of values: we want Estonia to be caring, respecting, dignified. An Estonia that is everyone's Estonia regardless of gender, race, language, religion and any other difference. Our Estonia is democratic, confident, protective, inclusive, caring, forward-looking and European in spirit.

On the morning of 17 March, before we launched that Facebook page, one of our team members said: "Okay, we'll be lucky if we have 3,000 followers by the end of the day." But by the end of the day, we had 16,000 followers - a rate that is unprecedented in Estonia, especially when it comes to citizen movements. It was like a massive wave. Now we have around 30,000 followers, which is more than any other civil movement and any party in Estonia.

The populists and to an extent, media, was first a bit puzzled as to who was behind the campaign - as we didn't publish the names of the main organisers (around 50 names) until the next day. There were many, who at first, said that it was "an operation by the parties not invited to the coalition talks" (and the ones ultimately forming the Estonian opposition), the Social Democrats and the Reform Party, both more or less on the liberal side. But this was not true: we were genuinely a citizens' movement. Among our organising team, there were a handful of people who were members of both parties, but none of them had been a professional politician. What's more, they all terminated

WE THEN DECIDED TO USE THE [ENGLISH] HASHTAG "MY ESTONIA TOO" TO SAY THAT PEOPLE WHO LIVE HERE AND CONTRIBUTE TO THIS COUNTRY CAN SAY "THIS IS MY ESTONIA TOO".

their party membership to focus on Kõigi Eesti movement instead.

After the successful social media campaign, we came together and while realising how big momentum we had created, decided to organise an open-air concert.

Why a concert and not other forms of protest?

We were discussing a few ideas, including a street protest. But in Estonia, you do not get massive amounts of people going to make their voices heard in the streets. There have never been massive protests here. After this coalition was formed, we have had people in the streets now more frequently than ever before – there’s a separate street protest movement called “Yes to freedom, no to lies!” – but still, it is not like in France or the UK, Portugal or Spain where you have millions of people coming in the street if they’re really fed up or unhappy about something. In Estonia, people love music and love singing – the prime historical example of a non-violent protest in an Estonian way is the so-called “singing revolution” – a series of open-air concerts in 1988 when hundreds of thousands of people came together at the Tallinn Song Festival Grounds to protest against the Soviet rule and demand sovereignty and independence. We sensed that it is easier to get people together with a concert. We set a date – 14 April – and had three weeks to put the line-up together, advertise and organise everything. For three weeks, approximately 40-50 people worked around the clock to organise everything. The line-up – consisting of Estonian and Estonian Russian artists – was very diverse and they all performed for free. The concert was called “Kõigi Eesti Song” and attracted approximately 10,000 people – it was a beautiful and moving day. The concert took place next to the main Song Festival stage – it was very symbolic.

It is also important to emphasise that from the start – including the social media campaign and the concert – we



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communicated all our main messages and statements in three languages: Estonian, Russian and English. This was unique as well: no other movement or political party has ever done it in Estonia. We immediately sent a signal that we speak to all the people in Estonia, including Estonian Russians. Many of them still feel alienated from the country. Or maybe alienated is too of a strong word, but you know, not fully part of the country. We also involved Estonian Russians in our team, and they

were very enthusiastic because again, nothing like that has ever been done.

You said that with this movement you want to represent everybody and it is great that you also tried to integrate Russians. But you also said that behind the movement there is mostly urban people. How do you see this? Are you able to reach outside cities?

This is a good question. This is really our next step. In the beginning, many of our team members that were already active in Tallinn already knew each other because Estonia is small. We also had people from other places as well – like Tartu and Pärnu – but still, they are respectively the second and fourth-largest towns in Estonia. Our next goal is to reach out to other places in Estonia. But for that, we need to really raise some funding because it would cost more to organise events outside Tallinn. We have had a lot of interest from other towns already, so we want to reach out and have local groups of Kõigi Eesti. And talking about what we want to do next, we want to reach schools. One of the ideas is to organise hackathons to get some

THE PRIME HISTORICAL EXAMPLE OF A NON-VIOLENT PROTEST IN AN ESTONIAN WAY IS THE SO-CALLED "SINGING REVOLUTION" – A SERIES OF OPEN-AIR CONCERTS IN 1988 TO PROTEST AGAINST THE SOVIET RULE

**ON SOCIAL MEDIA,
PEOPLE ARE ANGRY AND
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THEY REALIZE THEY ARE
ALL HUMANS, THEY
ALL LIVE IN ESTONIA.**

school children involved. The other idea is to organise some educational lectures because some young people are an easy target for populists, for radicals. EKRE has actually tried to reach out to a lot of young people here.

Why?

This is actually a question for us, as well. We have discussed this, but we need to have proper research here to look into it. One possible reason is that some young people in rural areas, poor areas maybe feel like.. I don't want to say left out... They are perhaps driven by this sense of belonging and identity. There was a poll that showed about 25% of people between 18 to 24 supported EKRE. So, it is not the majority, but 25% is a big number. And this is what got us concerned. We were not expecting it to be that high. And therefore we want to look more into it.

Also, to put a stop on hatred and division in the society, we have an idea of "Kõigi Eesti table" or "Kõigi Eesti talking circle": literally putting up a table in big events around the country or big shopping centres – or forming a talking circle. We would invite different people around the table to discuss and talk to each other. On social media, people are angry and divisive, but when you actually let them speak face to face they realize they are all humans, they all live in Estonia. People can communicate more. We want to do this on a large scale. We

have tested similar format already twice – at the Tallinn Freedom Square on 9 May, at the event celebrating Europe Day, and at the Estonian Opinion Festival in Paide, a small town in the middle of Estonia. On Europe Day, we simply had a small table and our large heart symbol and passively waited passers-by coming to talk to us – it was a pop-up action. At the Opinion Festival, we had our own tent and organised a "talking circle" with an open mike, which we had also advertised on the social media few days in advance. Very different people – from a 15-year-old school-girl to a few retired persons in their 70s, from all across Estonia – came to sit in a circle and expressed their opinion to the open mike. We also live-streamed it on our Facebook page. In both cases, the conversations went well. There was no angry exchange or anything like that, it was all polite and respectful. We realised that there is completely different chemistry when you speak to people or when you actually listen and initiate a dialogue.

What was the reaction of the authorities?

They were quite cool, they did not say much. But EKRE and its media outlets and social media channels, of course, started a certain fake news campaign against us: [they said] that we are for mass immigration, we are a tool of globalists, [linked with] Soros, and the usual lies. But governmental authorities were very calm about us. It is fine. But some people were cautious – or even afraid – to become publicly involved or support us because they saw us as too political. When I say afraid, I mean they did not want to sign up or support us publicly when we published a list of who initiated Kõigi Eesti.

You mentioned some of the challenges you face as a young movement, like raising funding and move outside the city... Do you face other challenges as a grassroots movement and do

you plan to establish an official NGO?

We are actually already an official NGO. We registered as NGO immediately because the donations – by several Estonian entrepreneurs and private individuals – needed to be registered and transferred to an official bank account. The next phase is to set up a back-office: we need at least one or two people working full time to communicate and coordinate our activities. Money and time are the two big challenges: in the last five months, I have put a lot of my time into coordinating Kõigi Eesti, and at the same time, I still have my media outlet to run. Everyone else is the same. For a month or two, many people put a lot of their time in Kõigi Eesti. In summer, we slowed down our activities because people needed to have a rest and catch up with their own work. The third challenge is being aware all the time and being a watchdog of what government is doing. One of the dangers is what happened in Poland and Hungary – people get used to that new normal. Just last week the leader of EKRE attacked Tallinn University – the third largest and third best university in Estonia – in very nasty terms saying that the university's output is not scientific and it has been producing "horse thieves". We reacted immediately on our Facebook page, releasing a statement in defence of the university (which is fact-based). But this is one of the examples of how you always have to be alert. A lot of people in society seem to get used to it. People just need to go on with their normal lives. They do not have time and energy to fight. We need to mobilise also within ourselves to be constantly alert.

Tacking the opportunity that you are also a journalist... What are the challenges that journalists face?

With three Estonians, we founded a private independent outlet, Estonian World, and we have managed to survive thanks to private support. We are proud that we are

independent, especially in a situation like this, where the democratic institutions and the foundations of liberal democracy are being tested. No one can tell us what to write, and we have been vocal about these issues. But, as an independent outlet, it is very difficult to survive and be sustainable. We need more support for that. EKRE's MP and deputy chair Martin Helme also attacked our public broadcaster ERR while they were still negotiating to form the government (he became Finance Minister). When he attacked ERR and said that some journalists there are not impartial or neutral and should be "held accountable", he was publicly supported by at least one politician of Isamaa party (in English, Fatherland) which is a traditionally conservative party, not far-right. One of their politicians, a former journalist, published an opinion article in which he supported the criticism against our public broadcaster. Furthermore, he listed several names of journalists at ERR whose integrity should be questioned. That was the big red flag for many journalists, including me. Luckily, there was a big storm after that; people started defending ERR and their integrity. ERR's chairman was forced to make a statement – though there was a lot of criticism about ERR chairman because he was quiet for a while instead of defending his journalists. Eventually, he issued a statement saying

BY BRINGING OUT THE VALUES THAT ARE IMPORTANT TO US – REGARDLESS OF GENDER, RACE, RELIGION OR OTHER IDENTIFIERS – WE WANT TO STRESS THE POSITIVE ONES THAT UNITE US



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that ERR is impartial, no one can tell them what to do.

There's been an issue with Postimees, the oldest and largest daily newspaper in Estonia. Reporters Without Borders, an international organisation that conducts political advocacy on issues related to freedom of information and freedom of the press, has expressed concern about Postimees and has called the newspaper's owner, Margus Linnamäe, to respect the editorial independence of the daily. The editors of five sections of Postimees have resigned or have been forced to resign in the past year. The editors of the news, business, investigations, sports and op-ed sections have left because of Linnamäe's attempts to turn Postimees into a propaganda mouthpiece for his conservative and nationalist opinions, Reporters Without Borders said. According to Reporters Without Borders, Linnamäe has told his staff that "not all opinions are worth repeating, only the good ones". Until now in Estonia we have had complete press freedom: we were 11 in last year's Reporters Without Borders Press Freedom Index. It is a good number, but it could go down after what happened here.

Do you think that the European Union could be an ally in your fight and, more broadly, for the fight of the movements fighting against the far-right all across Europe? How?

I think it would [help] if there was a pan-European collaboration between civil society and movements. When you say that something is supported by the European Union, immediately it would be resented by the far-right and some others like radicals and populists. "Brussels is saying what to do in Estonia", this is the weapon they use. But I think that the European Union should definitely encourage this sort of cooperation between citizens' movements and find ways to support that. As for journalists, I think it would [also] be good if there were some pan-European cooperation between independent journalists and media: that would help with the know-how and with funding. All those things are happening across Europe, we are all in it together, so there is definitely a need for more collaboration and [exchange of] know-how among us. ■



FRANCE

Civic space in France is rated "narrowed" on the CiViCUS Monitor

The associative sector in France is strong, mature and growing, with averagely 70 000 new associations each year.¹ It is a recognised economic force. A sizable part of associations deals with human rights and civil liberties issues. Associations are quite vocal on rights' violations, as well as on advocacy towards policy-makers. France has a strong associative and mobilisation culture, with thousands of assemblies and protests, carried out peacefully every year, most often led by associations and trade unions. While fundamental freedoms are protected by the law and generally respected, civil society and civil liberties have been put under increasing pressure since 2015, when the state of emergency was introduced in response to the terrorist attacks. More recently, the heavy-handed state response to the unstructured and leaderless Yellow Vests movement is also bringing at the forefront police violence that has already a long story rooted in the discrimination of vulnerable groups in poor suburban "ghetto" areas.

¹ Chiffres 2017 - Le paysage associatif français, Le Mouvement Associatif

THE SECTOR IN NUMBERS (2017)

Population:
66.77 million

Number of associations:
1.5 million

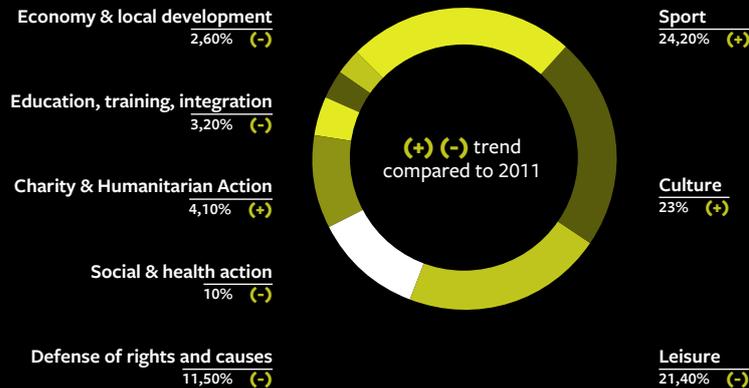
Number of employees:
1.8 million

Number of volunteers:
22 million

89.4% (+) of associations are only composed of volunteers

159,000 (-) employing associations

DISTRIBUTION OF ASSOCIATIONS BY FIELDS OF ACTIVITY



THE ECONOMIC WEIGHT OF THE SECTOR

The associations' budget amounts to

113 billion euros in 2017.

+10,2% compared to 2011

It represents **3.3%** of national GDP

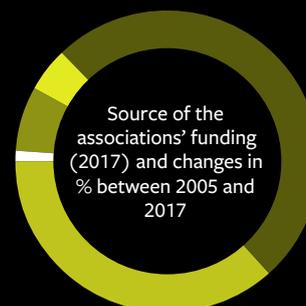
Private donations and sponsorships
4,60% **-0,2%**

Other
6,50% **-3,5%**

EU funding
1% =

Public funding
37% **-3,4%**

Own funding (fees and economic activities)
50,90% **+6,9%**



SHIFTING TOWARDS A PREVENTIVE APPROACH TO MAINTAINING PUBLIC ORDER

Restricting the right to demonstrate from exception to routine

By Arié Alimi, Ligue des droits de l'Homme

58

The Charter of Fundamental Rights of the European Union guarantees the right to freedom of assembly and association (Article 12) and the right to freedom of expression and information (Article 11). The French constitution protects freedom of expression, assembly and demonstration. However, in practice, civil society in France is increasingly under attack, resulting in a restriction of access to public space and an increase in the criminalisation of civil society actors.

Despite the strong reactions of all human rights organisations in France and European and international institutions (the Commissioner for Human Rights of the Council of Europe, the European Parliament, the UN High Commissioner for Human Rights and the UN Special Rapporteurs), the government has not ended these severe violations of the right

to protest and has done nothing against the physical damages inflicted to protestors.

RESTRICTING THE RIGHT TO PROTEST FROM EXCEPTION TO ROUTINE

The right to assembly has been severely attacked since the *state of emergency* that was set up following the attacks of 13 November 2015 and repeatedly extended by the Parliament upon the proposal of the government for nearly two years.

The *state of emergency* gave the Prefect, that represents locally the government, the power to carry out house searches without the authorisation of a judge. Many violent raids at night have been reported. Police officers entered a house tearing down the front door, handcuffing people in the house, sometimes violently and in the presence of children.

It also gave the government the power to keep people under house arrest because of alleged elements that could link them to a terrorist threat. House arrest consisted in confining a person in a place from 8 p.m. to 7 a.m. with the obligation to report to a police station up to three times a day. These restrictions prevented any normal

**THE RIGHT TO
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NOVEMBER 2015**

work or family life. Victims of these administrative decisions reported the loss of their job and income and “de-socialisation”. Most of the people were targeted by these decisions for practising

Islam, based on abusive denunciations from neighbours or employers. This mechanism should only have been implemented in exceptional situations such as combating the terrorist threat.

However, it also legally justified restrictions to the right to protest against activists beyond the risk of terrorism. In December 2015, several environmental and left-wing activists were placed under house arrest under the provisions of the *state of emergency* in order to prevent them from demonstrating in the context of the 21st United Nations Climate Change Conference (known as the COP 21). Nevertheless, the Council of State, the administrative court of last resort that rules on the legality of administrative decisions, validated its use against these activists on the grounds that this decision allowed the police forces to be more available to fight the terrorist threat. Similarly, a large number of ordinances were issued by Prefects prohibiting social protests which did not represent a terrorist threat. For example, in spring 2016 the movement led by trade unions against the Labour Law, known as the El-Khomri Law, which aimed to remove certain protective provisions for employees from the Labour Code, was targeted by numerous administrative bans to demonstrate. The bans on demonstrations have multiplied with increasingly wider geographical perimeters, sometimes to include entire cities, such as the whole Paris territory (see infographics).

In October 2017, a new law « *to reinforce internal security and fight terrorism* » (*loi renforçant la sécurité intérieure et la lutte contre le terrorisme, (SILT)*) was adopted. It transposed some of the exceptional

Breakdown of police violence against the Yellow Vests since November 2018

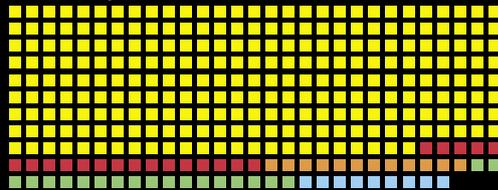
SOURCE: ALLÔ PLACE BEAUVAU ? [HTTPS://ALLOPLACEBEAUVAU.MEDIAPART.FR/](https://alloplacebeauveau.mediapart.fr/)

“ALLÔ PLACE BEAUVAU”

Types of injuries

Updated on 22/11.2019 at 12:27

316 head injuries



18 hand injuries



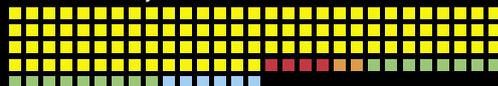
28 back injuries



75 upper limb injuries



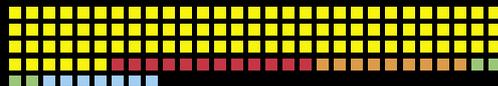
131 lower limb injuries



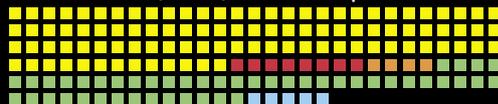
4 injuries to the genitals



125 others, not indicated



164 Intimidations, insults, restrictions on press freedom



“Allô Place Beauveau” is a database of police violence against the “Yellow Vests” movement in France by the freelance reporter David Dufresne. Each case is documented – photos, videos, medical certificates, complaints – and classified based on type of injury caused, type of weapon, location, law enforcement involved.

861 reports

2 casualties

316 head injuries

25 blinded

5 lost a hand

Breakdown of the victims

636 protesters

49 minors and high school students

28 Passersby

115 journalists

33 doctors

Official figures (Ministry of the Interior) as of 21.11.2019: 2,448 wounded, 561 reports filed with the police disciplinary body (IGPN), 313 criminal investigations, 8 administrative investigations, 23 criminal investigations by the gendarmerie disciplinary body (IGGN), 212 investigations reported to the Prosecutor’s Office, 19,071 LBD shootings, 1,428 flash tear gas grenades, 5,420 de-embarking grenades, 474 injured gendarmes, 1,268 injured police officers.

SIMILARLY, A LARGE NUMBER OF ORDINANCES WERE ISSUED BY PREFECTS PROHIBITING SOCIAL PROTESTS WHICH DID NOT REPRESENT A TERRORIST THREAT.

powers of the Prefect into ordinary law, including the power to place individuals under house arrest and surveillance and to delimit “security” perimeters in cities. It also gave primacy to administrative measures in the fight against terrorism leading to the establishment of a *posteriori* rather than a *priori* judicial review¹.

THE ROUTINISATION OF THE VIOLENCE BY POLICE OFFICERS

In the contexts of demonstrations, new technics were introduced in police practices. When demonstrations were not banned, the doctrine of “maintaining public order” contributed to significantly restrict the effective exercise of the right to protest. Among these practices, we saw the repeated use of the “kettling” technique, consisting of encircling a large number of demonstrators for several hours and immobilising them.

Many people were injured as a result of disproportionate use of violence and, more specifically, the use of weapons introduced in the arsenal of police units. In particular, the LBD 40, a successor of the Flash Ball, caused numerous serious injuries to the demonstrators, as did the

GLI F4 explosive grenades, composed of 26 g of TNT and very aggressive tear gas, and the dispersal grenades that emit rubber pellets at very high speed. This disproportionate use of bludgeoning and tear gas has become a deterrent against demonstrations.

The use of these weapons increased considerably since December 2018, when the so-called Yellow Vests movement was starting to peak. This movement, differently from movements organised by trade-unions or civic organisations, does not have recognised leaders nor an operational structure. Its actions have been marked by various acts of violence perpetrated by some of the people joining. The reaction of the State showed police violence to a level rarely seen for many decades. Some journalists, such as David Dufresnes through Twitter, have been able to count hundreds of seriously injured people, including twenty-five people losing an eye and five who had one hand ripped off (see infographic). It should also be noted that a woman died in Marseille after receiving a tear gas grenade on her face while she was at her window on the 5th floor.

The state violence results from a change in the doctrine of policing during demonstrations. In that framework, the objective of the police has traditionally been to keep the violent demonstrators at a distance in order to prevent as much as possible

MANY PEOPLE WERE INJURED AS A RESULT OF DISPROPORTIONATE USE OF VIOLENCE AND, MORE SPECIFICALLY, THE USE OF WEAPONS INTRODUCED IN THE ARSENAL OF POLICE UNITS.

having participants been injured. Now, the routinised use of weapons inside demonstration creates a climate of fear among the demonstrators conducive to a disincentive to demonstrate. Additionally, the deployment at the frontlines of police officers poorly prepared to policing assemblies with commands often unexperienced has been well-documented even by gendarmes (another law enforcement agency) who have repeatedly refused to intervene using this approach.

JUDICIARY PROCESSES INSTRUMENTED THROUGH SO-CALLED PREVENTIVE ACTIONS

Civil society has become regularly a target of the judiciary, which is increasingly “instrumentalised” by the government through Public Prosecutors (In French: Procureurs de la République). The Public Prosecutor is a judge who has the power to initiate criminal prosecutions. The European Court of Human Rights has several times ruled that Public Prosecutors should not be considered a judicial authority as they are not independent of the government. They act under the authority of the Ministry of Justice, which has the power to appoint them and to give them instructions on general criminal policies. Despite this lack of independence and the numerous criticisms of

¹ Office of the High Commissioner for Human Rights, Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E>, 2018.

18 MONTHS OF STATE OF URGENCY

(Nov. 2015 – March 2017):

155 demonstrations banned

639 individuals prohibited from attending demonstrations:

21 linked to demonstrations for COP21, **574** to the protests

against the labour law

Source: Amnesty International France (2017)

their status raised by the European Court of Human Rights, they hold very significant power, particularly with regard to protesters.

In December 2018, an emblematic episode was the arrest of 152 high school students in the low-income neighbourhood of Mantes la Jolie during a demonstration against draft legislation creating a selection for the admission to a university. A video posted online by police officers showed these 152 high school students, mostly minors, kneeling, arms on their heads and sometimes handcuffed, left in this position for two hours. In addition to the humiliating nature of this posture, which evokes images of France's colonial past, these minors were placed in police custody in unacceptable conditions. This event created an emotional reaction that went far beyond France. Later, the Ministry of the Interior sued a trade union for defamation after it published a poster showing a police boot crushing a stuffed toy covered in blood. This judicial procedure is still ongoing.

With the Yellow Vests movement starting in November 2018, the judicial mechanism evolved to a more coordinated work between Prefects and Public Prosecutors to establish a system of so-called "preventive" arrests. This mechanism has allowed widespread use of identity checks, bag searches and car inspections before Yellow Vests demonstrations. It aimed at systematically arresting people suspected of wishing to participate in the protests². These arrests resulted in two days of police custody to prevent the persons from taking part in the demonstrations. Police custody is part of the Public Prosecutor's powers to allow the detention of a person against whom there are grounds for suspecting that they have committed an offence or a crime, by

² Note of the editor: In mid-January, LDH reported "More than 5,500 arrests, some of them preventive even before the rallies, thousands of detainees and more than a thousand severe sentences have been recorded." Read more: <https://www.ldh-france.org/manifeste-sans-risque/>.

questioning him or her about the charges brought against them. At the end of these two days, the authorities often carry out a *rappel à la loi*, meaning *reminder of the law*. The Public Prosecutor has the power to remind a person of the law they have violated. It is not a court decision following a trial. A very large number of people have been the subject to such *rappel à la loi*. Although the *rappel à la loi* does not imply a conviction, it makes it possible to file a judicial record of the persons who are subjected to it, even if they committed no offence.

Alternatively, *immediate appearances* before a Criminal Court have been carried out leading to remand or permanent detention on the grounds of the offence of "grouping with the purpose of committing violence or degradation". The *immediate appearances* are short trials held at the end of a period in custody and used to speedily prosecute people when the offences charged are minor or committed in flagrante. This procedure, which should be in principle exceptional, has become a norm in criminal proceedings. The problem is that the accused persons have at their disposal extremely short time to

prepare their defence with a lawyer, often only a few minutes. The extensive use of this emergency procedure with the Yellow Vests has led to a considerable number of convictions, often for the sole reasons they wanted to take part in a demonstration (see infographics). This means that the judiciary has started adopting a preventive approach to maintaining of the public order, whereas its traditional function was only to punish acts already committed or about to be committed and proven by the prosecution.

In April 2019, a new law ("*loi visant à renforcer et garantir le maintien de l'ordre public lors des manifestations*") dubbed « anti-rioters » has further toughened the doctrine, providing the authorities with the



THE AUTHOR

Mr Arié Alimi is a lawyer for the French League of Human Rights (LDH). He is a lawyer at the Paris Bar with over 15 years of professional experience. In 2002, he founded his law firm Arié Alimi Avocats and developed a specialization in commercial real estate law. Mr. Alimi is also a recognised specialist in criminal law, labour law and corporate law. He was the lawyer of Nabil Koskossi, a Palestinian defender and initiator of a demonstration in Sarcelles, and he is also the lawyer of Rémi Fraisse's family in a case of police violence. Arié Alimi is also a lecturer in legal liability and criminal law at the University of Paris X Nanterre.

WITH THE YELLOW VESTS MOVEMENT STARTING IN NOVEMBER 2018, THE JUDICIAL MECHANISM EVOLVED TO A MORE COORDINATED WORK BETWEEN PREFECTS AND PUBLIC PROSECUTORS TO ESTABLISH A SYSTEM OF SO-CALLED "PREVENTIVE" ARRESTS

IN APRIL 2019, A NEW LAW DUBBED "ANTI-RIOTERS" HAS FURTHER TOUGHENED THE DOCTRINE, PROVIDING THE AUTHORITIES WITH THE POWER TO SEARCH BAGS AND CARS IN AND AROUND DEMONSTRATIONS

power to search bags and cars in and around demonstrations if requested by the Prosecutor. It also established the "crime" of covering, even partially, one's face during demonstrations, punishable with one-year imprisonment and a 15 000 Euro sanction³.

REPRESSION OF THE OBSERVATION OF POLICE PRACTICES

This criminalisation of the right to protest has also resulted in an increasing number of prosecutions of journalists while exercising their function and members of NGOs monitoring police practices during demonstrations. For instance, in the framework of the civil society actions

taken during the G7 that took place in Biarritz in August 2019, three female observers from the Ligue des droits de l'Homme were arrested in Bayonne, although perfectly identifiable as observers and able to prove their credentials. They have been placed under police custody under an accusation of carrying some protective equipment for their safety. Similarly, several journalists were arrested during the demonstrations and prosecuted on the same basis of carrying protective equipment and therefore "identified" as demonstrators who allegedly could commit violence or degradation. During these demonstrations, journalists and members of NGOs were also targeted by numerous incidents of police violence as it was extensively reported (see infographics).

THE GOOD NEWS REGARDING THE CRIMINALISATION OF ASSISTANCE TO MIGRANTS

Another front that should be assessed in relation to civic space in France is the repression of activities assisting migrants. Many legal proceedings for facilitating illegal immigration have been opened against individuals or associations helping migrants and unaccompanied minors at risk in the Roya Valley located on the French side of the border with Italy. This offence is commonly referred to as "solidarity offence". After several convictions,

the French Constitutional Council, which is in charge of ensuring that the law complies with the constitution, has overturned several of these prosecutions by constitutionalising the principle of fraternity which is now to be applied to actions as those prosecuted. NGOs protecting migrants in the Mediterranean Sea have also been the target of verbal attacks by the Ministry of Interior accusing them of "*playing the game of the smugglers*", i.e. of being accomplices in criminal offences related to illegal immigration. These attacks mirror some by the former Italian Interior Minister Salvini.

CONCLUSION

All these developments in police practices and judicial behaviour are taking place in the context of a general deterioration of the rule of law. We are witnessing the regression of standards and the development of mass surveillance tools without any real control mechanisms or accepted counter-powers.

This trend is affecting many countries that are considered democratic, where governments have chosen to reduce civil liberties in the name of measures presented as increasing security under the wrong assumption that both should evolve as communicating vessels. The consequent moral relativism is reflected in police practices that were unimaginable for decades. ■

The text was written in French and translated.

CRIMINALISATION OF THE YELLOW VESTS SINCE NOVEMBER 2018:

2,907 protesters arrested

1,304 (nearly half) of the arrests dismissed

515 immediate court proceeding

30 investigations were still ongoing.

Source: Paris Prosecutor (as of May 2019)

On the 19th of July 2016, the young Adama Traoré, aged 24, fearful of a police identity check, flees and ends up being brutally arrested in Beaumont-sur-Oise, a Parisian suburb. His arrest by prone restraint leads to his death, in the police station. The circumstances of his death have been largely commented and analysed in the French media for the past three years. Whether he fled for good reasons or not, he should not have died. The “struggle for Adama” began then. His family, with the lead of his sister, Assa Traoré, fights for the truth about his death to be recognised. “Justice and Truth” is what Assa is asking for. The Comité pour Adama settled with this aim has become very well-known in France. It has become the symbol of the struggle for all victims of police mistreatment without justice. It is a fight against violence from the police, against impunity for public officials, and, by extension, for the right to live and to be safe whether you are white, black or Arabic, whether you are rich or living in a poor neighbourhood. In July we interviewed **Assa Traoré**, who has since become the target of four lawsuits by gendarmers and police officers she publically accused of being accomplices to the death of her brother and covering the truth, and activist **Almamy Kanouté**. Their struggle is not over.

Camille Champeaux, Project officer at the Centre de recherche et d'information pour le développement (CRID)

FIGHTING FOR JUSTICE AND TRUTH FOR VICTIMS OF MISTREATMENT BY THE POLICE

Police violence has a long history in the suburbs

Interview with Comité pour Adama

63

Can you tell us your brother's story and the events of July 2016 in Beaumont-sur-Oise?

ASSA TRAORÉ: On July 19th, my brother's day began at 10 a.m. when the local town hall called us to inform that his identity card was ready. This ID had a very important role that day. Unfortunately, Adama never had time to pick it up, and when he met the gendarmes who were checking the identity of his brother Bagui to arrest him¹ around 5 p.m., Adama did not have his identity document.

Like all the young boys in the suburbs, like all black or foreign origin men when they do not carry their identity document, Adama immediately felt scared. He ran away from the police checkpoint, even though he was not the one they were looking for.

This was 2016, but this experience is undoubtedly the inheritance of France' slavery and colonisation times. As Elsa Dorlin wrote in one of her books, the first French passport was created for slaves. It was okay to beat a slave on the street if he was caught without an identity document. In 2016, my brother was still killed because he did not have that shield in his pocket, he did not have that bulletproof vest, he did not have his ID. In France, today, young people of colour who do not have this shield, this identity document, can die as a result.

That day, my brother ran away. The police chased him. At first, he was knocked in front of the Town Hall. He ran again to hide in the apartment of a person he knew. There, the police subjected him to prone restraint²: he was kept by police officers with his face to the floor with over 250

kg weight on top of him. This immobilisation technique is prohibited in several European states, but it is still used in France leading to the death of many black and Arab people arrested by the police. That day, Adama told them "I can't breathe anymore", but they continued to compress his rib cage. They put him

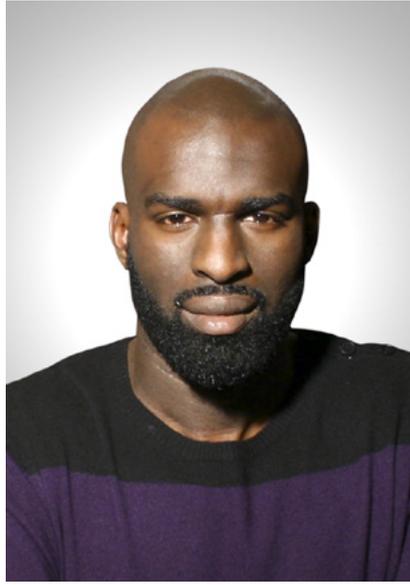
LIKE ALL THE YOUNG BOYS IN THE SUBURBS, LIKE ALL BLACK OR FOREIGN ORIGIN MEN WHEN THEY DO NOT CARRY THEIR IDENTITY DOCUMENT, ADAMA IMMEDIATELY FELT SCARED.

¹ Note of the editor: This was linked to an open investigation.

² Note of the editor: Prone restraint means a restraint in which the targeted person is held face down to the floor.



Assa Traoré



Almamy Kanouté

in their vehicle. There again Adama told them “I can’t breathe anymore”; he urinated on himself. Yet, they did not take him to the hospital even though the hospital was only two minutes away. Instead, they took him to their barracks, the gendarmerie. They left him in the yard. They let him die.

Later, when the firemen arrived at the scene, he was handcuffed, his stomach against the ground. The police later said they had given him first aid and put him in the recovery position³. Though, thanks to our lawyer Yacine Bouzrou we found out that the first-aid doctors’ reports were missing. According to these reports, when the firemen arrived at the gendarmerie, Adama was not in the recovery position. He had not been given first aid. A fireman asked the police to remove the handcuffs, and the police answered: “No, he’s faking it!” The fireman insisted that “He is a 24-year-old young man; it is not possible

³ Note of the editor : The recovery position refers to one of a series of variations on a lateral recumbent or three-quarters prone position of the body, in to which an unconscious but breathing casualty can be placed as part of first aid treatment.

to let him die”. My brother’s death was officially declared at 7:05 p.m.

The day went on. Someone came to see my brother, Samba: “Adama had a heart issue, go see if he is in the hospital”. My family went to the hospital, but Adama was not there. Samba called the fire brigade, who tipped him directly towards the gendarmerie. This was abnormal.

Around 9 p.m. Tata, Adama’s mother⁴, went to the gendarmerie explaining that she had heard that her son had felt unwell and that she wanted to see him. The response was: “Your son is fine; you can’t see him, it’s late.” She asked whether it was necessary to call a lawyer. The gendarmes replied that “If Adama needs a lawyer, we will call a lawyer”. She said a sentence that makes sense today: “If anything bad happens to my son, I will sue you”.

Fifteen minutes later, my other brother Yacouba brought three sandwiches to the gendarmerie: one for Bagui, one for his friend and one for Adama. The gendarmes took them – so he felt that something weird was happening. At this point,

⁴ Note of the editor: Adama and Assa are step brothers.

rumours had started spreading; people had begun gathering in front of the gendarmerie. At around 11 p.m. Yacouba put his foot in front of the door of the gendarmerie, blocked it and forced himself in. He went to see a senior officer, and he was told: “if we tell you something, will you take it the wrong way?” Of course, my family said “no” as the possibility of death never crossed their mind. That is when the police told them that Adama Traoré was dead. It was around 11:15 p.m. So the death had been hidden for several hours. Uprisings started taking place in the neighbourhood. As for Yacouba, he was put in prison for “violent intrusion into the gendarmerie” because he obstructed the door with his foot. We went to pick him up from prison one year later, on July 19, 2017. The revolts lasted several days in the neighbourhood. The Prosecutor immediately communicated that Adama Traoré was under the influence of alcohol and drugs, that he had died of a severe infection, linked to his heart. This was false. We knew our brother very well. That is when we realised that we would have were going to have to fight for the truth. Three days later, we were summoned to the prefecture of Cergy-Pontoise. We were informed that authorities had taken the liberty of contacting Air France and the authorities of Charles De Gaulle Airport in Paris so that my brother’s body could be sent to Mali the day after. We

THE POLICE SUBJECTED HIM TO PRONE RESTRAINT : HE WAS KEPT BY POLICE OFFICERS WITH HIS FACE TO THE FLOOR WITH OVER 250 KG WEIGHT ON TOP OF HIM

told them “no”. We asked for a counter autopsy. Babacar Gueye, who died in 2015 after being shot by the police with five bullets in his body was not that lucky. His sister did not speak and read French very well. The authorities sent his body directly to Senegal, without an autopsy.

Authorities often play on the fact that many citizens do not know how to exercise their rights. They tried with us as well, but the doctors had told us not to take Adama’s body out of France: the body would be contaminated and it would not have been any longer possible to do a second autopsy. This is why we made a brutal gesture: we refused the body, although we are Muslims and in our religion, the body must be buried within three days from the death. We were right to do so. The counter-autopsy revealed that Adama Traoré did not die of a severe illness, nor of alcohol or drug consumption. Our lawyer then asked the prosecutor Yves Jannier to be removed from the case. This happened three weeks later when the case was relocated under the jurisdiction of the Paris Prosecutor. The fight continued. In August we went to Mali, we buried my brother.

When the case arrived at the Paris Court, in January 2017, three judges requested further expertise – a rare occurrence in cases of police violence. We already had two expert opinions, one refuting and the other one confirming the causes of heart disease and severe infection. The result of this further autopsy was released in September 2018. One of the experts, specialised in cardiology, demonstrated that Adama did not have any heart problems: he had an athletic heart. An expert on infections said that he did not have any severe infections. However, Professor Barbet, a forensic expert, concluded that Adama Traoré had sickle cell disease. As he ran 480 meters in 15 minutes, he died out of breath.

We asked for a new counter-autopsy, but the court refused it. We carried it out anyway and paid for it. It was released in

February 2019, made by internationally recognised specialists who confirmed that Adama did not die of an illness. He died of suffocation following his arrest. On the morning of the reveal of this expert report, the gendarmes wanted the case to be closed. However, the judges decided to reopen it that very evening. We filed a complaint against the first expert who stated that the cause of death was a heart disease because the cardiologist of the counter autopsy confirmed that there was no evidence of any heart disease. We discovered that this first expert had been summoned twice by the Order of Physicians for unethical conduct due to false expertise.

Today, that is where we stand.

Your fight for truth and justice has taken on a national dimension, but it is still very locally organised, right?

ASSA TRAORÉ: From the start, the fight was carried out locally. The strength of the fight is its local dimension. For one year, we did a massive work locally, and only then we asked people from outside to join. The “Comité” was not created by anyone specific; it was really something that was done collectively. It was a local fight that was fought by the local community. People came from the neighbourhood; the fight is fought inside the neighbourhood with the people from the neighbourhood. But then, from the very beginning, Almamy Kanouté, who is here, and several activists and campaigners joined: Almamy Kanouté, Youcef Brakni, Samir and photographers Noman and Anne-Charlotte, there were Adama’s friends, my brothers. All of them have a very important role. Tell us, Almamy, what is your role?

ALMAMY KANOUTÉ: As activists, we are supposed to be at the service of families or people who need support, protection. We are simply available with our experience, but it is the Traoré family that makes the choices and takes the decisions. Even for external relations, it is the family who

FROM THE START, THE FIGHT WAS CARRIED OUT LOCALLY. THE STRENGTH OF THE FIGHT IS ITS LOCAL DIMENSION.

decides with whom to work or not, with whom to exchange or not. It is like this also for today’s interview, it is like this with any European network.

ASSA TRAORÉ: All these activists, Almamy, Youcef, Samir and the others, had a very important role since they already knew the environment of such a situation, which my family and I did not know. It was crucial in order not to fall into misguided exploitation by people who were there to use our story. Immediately, they helped us to protect our story and to say that no one would speak on behalf of the Traoré family except the Traoré family. I think that this is also one of the Comité’s strengths: no one is speaking for us.

The Comité Adama is indeed a local struggle. But if we are here today, with you from the European Civic Forum, it is a sign that our base is solid. It has been three years since the death of Adama, and the fight would have already run out of steam without people all across the country saying “We are going to march”. On Saturday (July 20, 2019), a march will be held from our home with the residents of the neighbourhood. The security and the kitchen will only be done by the local people. The base is there, and that is what supports us today to reach out to other cities. You say this is the fight for Adama, in fact this is the fight for all the other Adama Traoré. This fight is about the invisibility of our suburbs. We said this is the fight we are taking with the suburbs. We are not going to fight FOR the suburbs, we are going to fight together WITH the suburbs. I am not a spokesperson [for the fight], I am



only a spokesperson for my family, and I am Adama Traoré's sister.

The goal is for the voices of all these people in the suburbs to be heard and for people to say "Their voice is as valuable as anyone's". Their word must be visible. Our role is to show that they are there, but no one will speak for them. The goal is to have spokespersons chosen everywhere in the suburbs and to have their voices as strong and powerful. That is right: not to speak for them, but for them to speak.

AS THE FAMILY MEMBERS SAY: "WE WEPT ADAMA ONE DAY, THE NEXT DAY WE WENT INTO BATTLE".

Almamy, why did you decide to support the Comité Adama among so many others?

ALMAMY KANOUTÉ: First of all, the suburbs rose up. We can go back to 2005 when Zyed and Bouna died while escaping police controls. There was a lot of anger, which was expressed spectacularly. The violence of the people has turned against their own space, and this can be shocking. When people start destroying their own living space, it is because they have reached their limit. In the case of Adama, his story had a similar effect in the suburbs; the press took hold of the damage caused, the fire, the riotings. This had an international impact.

France is concerned when its image is tarnished at the international level, so the government was forced to answer questions in the Assembly. Unfortunately, as it often happens in these cases, they defended the police and justified this repression. They justified the violence against Adama like it was legitimate. This response of incriminating victims of police violence is systemic — however,

this time they had to face a family that decided to stand up.

As the family members say: "We wept Adama one day, the next day we went into battle".

Nowadays, with the Yellow Vests mobilisation, the issue of police violence is central, and as we see not new...

ASSA TRAORÉ: There is one thing I insist on: we worked on the issue of police violence for two years, but we learned from what happened in 2005 when the people in the suburbs stood up, fought. A lot of kids went to jail; it turned out negatively. The Comité Adama worked for the past two years to make this fight against police violence a priority. Had it been a priority before, maybe my brother would not have died. Today's violence against the Gilets Jaunes is a fact in itself, but when we discuss it, we need to be very accurate. I warn journalists: "Yellow Vests do not legitimise the fight against police violence in our suburbs". On the other hand, when the Yellow Vests talk about police violence,



Mobilisation against police violence. February 2019.

© FACEBOOK PAGE "LA VÉRITÉ POUR ADAMA"

they are told: “Be careful, there is a long story behind.”

It starts in the suburbs, all those young people who died... and my brother. I tell them, many young people of colour have been suffering police violence for long. Today, we will join with the Yellow Vests in the fight against police violence keeping in mind the history of this violence that dates back long, long before 2018. It has roots in France’s history of slavery and colonisation.

With the Yellow Vests, many people are becoming aware of police violence. When we call on the Yellow Vests to go on together in this fight, it is to be reminded that there have been battles and struggles that have been fought long before. We are not asking them to legitimise Adama’s fight, they can just learn from his story.

Beyond the French perspective, there are movements against police violence on black people that are increasingly asserting themselves throughout Europe

WE ARE NOT GOING TO TALK ABOUT A CONVERGENCE OF STRUGGLES. TO TALK ABOUT CONVERGENCE IMPLIES THAT THESE STRUGGLES ARE SEPARATE, WHILE WE ARE ALL FIGHTING FOR THE SAME RIGHTS.

and the world: the Black Lives Matter campaign, for example. Are you in contact with other fights outside France? Do you have links with other movements?

ASSA TRAORÉ: There are Comities that have been set up all over the world. We went to Canada with Almamy, he also went to

Kenya. We went to Italy, and we are going to Germany soon, then Spain. We saw people from the US Black Lives Matter last weekend; we call on them to support our movement too.

ALMAMY KANOUTÉ: We have many similarities with the movement in North America. That said, we are not going to talk about a *convergence of struggles*. To talk about convergence implies that these struggles are separate, while we are all fighting for the same things, for the same rights. We build relationships on common points, without trying to get everyone with our banners. In France, we consider that we all represent a hand, but this hand is open, it is harmless.

The “Comité” has always been open to cooperation with other organisations, even if we have to be vigilant about certain organisations pushing their own agenda through our fight. We really hope that one day the organisations opposing police violence can create a true coalition, with common funds, and that we can reduce the legal costs for families by supporting them. That would be a huge step



forward because we are facing a power system that regularly covers the perpetrators of crimes, whether financially, politically, in the media...

We have no member of the Parliament to support us, to speak for us in the National Assembly. We hoped that some of the MPs who had more or less taken a stand in the Adama case would take symbolic action, like the American MPs after the Trevon Martin case, where they put on a hoodie in Congress. We just see that this did not happen.

Would you expect some help could come from the European level?

ASSA TRAORÉ: Of course! The day when Europeans will have seen enough and will denounce what France is doing. We must show other Europeans and the rest of the world that France is a racist country, a country where human rights are not respected, where there are inhuman treatments and violence. That is the work we are contributing to. French authorities are afraid that other countries will point the finger at France. It will hurt them to be denounced like the United States are.

Since 2016, the Government in France has changed, but has anything changed for the “Comité”, have you felt a change in the attitude of

the authorities towards your demands?

ASSA TRAORÉ: Not at all. On the contrary, this government is even more repressive. We are facing a war machine that has no feelings, no moods, no remorse. Fortunately, from the beginning until now, the strength we have is in the “WE”. WE, the Yellow Vests. WE, the citizens. WE, the suburbs. Whether or not you are subjected to violence, [regardless of] your sexual orientation, religion, hair colour... we have to go together because none of us is represented in this political system.

FACED WITH INJUSTICE, WITH HOSTILE MEDIA, WITH THE POLITICAL POWER OF THE FRENCH STATE, WITH ITS VIOLENCE, A GROUP OF INHABITANTS – A FAMILY – HAVE SUCCEEDED IN CREATING A BALANCE OF FORCES THAT WE HAVE NOT SEEN IN THE 2000S

I am referring to all political parties, whether they are from the left or the right, in no way they represent us. They are part of a system where they share power and responsibilities. This is a system that stifles us at best. That is what we want to incorporate in the public debates with the book *Le Combat Adama*.

We question this power and how it is distributed in the system: what is the role of the prosecutor and the police in this repressive system? How can we dismantle it? How can we occupy public space? How can our messages be heard?

ALMAMY KANOUTÉ: People are used to standing still, they tend to be in a sort of wait-and-see attitude, so it seems that nothing is moving forward. The book *Combat Adama* demonstrated a balance of power. Faced with injustice, with hostile media, with the political power of the French state, with its violence, a group of inhabitants – a family – have succeeded in creating a balance of forces that we have not seen in the 2000s. And when the Comité Adama dares responding to a press release from the Prefecture of Police, dares responding to statesmen and stateswomen who convey lies, it necessarily provokes an electroshock.

People think we are crazy to stand up to the state. We have to tell them that this is unfortunately what we must do, to demand the enforcement of our rights and to demand truth and justice, something that is just supposed to be in accordance to the rule of law.

We have shown that we have to push in order to see even a small piece of truth. The state tried to incriminate the victim of its violence, to spread lies. Prosecutor Jannier was even thanked for openly lying to the public. But in the end, the Traoré family managed to demonstrate that they were telling the truth from the beginning, thanks to the latest medical expertise we were able to present. ■

The interview was carried out in French.



ITALY

Civic space in Italy is rated "narrowed" on the CIVICUS Monitor. The country was downgraded in November 2018

The data from 2016 show that the third sector in Italy has been growing in an economic context characterised by a deep and prolonged recession. 11,6% more entities were registered compared to 2011, with a growth in the number of volunteers and employees, respectively +16,2% and +15,8%¹. While half of these entities are concentrated in the northern part of the country, the sector grew in all Italian regions compared to 2011. In 2018, however, the establishment of a new government has put pressure on associations. The space for solidarity, in particular, has been hit by a heavy campaign of criminalisation directly driven by the Government of the time in parallel with restrictive legislation, with repercussions on the whole sector. At the same time, a multitude of initiatives have taken place, promoted and also coordinated by new and informal social groups and coalitions, to reverse the trend and reclaim the right to act.

¹ ISTAT, Censimento permanente delle Istituzioni non profit. Primi risultati, 2017

THE NUMBERS OF THE THIRD SECTOR IN ITALY (2015)

Population:

60.8 million

Number of Third Sector entities:

336 275

+11.6% compared to 2011

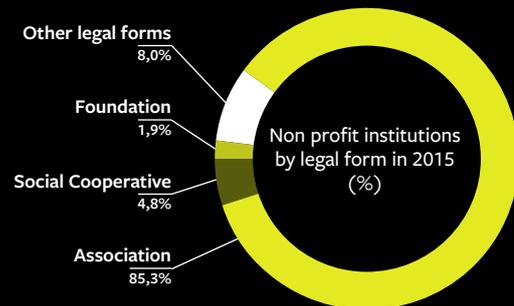
Number of employees:

788.126 (2015)

Number of volunteers:

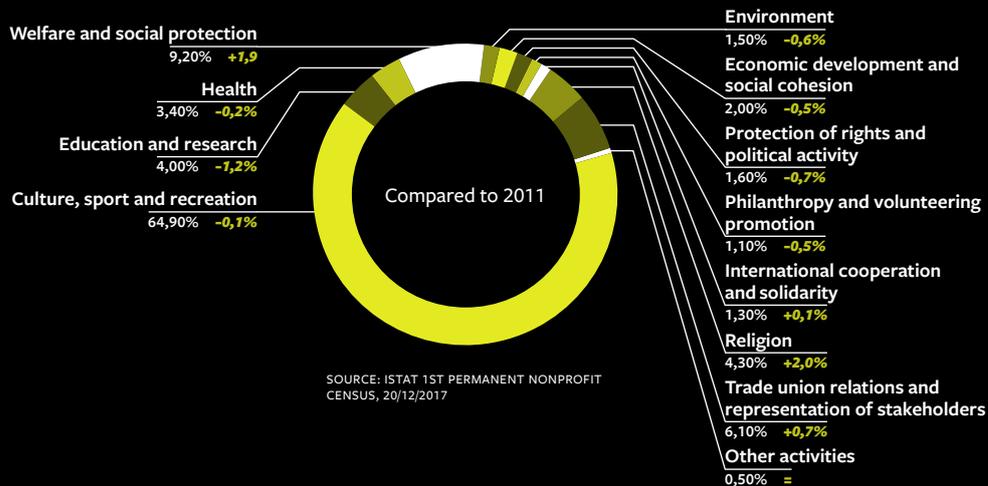
5 528 760 (2015)

SOURCE: ISTAT 1ST PERMANENT NONPROFIT CENSUS, 20/12/2017



SOURCE: ISTAT 1ST PERMANENT NONPROFIT CENSUS, 20/12/2017

DISTRIBUTION OF NONPROFIT INSTITUTIONS BY FIELDS OF ACTIVITY



SOURCE: ISTAT 1ST PERMANENT NONPROFIT CENSUS, 20/12/2017

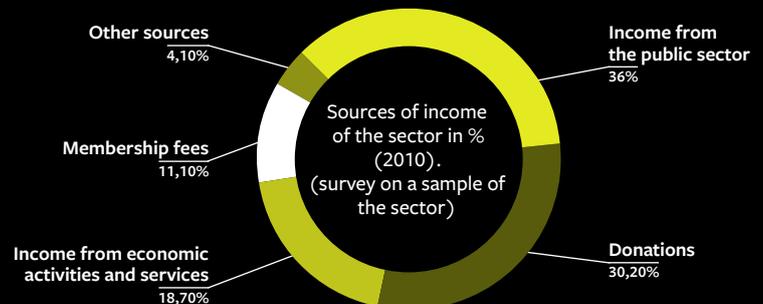
THE ECONOMIC WEIGHT OF THE SECTOR

Budget of the third sector:

circa 64 billion euros

It represents **3,8%** of national GDP

SOURCE: ISTAT, 3RD PERMANENT NONPROFIT CENSUS 2011



SOURCE: RICERCA SUL VALORE ECONOMICO DEL TERZO SETTORE IN ITALIA 2012, UNICREDIT FOUNDATION
WWW.FORUMTERZOSETTORE.IT/MULTIMEDIA/ALLEGATI/RICERCA.PDF

CRIMINALISATION OF SOLIDARITY AND WIDER REPERCUSSIONS FOR THE SECTOR

Towards an acceleration of shrinking space

By Gaia Romeo, *A buon diritto*

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From June 2018 to August 2019, Italy has experienced an attempt of centralisation of power under the so-called “yellow-green” government. The agenda was led de facto by the Minister of Interiors Matteo Salvini, head of the far-right League party and co-deputy prime minister together with the Minister of Labour, Luigi Di Maio, leader of the anti-establishment Five Stars Movement. These fifteen months accelerated the reduction of space of civil society, in particular for those working on the issue of immigration and especially for those engaged in rescue-at-sea. However, the measures had wider repercussions on the democratic space, including the right to protest and to criticise the actions of the government and its leaders.

BACKGROUND

In Italy, criminalisation of solidarity has a long history. Already in August 2016, the centre-left mayor of Ventimiglia, a village at the borders with France and transit point for many migrants, issued an ordinance prohibiting to give food to migrants in the street. Expulsion orders started being issued against young activists assisting migrants with food and legal help in Ventimiglia, Como and other cities. The ordinance was later repealed after three French volunteers were arrested sparking a large protest.

The turning point was in 2017 when the Public Prosecutor of Catania, Carmelo Zuccaro, announced an investigation into illegal funding and collusion with human traffickers and organised crime of NGOs rescuing migrants at sea. In March 2018, he also opened an investigation towards Marc Reig Creus and Ana Isabel Montes, respectively commander and chief of

mission for the Spanish NGO Proactiva Open Arms, after they had saved more than 200 people shipwrecking in international waters. The charges were criminal conspiracy aimed at smuggling, smuggling and private violence. Later in 2018, Zuccaro himself had to ask for dismissal of the general investigation towards NGOs and the charges of criminal conspiracy in the investigation against Creus and Montes, while the other charges are still pending. In none of these cases nor in the following similar ones anyone was found guilty by Italian justice. However, these accusations had and still have a strong effect as they contribute to poisoning public opinion against the work of NGOs. At the same time, the then centre-left Minister of Interiors Marco Minniti introduced the controversial “Code of Conduct” that NGOs were compelled to sign in order to keep operating in the Mediterranean Sea. The code put all the

operations under Rome's direction, introduced the presence of armed police officers on board and forbade the transfer of rescued people from one boat to another. The Code was strongly criticised by several NGOs and organisations, as its provisions made the rescue operations more difficult. Also, it strengthened the idea that NGO should be "controlled".

The same Minister passed a law which undermined the minimum legal guarantees in the procedures for the recognition of asylum and other kinds of protection, for example by abolishing the second degree of judgment. In this regard, it is important to emphasise that in the first degree the asylum seeker is not necessarily assisted by a lawyer, and the third degree only sentences about the regularity of the procedure. Therefore, the second degree was the moment in the procedure when the lawyer could properly intervene.

The law on immigration was adopted in combination with a law on security, which authorised the mayors, in collaborations with the prefect, to cast out individuals "undermining the public use of the area" from determined urban areas. Such vague definition was interpreted especially against migrants and homeless standing or sleeping in public areas, with the effect of identifying poverty with insecurity.

LEGISLATIVE DEVELOPMENTS

When Salvini – whose nationalist propaganda is fiercely anti-immigration and by extension against civil society dealing with migrants – took power, the ground was fertile enough to pass two governmental decrees on "security and immigration". The two bills were approved as matters of urgency, skipping the parliamentary discussion, and then converted into law.

The first one, approved in late November 2018, eliminated the "humanitarian permit of stay", the type of protection most

commonly provided by Italian national law. It also excluded from the reception system the holders of this permit and prevented asylum seekers from being registered in municipal registries, with the effect of depriving them of all the rights connected with residency. It also increased penalties for strangers committing crimes and foresaw the possibility to revoke Italian citizenship for those who have acquired it in adult age, as a consequence of some crimes.

In parallel, the Ministry of Interiors blocked the ongoing conventions with profit and non-profit entities in charge of managing the CAS ("Centri di accoglienza straordinaria", centres for special reception), a very widespread type of reception centre for migrants. The decree also strongly reduced the previous daily budget per capita, by cutting, in particular, the integration part and the possibility for many to live autonomously in apartments and not in the centres. The stop to the conventions created a very chaotic situation for both the hosting entities and the people benefiting from their services. As Oxfam Italy denounced in its report¹, up to 15,000 CAS operators risk to lose their jobs by the end of 2019 as an effect of the decree.

The second Security Decree – enacted in summer 2019 – gave to the Minister of Interiors the power to prevent boats suspected of "being a threat to national security", namely smuggling, to enter into the Italian territorial sea. It also established a huge fine of up to 1 billion € and the confiscation of the boat for the offenders.

While the core of the government narratives and legislation targeted migrants and solidarity, the aim was to have a broader effect on civic space. The two bills on immigration contained detrimental measures concerning freedom of assembly: the first decree foresees imprisonment

up to six years for anyone who blocks or obstructs a road, while the second one increased penalties for crimes committed during manifestations and use of force or threats against a public official. It also establishes imprisonment between 2 and 3 years and fines from 2000 up to 6,000 euros for anyone who uses protective helmets, or any other means to make it difficult to recognise the person. Moreover, the 2018 budget law had reduced tax advantages for nonprofit organisations, and with the law "against corruption" the government tried to penalise organisations whose members held elected offices. Both measures were eventually corrected afterwards.

THESE FIFTEEN MONTHS ACCELERATED THE REDUCTION OF SPACE OF CIVIL SOCIETY, IN PARTICULAR FOR THOSE WORKING ON THE ISSUE OF IMMIGRATION AND ESPECIALLY FOR THOSE ENGAGED IN RESCUE-AT-SEA. HOWEVER, THE MEASURES HAD WIDER REPERCUSSIONS ON THE DEMOCRATIC SPACE, INCLUDING THE RIGHT TO PROTEST AND TO CRITICISE THE ACTIONS OF THE GOVERNMENT AND ITS LEADERS.

¹ Oxfam Italia, Invece si può! Storie di accoglienza diffusa, https://www.oxfamitalia.org/wp-content/uploads/2019/05/oxfam_invece-si-pu%C3%B2-paper-accoglienza_2.05_digitale.pdf, 2019.

THE LONG WAIT ON BOARD, OFTEN WITH ADVERSE WEATHER CONDITIONS, CREATED VERY RISKY MEDICAL AND PSYCHOLOGICAL SITUATIONS FOR BOTH THE CREW AND ESPECIALLY THE RESCUED, AMONG WHICH WOMEN AND CHILDREN AND VICTIMS OF TORTURE AND DEPRIVATION.

THE POLITICS OF “PORTI CHIUSI”

On several occasions the government postponed for days and weeks the authorisation to land to boats which had performed rescue operations by announcing that “Italian ports are closed”, a procedure considered against national and international law. The long wait on board, often with adverse weather conditions, created very risky medical and psychological situations for both the crew and especially the rescued, among which women and children and victims of torture and deprivation. Often, the boats concerned belonged to NGOs – except the vessel “Diciotti” which was under the Italian guard coast – and in some cases their captains were put under investigation.

For example, in late June 2019 the captain of the Sea Watch 3 Carola Rackete was arrested straight after her entry into the port, and charged with violation of the second law on security and immigration – for having landed illegally – and for smuggling. She had forced the entry into the port of Lampedusa, the

Sicilian island which is famous for being the arrival point for many migrants rescued at sea, after two weeks of waiting in international waters with more than 40 people on board. The judge asked for the dismissal of the first charge, as Rackete was considered to have acted in a state of emergency, and because a boat saving lives cannot be considered as a threat to national security.

SMEAR CAMPAIGN AND FREEDOM OF EXPRESSION

About freedom of expression, while no restriction action was formally taken, it can be reported that Salvini’s attitude towards journalists has been and still is very hostile when unwanted questions have arisen. For example, a journalist was intimidated by Salvini’s security men after he filmed Salvini’s teenage son on the Police watercraft, on the beach, on July 2019, raising questions on the personal use of police equipment. When asked about this case during a press conference, Salvini insulted the journalist and accused him to “like children too much,” insinuating he was a paedophile. The three police officers involved – those who were serving as security men – are now under investigation.

Furthermore, Salvini has often publicly addressed threatening words to judges and prosecutors issuing decisions against the government policy, accusing them of making political decisions: it was the case of the judge who released Carola Rackete, or the judges of the Tribunal of Bologna, who sentenced in favour of the right of two asylum seekers to be registered in the municipal registry. After these episodes, the Associazione Nazionale Magistrati (National Association of Prosecutors), in a note, denounced Salvini’s contemptuous attitude in their regards.

A similar intolerance against the “enemies” can be found on the social media of the former Minister of Interiors. His Facebook page – whose staff was paid with the budget of the Ministry, namely

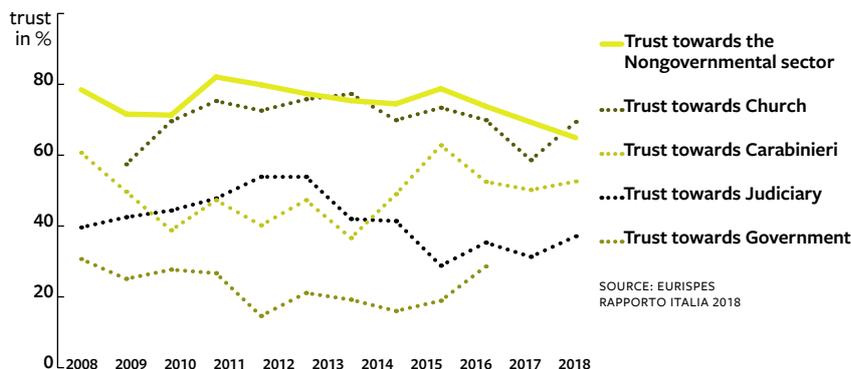
with public funds – often shared photos of undesirable journalists, judges or simple protesters – even teenagers –, never insulting them directly, but exposing them to the hatred of his followers. For example, in March 2019 he shared the photo of a young woman holding a sign against the Minister during a manifestation, collecting thousands of insults.

Also, it must be recalled that the last years have seen the rise of small but numerous neo-fascists groups, whose violent words and actions against both migrants and journalists have contributed to a climate of hate and intolerance. For example, two journalists – Federico Marconi and Paolo Marchetti from “l’Espresso” – were hit and threatened while they were documenting a fascist commemoration in Rome’s monumental cemetery Verano in January 2019. A month later Paolo Berizzi, a journalist from “Repubblica”, was intimidated several times by fascist groups on which he had been writing about. There is no formal relations between these groups and the party League, and Salvini has never given them his endorsement, but no serious action against them was even taken, or strong condemnation pronounced.

Another important alarm bell concerning anti-rights groups was the World

ABOUT FREEDOM OF EXPRESSION, WHILE NO RESTRICTION ACTION WAS FORMALLY TAKEN, IT CAN BE REPORTED THAT SALVINI’S ATTITUDE TOWARDS JOURNALISTS HAS BEEN AND STILL IS VERY HOSTILE WHEN UNWANTED QUESTIONS HAVE ARISEN.

Citizens' trust towards CSOs



Congress of Family that was held in Verona in March 2019. The WCF – the global anti-abortion, anti-reproductive rights, anti-feminist, anti-divorce and anti-LGBTIQI movement promoting the defence of the “natural family”- has been classified as a “hate group” by several civil society groups. However, the government first gave its sponsorship to the Congress and, only after the strong opposition of many citizens, withdrew it, while it was anyway accorded by the Ministry of Family. The Minister himself, Lorenzo Fontana, together with the Minister of Education Marco Bussetti and Salvini participated to the Congress.

CONCLUSION

In this framework, the response of civil society has been very diversified. Several actors – associations, lawyers, citizens – have put in place initiatives to contrast criminalisation of solidarity and to abrogate through legal means part of the legislation on security and immigration. Huge donations were raised to pay legal expenses for NGOs charged with accusations, and very active support groups were set up. For example, when Mimmo Lucano, famous for having repopulated the village of Riace in Southern Italy with migrants, was arrested as suspected of abetting illegal immigration, fraudulently awarding contracts and having organised “marriages of convenience”, civil society

mobilised strongly to protest against the accusations and to show solidarity. If the response of civil society proved many times to be remarkable, it lacks a central strategy.

In the last months, however, the situation has overturned very fast. In August 2019, Salvini, at the top of his popularity, decided to end the alliance with the Five Stars Movement and asked for new elections, certain to strengthen his power in the Parliament. Surprisingly, a new government was formed thanks to the

unexpected alliance between the Democratic Party and the Five Stars Movement, under the same Prime Minister, Giuseppe Conte. The government program announced a new strategy on migration and the modification of the two Decrees introduced by the former government in the parts concerning migration – but not the part concerning security. On September 23rd, in Malta, the new Italian Minister of Interior – Luciana Lamorgese, former prefect of Milan – met her counterpart from Malta, France, Germany in the presence of the Minister of Interiors of Finland – this latter country having the Presidency of the EU Council – and the outgoing EU Commissioner for Migration Dimitris Avramopoulos. The outcome of the meeting was an agreement to establish a European mechanism of redistribution of migrants, which will soon be discussed by the Council on Justice and Home Affairs. The next months will be crucial to understand how the new government will deal with the legacy of the previous one, and how this will impact civil society and its place and space in Italian society. ■

SEVERAL ACTORS – ASSOCIATIONS, LAWYERS, CITIZENS – HAVE PUT IN PLACE INITIATIVES TO CONTRAST CRIMINALISATION OF SOLIDARITY AND TO ABROGATE THROUGH LEGAL MEANS PART OF THE LEGISLATION ON SECURITY AND IMMIGRATION.



THE AUTHOR

Gaia Romeo, born in 1993. Since 2012 he has been collaborating with A Buon Diritto Onlus, for which she has been focusing on deprivation of liberty, torture, police abuse and psychiatric restraint. She is the reference for A Buon Diritto’s international partners.

Central Mediterranean has become a frontline in the global war against universal rights and their defenders: a liquid wall of the Fortress Europe and a migrants' cemetery. The war against rights and solidarity has yet to be won, but if there is still room to fight and to change, we owe it also to those who have resisted and keep resisting in the sea. They show everybody the duty to resist unjust orders in order to obey higher laws. They embody the living proof of the strength of the values enshrined in the national, European and international conventions of rights. They have become a symbol of democratic resistance, providing courage to other democratic activists. Among them, *Mediterranea* is an Italian participative platform born from the grassroots, involving many civil society actors, thousands of citizens and local groups that daily support, in many ways, their ships. We interviewed **Alessandra Sciurba** in July 2019 when the rooms of the Italian Interior Ministry were used as a megaphone for hate speech. Italy has now a new Government, and the institutional discourse is more civilised. However, a real discontinuity in the practices around the issues of migration and the Mediterranean Sea is still to be conquered. The struggle goes on.

Raffaella Bolini, Member of ARCI, Member of the Steering Committee of the European Civic Forum

THE MEDITERRANEAN SEA BECAME A BATTLEFIELD FOR VALUES IN EUROPE

How Mediterranea has reactivated hopes for democratic resistance in Italy and beyond

Interview with Mediterranea

Tell us about Mediterranea. Where does it come from? How has it changed over time - if it has?

Mediterranea was born out of a movement of fear and desire.

Fear regarding a historical moment when the criminalisation of solidarity had transformed the Mediterranean into a desert, as well as a cemetery, with [people on] social networks cheering to every news of shipwreck like at the stadium. At the end of 2018, there was no one at sea to witness violations of human rights and to save people where necessary. It seemed that a complete loss of decency and respect for the value and dignity of human life was becoming the norm. We felt at a point of no return: the Mediterranean Sea had become the battlefield to try to stop the process [of erosion] of the ethical foundations that - albeit fragile - had been built

after the end of the Nazi-fascism in Italy and Europe.

Hence the desire to do something starting from the fundamental value of human life. There was a strong feeling that, crushed between the Europe of the Troika and the Europe of Visegrad, there were many people who could no longer find a space to express an alternative vision of the world. There was also a conviction that, in order to reclaim our voice, it was necessary to act, to do something extraordinary, significant and, at the same time, utterly tangible.

Putting all these elements together, the idea of a ship emerged immediately, [the idea] of a ship that could fly the Italian flag, given that Italy is one of the protagonists of everything that is happening in the Mediterranean. And also because for us it was crucial to be able to claim that the terrible slogan "Italians first", established

with the new government, could mean something completely different: Italians first in solidarity and in defense of the rights of every person.

To turn [this] desire into reality and to overcome fear, we had to learn a lot: how

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Alessandra Sciarba

to search for a ship, how to buy a ship, how to form a crew, how to get ready to rescue lives where necessary, how to deal with the port authorities, and a thousand of other things.

Initially, the departure was made possible thanks to a credit line granted by Banca Etica with the signature of 5 guarantors: Mediterranea owes a lot to this bank and the people who have placed their signature. That first money was used to buy our ship Mare Jonio.

The main objective has always been to be at sea, to carry out the very important function of monitoring violations of fundamental rights, without ever evading the ethical and legal obligation to save human lives. For this reason, we have defined ourselves as an act of *moral disobedience* and *civil obedience*. Moral disobedience to this terrible rhetoric of “zero-sum” rights, for which the only way to have rights is to take them away from someone else, so that the only way to live is to let them die. At the same time, *civil obedience* to those wonderful conventions of international law of the sea and human rights – emerged after the Second World War to say “never again” to the horrors of previous decades. These make the life and dignity of people an un-negotiable priority both on land and at sea.

Mediterranea was born from all these solicitations, from all these considerations. Its

objectives have never changed, what has changed is the political and regulatory framework in which we operate and which has forced us overtime to review our ways to resist and live at sea.

You call yourself an open platform rather than an NGO: why this choice? How do you manage participation from the ground up?

Mediterranea is not an NGO, but as we define it, – an NGA, a Non-Governmental Action: it is born from a group of friends and some associations. It was not only a decision at the beginning to be an open platform but also a matter of fact. We were many – with diverse backgrounds, ways of acting and training, but [we were]

WE WERE MANY – WITH DIVERSE BACKGROUNDS, WAYS OF ACTING AND TRAINING, BUT [WE WERE] UNITED BY YEARS OF CONCERN AND FIGHTS FOR THE DEFENCE AND PROTECTION OF THE RIGHTS OF ALL.

united by years of concern and fights for the defence and protection of the rights of all. [Together we] took an action [that was] extraordinary but also needed, tangible, like buying a ship and putting it at sea. It was in its nature to be open. Already since the start, Mediterranea involved the web magazine “i Diavoli” from Milan; the co-working restaurant of Palermo “Molti volti”; a large national association like Arci; an NGO like Sea Watch, the reception community San Benedetto al Porto of Genoa founded by Don Gallo; the association Ya Basta that had always worked

in the field of cooperation from the grassroots in Latin America. Very different realities that merged with many others that immediately joined.

It was and [still] is a complicated process, very different from having an organisation with a hierarchical structure and clear roles. Instead, we made an effort to keep open the different methods of participation and decision-making in the intersection of different realities, and this is a challenge. We can say that the form of Mediterranea on the ground is also a challenge of various types of self-organisation. Now we are trying to establish a second-level association, which can formally hold all these realities together, while the individuals who have participated will form themselves an association. We need to give ourselves a formal structure, for fundraising and also for the transparency of our actions. But we got there after a journey and after a study on what could be the most effective forms of participation.

And anyway, beyond this formalisation, small territorial communities and groups have sprung up spontaneously and autonomously, immediately after the launch of Mediterranea, after 4 October 2018 and the press conference which announced that the ship Mare Jonio had left the day before, on the anniversary of the great massacre of Lampedusa. They aim to support this project because they have grasped its strength, importance and potential of/for inclusivity.

That is why we have always talked about crews at sea and crews on the land.

The land crews are Mediterranea: they come on board even if not physically. Tugboats and sailboats cannot accommodate thousands of people, but symbolically they are always there.

The explanations for the transfers to our crowdfunding are moving, we should write a book by lining them up. They are all small donors, and they are many: we have spouses who ask to donate to Mediterranea instead of gifts for their



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Mediterranea Mare Jonio.

I BELIEVE THAT ENERGIES THAT ALREADY EXISTED HAVE FOUND IN MEDITERRANEA A SPACE TO REDISCOVER HOPE AND MOBILISE, FROM THE SEA AND FROM THE LAND.

wedding, parish dinners, film screenings, birthdays, book presentations, shows. Anyone who has something to stage, or to celebrate, or can build ad hoc initiatives, participates not only

economically but also by defending the values of Mediterranea, or telling its story. They contribute to restoring hope. This is demonstrated by the figures we have reached, which are enormous even if they are never enough for a project with very high costs such as Mediterranea. Even though none of us – the rescue teams, our ship-owners and myself as a spokesperson – no one gets one euro. For example, think that a single tank of Mare Jonio costs 38,000 euro and every mission at least 100,000 euro and that we have to pay every month for the professional crew needed to put a commercial ship into the sea.

To support these costs, a great deal of creativity has been put in place: we provide the logo on our website, and many groups and individuals have come up with the most diverse ways to make self-financing:

bags, bottles, cups, pins, and a thousand other things.

This lack of centralisation certainly has limits, but it also allows us to free and express many energies.

I believe that energies that already existed have found in Mediterranea a space to rediscover hope and mobilise, from the sea and from the land.

How has the Mediterranean changed since you became operational?

The year of the turning point was 2017 when we were not at sea yet. It is the year of the agreement with Libya, a monstrous pact made by an Italian centre-left government, signed by the then Prime Minister Paolo Gentiloni with Al Sarraj, head of one of the militias already engaged in the



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On board the Nuestra Madre de Loreto, Spanish fishing vessel.

conflict that would later become a real civil war.

This happened in a climate in which several initiatives to criminalise sea rescue had already been carried out: the code of conduct for NGOs, pretextual investigations which then never even led to an indictment of civil society ships. These had made the Mediterranean a desert.

We arrived in a desert. It was already very clear that there was a war against solidarity at sea, and what that war meant symbolically and politically. In this respect, we are very different from our friends from other rescue ships. They had been put into the sea in a phase of collaboration with the maritime coordination centres of countries such as Malta and Italy, and with their respective coastguards or military navies, and, therefore, initially experienced a moment of confusion with regard to this radical change in the attitude of governments.

Our action started when the process of criminalisation and desertification was already in place. And so we were already equipped with instruments – from the very beginning those of international law – and clear ideas of what was at stake.

I think we can say, without looking presumptuous, that Mediterranea has

contributed to restoring courage to other organisations, and has shown that, despite the sudden violence that hit all the ships of civil society the previous year, it was still possible to be at sea. This also thanks to its Italian flag that has revealed the hypocrisy of the political attack on the “foreign ships that bring migrants to Italy”.

In fact, together with Mediterranea, all those who still had a ship have returned to the sea with the shared idea of upholding international law. I believe that we have given a very important key to

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understanding this: when there is no longer cooperation with governments, when you become a target rather than a subject to reward or recognise, we must cling to something certain – the international law. At sea, we shall not obey hashtags, but instead, ask ourselves what international law says. [The international law] is based on fundamental principles, first and foremost, the protection of human life always, and we must obey to that.

It is this approach that has always saved us so far, despite the enormous increase in violence that has been put in place against us since the new government in Italy took office in 2018. This government has found fertile ground prepared by the previous one, and has taken the process of denial of reality to the extreme consequences, through the implementation of agreements with countries where there are dictatorships or wars or where violations of human rights happen daily, with acts that can be clearly defined as crimes against humanity. And so the cooperation with pieces of power in Libya has been strengthened, despite the fact that Libya has entered a phase of civil war. In fact, this has greatly facilitated the networks of traffickers who act in full continuity with the so-called Libyan coastguard – disguised militiamen – who capture people, take them back to detention centres and make them victims of extortion and violence before putting them back at sea and catch them once again. This endless trading cycle is broken only by the ships of civil society when they save people and bring them to safety in Europe. The accusations made against NGOs and Mediterranea of favouring or even collaborating with traffickers are slanders that mask an opposite reality: governments are currently the best allies of criminal networks and, in cases such as Libya, even their largest donors more or less directly. It is an upside-down world: a combination of repressive, administrative and criminal measures is now being applied against us, recalling the one used against the mafia



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in Italy. They want to strike at the symbolic value of our ships.

They are affirming a gloomy, grey regime, where rights count for nothing and where the arbitrariness of power prevails, and they must destroy any possibility of an alternative vision. And at this moment the ships of civil society and *Mediterranea* represent the possibility of a gap, a discrepancy, the reaffirmation of principles that are not compatible with a regime of arbitrary violence like the one that is being imposed: and they must be destroyed for this.

As history teaches us, in times of economic and political crisis the best way not to deal with people's problems is to invent enemies and act with policies of hate that are completely unreasonable from all points of view. Even in this historical phase, this is the way that the government has found to stop talking about inequalities, poverty, welfare: in a country

like Italy that falls apart, immigration is used as a weapon of mass distraction.

The myth of immigration and the war against the ships of civil society serve this purpose. In this context, staying at sea is becoming more and more complex and risky: fines of millions of euros, confiscation of the ship, arrest in flagrancy of the captain, according to what is provided for in the Security Decree bis which at this time is about to be converted into law. But just being there and staying at sea is also becoming increasingly important: the more our ships become the political target to be hit, the more they become a symbol of humanity and resistance.

How did you cope and react in the most challenging moments, especially after the seizure of the boat Mare Jonio? How did you find the courage and strength to

continue your mission? What role did solidarity play in all this?

We had two seizures of the boat *Mare Jonio*: a seizure, a release and, then, another seizure, which ended only a few days ago, with the restitution of our ship that can return very soon to the sea (we hope it will be already by the time this interview is published). Then the sailboat *Alex* was also seized and confiscated.

And *Alex* is already an answer to the question: the ship was seized, so we went out into the sea on an 18-metre sailboat. Of course, we were not expecting we would rescue 59 people; we had to be just a support for the activities of other ships already at sea, but we believed that we had to be there at all costs and by all means. Civil society and people on the ground have been fundamental. First of all, because crowd-funding continues even when we are stopped and forced on the

shore. On the social media and in many other ways there are thousands of people who ask us to return to the sea, and for this reason, they help us economically, and it is a huge push to never stop. I must say we have never had a moment of discouragement.

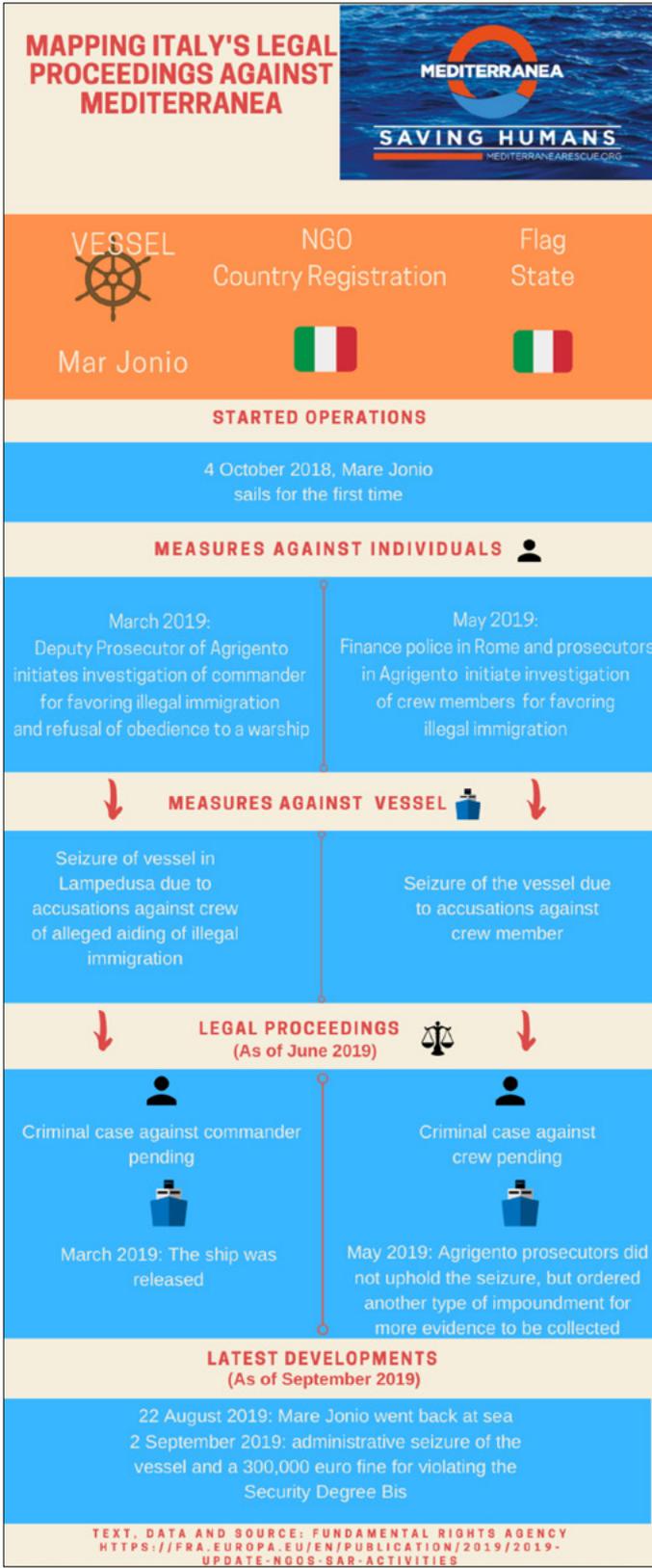
Of course, sometimes we are frightened by the economic issue: we ask ourselves “Mamma mia, we have six hundred thousand euros of debt... how do we go on to pay the missions?”. But we never thought that we had been defeated or that we could not go back to sea. We never feared that we could not continue to do what we started. This is not an option at a time like this and when you have built something like Mediterranea.

When I am in a city that is not my own, I often see people I have never seen before wearing the Mediterranea shirt. A few days ago I asked one of them why, and the answer was “Because I want people to know where I stand”. These are the things that give us courage and strength, huge confidence to continue.

So we never thought for a moment that the conditions were no longer there. There are the material difficulties that

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sometimes make us wonder how we can do it, but none of us ever thought of stopping.

Which objectives do you think you have achieved and which ones are still to be achieved?

Our goal, our dream is that there will no longer be any need to go at sea, that there will no longer be any shipwreck of people forced to cross the sea to escape war or torture, and that no one will be forced to be there to help them. From this point of view, *Mediterranea* was born to dissolve. We are where we do not want to be, but where it is necessary to be. No one should be forced to shipwreck in the Mediterranean, and no one should be forced to become a rescuer.

We had to accept this absurd battlefield as they transformed the Mediterranean into; a battlefield that we certainly did not help to set up, that governments created by closing all legal entry channels for people migrating, even if they are fleeing war. A battlefield where now we have to be to defend lives, the future of our rule of law, and the possibility to speak out against injustice.

I have already talked about the objectives achieved. The main one, in addition to the hundreds of lives that we have directly saved or indirectly contributed to saving, has been to revive dreams, possibilities, to show that nothing is over, that there are spaces to give voice back to those who defend fundamental rights, to those who fight all forms of racism. Everything is in action, and it is the beginning of a great historic battle that certainly *Mediterranea*

does not face alone. But I am happy that *Mediterranea* has contributed to reactivate it, to show possible ways that obviously still have to be developed for the most part.

Do you think that the European Union can be an ally in your battle and that of many citizens for solidarity? In what way?

Certainly in the European Union contradictions are becoming more and more evident. Someone is realising that the Europe of the Troika was not the winning move. The tightening of economic policies, together with the tightening of migration policies used as an instrument of propaganda, already at the time when the progressives were much more incisive in Europe than now, has led to a deep crisis affecting the very existence of the European Union. [As a result] sovereignty, populism, Nazi-fascism are dangerously rising and, in some countries, have even entered Parliament.

I think that awareness of this is emerging at the European level. I say this without naivety: I do not believe that suddenly politics at European level have been filled with strenuous defenders of human rights, but I believe that also at the economic and financial level the risks of this situation are being felt.

Therefore, it seems to me that someone is pointing at a few inconsistencies. There have been important positions taken by

A BATTLEFIELD WHERE NOW WE HAVE TO BE TO DEFEND LIVES, THE FUTURE OF OUR RULE OF LAW, AND THE POSSIBILITY TO SPEAK OUT AGAINST INJUSTICE

Germany recently on sea rescue, some voices are also being raised in France, but certainly, there is too much shyness.

In front of the crimes committed by some governments, there should be a much stronger stance, but they cannot do so because there is huge hypocrisy.

We have observed European missions at sea that remotely control the Libyan militiamen with their air assets, to help them capture refugees and bring them back in violation of all the principles of human rights law. So Europe is actually a full part of this terrible scenario.

The repurposing of the *Sophia* mission¹ is this, but even before that, the policies of the last few years, mainly structured by the European Migration Agenda of 2015, have been horrible and terrifying; the agreement with Turkey, for example, was at the origin of the agreement with Libya. I believe that the European Union is realising that it is moving quickly towards suicide and that it is trying, in a contradictory and disjointed way, in some parts, to find some remedy.

The work of the United Nations is stronger at the moment, at least in terms of narrative: the interventions of the Special Rapporteurs of the United Nations on trafficking, human rights and migration are fundamental for the important effort to reaffirm priorities, values and principles against governments and, in particular, against the Italian government at this time.

However, if I have to think of real allies at a political and institutional level, I think more of the networks of cities in Germany, Spain and many other countries, including Italy.

These networks are under construction, depending on the country, but there is

¹ Note of the editor: Established in 2015, Operation *Sophia* is a military operation of the European Union aims at countering refugee smuggling in the Mediterranean. In 2017, the mandate was further expanded to support and train Libyan authorities. See: <https://www.consilium.europa.eu/en/press/press-releases/2017/07/25/eunavformed-sophia-mandate-extended/>.

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a movement of mayors who are experimenting, of local realities that every time there is a ship at sea opens its doors, offers to welcome people. A network that meets, discusses, thinks about how to try to impose solidarity from the bottom up, starting from the cities. This seems to me to be a very interesting process.

And then there is the Europe of associations, groups, people, movements that care about life, dignity, rights and democracy. There are already relations with many of them, but one of the commitments for the coming months is to strengthen European solidarity. The boats of Mediterranean fly the Italian flag, but our objective is that it should be an European project – open to European crews and the active support of social actors from all over Europe because the threats, challenges and dreams we face are common.

The interview was carried out in Italian.



POLAND

Civic space in Poland is rated "narrowed" on the CiViCUS Monitor.

Since 2015, when the Law and Justice government took power, the conditions for Polish civil society organisations have greatly deteriorated. Nevertheless, in comparison with other countries in Central-Eastern Europe, the conditions of Polish CSO sector are relatively positive. There is a civil society strong in numbers and mature, as shown by the increased presence of well-established CSOs (31% of NGOs have over 15 years) next to younger ones (30% NGOs have up to 5 years)¹. The negative political environment brought CSOs to react and look for new, innovative solutions to sustain their activities, including asking more openly for donations. 2017 was the year which registered one of the highest tax allocations ever from the 1% income tax with Poles donating approximately 117 million zł. Moreover, a growing number of Poles engage informally, through protests and non-statutory associations.

¹ Charycka, B., Gumkowska, M. (2019), Kondycja sektora organizacji pozarządowych 2018, Klon/Jawor Association, Warsaw, accessible at <https://api.ngo.pl/media/get/108904>.

THE SECTOR IN NUMBERS (2018)

Population:
37.98 million

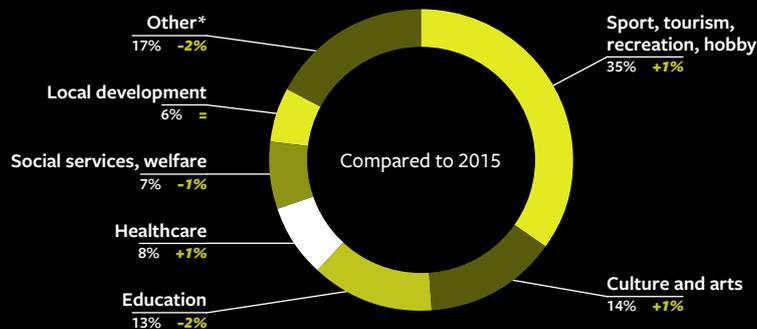
The number of registered organisations:
143.000

About **65%** of registered organizations are active

SOURCE: KLON/JAWOR ASSOCIATION/EUROSTAT, 2018



DISTRIBUTION OF NGOS BY FIELDS OF ACTIVITY



SOURCE: ADAMIAK ET AL., KLON/JAWOR, 2018

*ENVIRONMENT/LABOUR MARKET/RESEARCH/
SUPPORTING NATIONAL IDENTITY/
PROFESSIONAL AFFAIRS/HUMAN RIGHTS/
SECURITY-DEFENCE/DEVELOPMENT AID-
INTERNATIONAL AFFAIRS/RELIGION

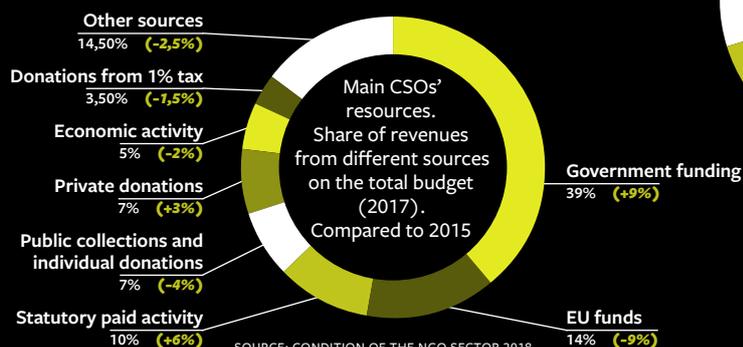
THE ECONOMIC WEIGHT OF THE SECTOR

Budget of the sector:

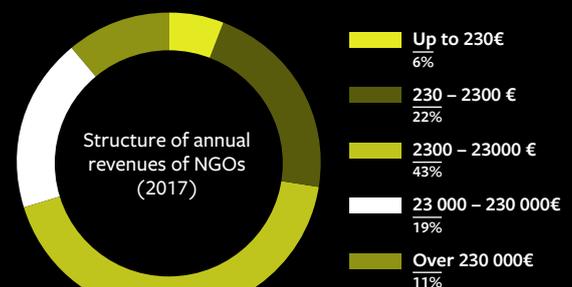
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GDP:

na



SOURCE: CONDITION OF THE NGO SECTOR 2018, KLON/JAWOR ASSOCIATION



SOURCE: CONDITION OF THE NGO SECTOR 2018, KLON/JAWOR ASSOCIATION

GROWING CENTRALISATION OF GOVERNMENT'S CONTROL OF THE SECTOR

New waves of informal activism emerge

By Filip Pazderski, Institute of Public Affairs

Since 2015, when a conservative populist party, Law and Justice (PiS), took power¹ conditions for Polish civil society organisations' (CSOs) have greatly deteriorated. The ruling party's activities and policies have a negative influence especially on organisations that obtain some financial support from abroad and the ones dealing with matters not in line with the government's agenda, including those working on minorities' rights (including women, LGBTQ, ethnic minorities), antidiscrimination, migrants and refugees support, environmental protection as well as watchdogs. On the contrary, CSOs openly working alongside the government's conservative ideological line received increased support. As a result,

through its pillarization through activities in several areas the Polish civic sector has been brought into a heated political dispute. Between 2018 and 2019, these trends remain visible both in the legislative developments and particularly in the practices of the government and state's institutions.

Nevertheless, the Polish civic sector remains relatively strong in numbers. Next to traditional ways of organising civil society, in the last 2 to 3 years we also observed an increase of public demonstrations in the streets, especially organised to resist specific policies of the current government, as well as more informal ways of association. In the field of the rule of law, the public resistance to the reform of the constitutional system was successful in reducing the intensity of the government's efforts to weaken the separation of powers in the country also thanks to the pressure from European institutions. In 2018, the government withdrew some proposed

changes concerning the functioning of the Supreme Court, including those that lowered the retirement age for judges.

LEGISLATIVE DEVELOPMENTS

A major development in the framework of CSOs operation in Poland is the establishment of the National Freedom Institute – National Center for Civil Society Development (NCRSO) in 2017². It is a governmental agency reporting directly to the prime minister with the role of distributing all public funds dedicated to civil society development and controlling CSOs' operations, thereby centralising the government' supervision over the sector. The Polish Helsinki Committee³,

¹ See: Pazderski, F. (2017), CSO Sustainability Index 2016: Poland, in The 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia, USAID, Washington, accessible at <https://www.usaid.gov/europe-eurasia-civil-society>.

² The Act on the National Freedom Institute – Centre for Civil Society Development of September 15, 2017 (Dz. U. 2017 item 1909 and 2371).

³ See at www.hfhr.pl/en/national-freedom-institute-act-helsinki-committee-in-poland-issues-statement/.

the Polish Ombudsman⁴, as well as OSCE Office for Democratic Institutions and Human Rights⁵ expressed strong criticism for the consolidation of so many powers under one single authority and for the composition of its governing and advisory bodies, with a very limited role for CSOs' representatives. The adoption of the legislation establishing the institute was also perceived like a mere façade of a consultation process as most of the serious concerns raised by various CSOs remained unanswered. In late 2017, another government body was established: the Committee for Public Benefit is responsible for coordinating ministerial policies related to public benefit organizations⁶ and it is headed by the deputy prime minister responsible for culture and national heritage⁷.

In 2018 the legal framework itself was not modified so much, but the implementation of existing laws changed during the year. For example, some registration courts applied non-statutory requirements that prolonged the registration process for a few CSOs—including watchdog organisations and an association of transgender people. There was some speculation that these incidents may have been related to the local elections held on October 2018, as some of the people involved in establishing these CSOs were also candidates for office. Despite these incidents, registration continues to be generally easy and affordable for most CSOs.⁸

In its narrative regarding the civil society, PiS government maintains that it supports

it more widely than its predecessors, reaching also to smaller towns and villages. In line with this, in November 2018, a Law on rural housewives' circles, a traditional form of self-organisation in rural areas (of not only women) was adopted. The new law provides these CSOs legal personality and the possibility to apply for public funds. Previously most of these entities operated informally. However, some experts have alleged that the law is unconstitutional, since it only allows one rural housewives circle per village, thereby restricting freedom of association. Moreover, the law does not allow people living in rural areas that are administratively parts of cities the right to establish housewives circles. The EU General Data Protection Regulation (GDPR) entered into force in 2018, placing additional obligations and burdens on CSOs and other legal entities. The regulation itself does not explicitly indicate specific means for protecting personal data or what documents should be retained to fulfil GDPR obligations. Therefore, every entity processing personal data, including CSOs, must develop their methods to protect data adapted to their specific work. CSOs struggle to figure out their policies to comply with GDPR, as they generally lack the financial resources or time to do so.

The government has also taken over the initiative for a more profound reform of CSOs laws. For example, in 2017 it announced significant changes to the Act on Public Benefit and Volunteer Work, the main legislation establishing the rules on CSOs cooperation with public administration bodies of central and local levels, and continued to work on amendments without public input throughout the following years. At the same time, CSOs have not demanded to be involved in this work and have not prepared their proposals, possibly demonstrating their lack of faith in the process.⁹ In June 2019 only small amendment to the law was presented,

IN 2018 THE LEGAL FRAMEWORK ITSELF WAS NOT MODIFIED SO MUCH, BUT THE IMPLEMENTATION OF EXISTING LAWS CHANGED DURING THE YEAR.

again consulted with limited number of entities in a very short time. It establishes a new consultation body, the Council of Dialogue with the Young Generation. Amendments to the Act on Free Legal Assistance, adopted on June 2018, introduced a certification system awarded by government representatives at the regional level for CSOs that provide pro bono legal help and can access public funding to do so. The changes entered into force in January 2019 and we still have to wait to see whether some CSOs' concerns that it can be another mechanism used to centralise and control the civic sector by the authorities are justified.

CHALLENGES CONCERNING ADVOCACY WORK OF CSOS

As a result of the unfavourable political circumstances described above, CSOs in Poland had fewer opportunities to engage in advocacy work. According to a 2018 report by the Citizens' Legislation Forum (OFL), the use of public consultations in legislative processes has decreased¹⁰ and when they are organised, such consultations are often illusory and only engage a narrow group of CSOs. Furthermore, the government rarely responds to critical comments from CSOs. In addition, the periods for submitting comments during

⁴ See at <https://www.rpo.gov.pl/en/content/commissioner-presented-his-opinions-government-bill-national-freedom-institute%E2%80%93centre-civil-society>.

⁵ OSCE ODIHR, Opinion on the draft Act of Poland on the National Freedom Institute - Centre for the Development of Civil Society, NGO-POL/303/2017, Warsaw, 22 August 2017, accessible at <https://www.osce.org/odihr/336551>.

⁶ CSOs with special status that allows them to benefit from the 1 percent income tax mechanism.

⁷ Pazderski, F. (2019), CSO Sustainability Index 2018: Poland, in The 2019 CSO Sustainability Index for Central and Eastern Europe and Eurasia, USAID, Washington.

⁸ Ibidem.

⁹ Ibidem.

¹⁰ Obywatelskie Forum Legislacji (2018), Legislacja bez dialogu [Legislation without dialogue], Fundacja Batorego, Warszawa.

AS A RESULT OF THE UNFAVOURABLE POLITICAL CIRCUMSTANCES DESCRIBED ABOVE, CSOS IN POLAND HAD FEWER OPPORTUNITIES TO ENGAGE IN ADVOCACY WORK.

public consultations are very short, often just a week or even a few days and comments or suggestions filed during the process are not always published. Finally and importantly, legal lobbying has ceased to matter, primarily because the role of legislators has been limited to approving what the government has already decided. Parliament has ceased to be a place of public debate and laws promoted by the government are often adopted within a few hours or days.

Advocacy activities of CSOs that are in opposition to the government have very little impact, while advocacy by CSOs promoting issues consistent with the governmental agenda, even controversial issues, seem to be particularly effective. For example, pro-life organizations prepared a draft law that would abolish the right to terminate a pregnancy due to severe fetal defects. The draft was accepted for the first reading in the Sejm, while an initiative demanding a woman's right to terminate her pregnancy within the first twelve weeks was rejected.

While CSOs continue to engage in actions to influence the public debate by forming coalitions and drafting public letters and petitions, the only effective advocacy activities seem to be mass protests. For example, the Polish Women's Strike protested, since late 2016, against further attempts to tighten the abortion law in Poland and

successfully stopped all legislative proceedings in this area. However, many such activities fail to bring change. For example, the government failed to respond to the demands of people with disabilities and their guardians after they occupied, in spring 2018, buildings of the Polish parliament for forty days to demand increased financial and non-monetary public support. This led to a growing sense of discouragement among CSOs over 2018, with activists increasingly concluding that it is not worth doing anything.¹¹

TOWARDS A CENTRALISATION AND POLITICISATION OF PUBLIC FUNDING

The financial situation of CSOs has also significantly affected their operations. In the infographics at the beginning of the chapter, it is interesting to look at the share of revenues collected by the CSOs from different sources compared to the sector's total budget. Clearly, Polish CSOs turn out to be relatively dependent on public funds. When these dry out, many organisations can have problems in finding a replacement. This landscape allows authorities to shut off the money supply to CSOs that are critical or work for aims contrary to governmental ideological line. This can be observed to certain extent in Poland, where CSOs focused on equality, immigration, and refugee issues have decreased access to public funding, while groups declaring conformity with the ideological direction of the government (e.g. promoting Christian and national or patriotic values) received more funding during the year.¹²

To an extent, the shift in the CSOs receiving government support since 2015 emerged from a study conducted in early 2018 on the budget allocated to CSOs by five ministries (Justice; Foreign Affairs; Culture and National Heritage; Family,

Labor and Social Policy; and National Defense). The great majority of funds allocated to CSOs between 2013 and 2017 (70%) went to organizations that received funding both before and after the 2015 elections. Of the remaining funding, 15% went to CSOs that received subsidies only under the previous Civic Platform (PO) government, while the other 15% went to CSOs that were only funded by the current PiS government.¹³

While the regulations for funding competitions are theoretically transparent, they are applied inconsistently, allowing for discretionary decisions. For example, the Justice Fund managed by the Ministry of Justice awarded grants for post-penitentiary assistance to several CSOs that lacked relevant experience but had openly declared that their activities were based on

¹³ Pazderski, F. (2019), CSO Sustainability Index 2018: Poland, op. cit.

CSOS FOCUSED ON EQUALITY, IMMIGRATION, AND REFUGEE ISSUES HAVE DECREASED ACCESS TO PUBLIC FUNDING, WHILE GROUPS DECLARING CONFORMITY WITH THE IDEOLOGICAL DIRECTION OF THE GOVERNMENT (E.G. PROMOTING CHRISTIAN AND NATIONAL OR PATRIOTIC VALUES) RECEIVED MORE FUNDING DURING THE YEAR

¹¹ Ibidem.

¹² Pazderski, F. (2019), CSO Sustainability Index 2018: Poland, op. cit.

Christian values¹⁴. The National Fund for Environmental Protection as a pre-condition for award required applicants to submit a positive recommendation from the Ministry of Environment and Chief Inspector of Environmental Protection¹⁵. There have been many complaints about the transparency of funding procedures over the past three years. According to a report of the National Federation of Polish NGOs (OFOP, <https://ofop.eu/about-us>), between November 2015 and November 2018, sixty violations of the principles of subsidiarity and partnership in cooperation with CSOs were identified in twenty-one ministries¹⁶.

In line with this trend, we can read the activities of the National Freedom Institute, which recently launched new programs to support civil society. The guidelines allowed room for arbitrary decisions in the allocation of public funds: although two external experts evaluate each project proposal, final decision on granting funds is taken discretionally by the NCRSO's director. The government failed to address the sector's worries regarding that during the consultations¹⁷. The results of the Programme of Civil Society Development (PROO) announced in August 2019 show that these fears are justified. 16% of the strand dedicated to core funding for CSOs' operations was awarded to organisational units of the Catholic church (parishes and archdioceses); 12% supported organisations openly propagating far-right views

¹⁴ See more at <https://repozytorium.ofop.eu/?s=fundusz+sprawiedliwo%C5%9Bci&submit=Search>.

¹⁵ See more at <https://repozytorium.ofop.eu/?s=Fundusz+Ochrony+%C5%9Arodowska&submit=Search>.

¹⁶ See: Polubicka K., Kielbiowska K., Gąsiorowska A. (2018), Raport z Repozytorium Ogólnopolskiej Federacji Organizacji Pozarządowych. Zestawienie udokumentowanych przypadków naruszenia zasad współpracy ministerstw z organizacjami pozarządowymi w okresie XI 2015–XI 2018 [Report from the Repository of the Polish Federation of NGOs. List of documented violations of the principles of cooperation between ministries and non-governmental organizations in the period of XI 2015 – XI 2018], OFOP, Warszawa, accessible at <https://repozytorium.ofop.eu/statystyki-i-analizy/>.

¹⁷ Ibidem.

and even using violence in public life.¹⁸ This is the case of Podlaski Instytut Rzeczypospolitej Suwerennej / Podlasie Institute of the Sovereign Republic, an entity responsible for organising an annual Independence March in the city of Białystok on the 11th of November. In July 2019, it called for the counter-manifestation – which turned violent – against the first Equality Parade held in the city. This Institute received a public subsidy for three years of work in the highest possible amount awarded (700,000 PLN = ca. 162 790 EUR, which was granted to 14 out of the 154 founded entities).

Similar issues have also affected CSOs' access to foreign funding. For example, the government moved the responsibility for the EU Asylum, Migration and Integration Fund (FAMI) that integrates newcomers into EU member states to the provincial governors, instead of distributing at least part of them on the central level to the CSOs having years of experience of work with immigrants. This put many of them in a difficult financial position.¹⁹ The government also started a dispute with Norwegian counterparts over the establishment of the new round of the European Economic Area (EEA) and Norway Grants and, in October 2018, threatened not to recognise the decision of the agency to award an independent consortium of Polish CSOs for implementing the national strand of these funds. The launch of these funds has been postponed since the fall of 2018 and will start only after the 2019 parliamentary elections. Moreover, the government

¹⁸ However, amongst associations and foundations that received grants in the same competition there are also many not controversial ones, i.e. working on education, social assistance, humanitarian aid or infrastructural organizations that support other CSOs – see full results at <https://niw.gov.pl/wyniki-oceny-wnioskow-pelnym-priorytecie-1a-proo/>.

¹⁹ Klaus W., Ostaszewska-Żuk E., and Szczepanik M. (2017), *Fundusze europejskie i ich rola we wspieraniu integracji cudzoziemców w polsce* [European funds and their role in supporting the foreigners integration in Poland], Helsinki Foundation for Human Rights, Warszawa, accessible at http://www.hfhr.pl/wp-content/uploads/2017/09/raport_po-FAMI_net.pdf.

has been pushing for the NCRSO to be selected as the operator for the regional strand of the EEA and Norway Grants.²⁰ On a positive note, NCRSO distributed funds through the Civic Initiatives Fund (FIO) for the first time in 2018. The procedure was carried out in a transparent manner and support was directed to a larger number of small organisations than before. However, CSOs have already expressed some concern about the grant rules for the 2019 edition of this program, as one of the criteria is the quality of the project idea, without any clear and objective guidelines for assessing this.²¹

²⁰ Pazderski, F. (2019), *CSO Sustainability Index 2018: Poland*, op. cit.

²¹ Ibidem.



THE AUTHOR

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HARASSMENT AND SMEAR CAMPAIGNS²²

Public institutions harassed several CSOs and groups of individuals during the year. Organisations working on women's rights, including BABA Association from Zielona Góra, were implicated in criminal proceedings against an official of the Ministry of Justice who was accused of fraud, although their only connection to the case was their receipt of public funding overseen by the accused individual. In 2017, the same CSO – together with other organisations involved in organising the Black Protests – was raided by the police one day after the mobilisation and had their computers and documents seized (including those with personal data of their beneficiaries). In 2018, the prosecutor's office summoned the CSO's representatives to testify. As a result of these actions by state authorities, some employees who did not want to be involved in the investigation left the organisations. Also the CSOs' reputations in their communities were tarnished.

In November 2017, the Ministry of Internal Affairs and Administration sued to establish receivership over the Citizens of the Republic of Poland (Obywatele RP) Foundation, which openly opposes the current government. The foundation was officially notified about the court's decision to start the proceedings in May 2018. The ministry, which has oversight responsibility for the foundation, accused the Foundation of inciting unlawful activity and insulting the president and other executive bodies. The court dismissed the ministry's request in November, stating that no legal provisions had been violated. In October 2018 the chairman of the Public Benefits Committee issued a new regulation on reporting requirements for public benefit organisations, which allows the government to initiate inspections of these organisations without justification.

At the request of the chairman of the Committee for Public Benefit, inspections had already been launched against five CSOs by the end of 2018. The official reason given for these inspections was that the organisations collect the largest amounts from the 1 per cent tax mechanism. The Agora Foundation, established by the publisher of *Gazeta Wyborcza*, a liberal newspaper that the government views as an enemy, is one of the inspected CSOs. Despite the official explanations given, Agora Foundation is not among the top recipients of funds through the 1 per cent income tax mechanism, making some question if the inspections are politically motivated.

There were also new attempts to limit CSOs' cooperation with public schools in 2018. A smear campaign was organised against the so-called Rainbow Friday Initiatives, in which CSOs focused on anti-discrimination and issues affecting lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals organise events in schools to raise understanding

of sexual diversity. In 2018, some CSOs were prevented from entering schools to organize these events. In addition, participating teachers were harassed, and some participating students had their behaviour grades reduced. Similarly, authorities prevented Constitutional Week, a campaign organised by Zbigniew Hołda Association (<http://stowarzyszenieholda.pl/>) to educate secondary and high school students about the Constitution and the Constitutional Tribunal, from being organised in numerous schools and some of the judges participating in this activity were faced with disciplinary charges.

FREEDOM OF ASSEMBLY

For the last few years, we can observe growing importance of different social movements stepping into the public realm in Poland. It has probably started from informal urban movements and social movements for tenants' rights protection and get to the massive protest movements that have been developed since 2015. Examples of these are the above mentioned Polish Women's Strike as well as Committee for the Defence of Democracy, KOD a civic organisation promoting European values founded in November 2015 in response to the constitutional crisis.²³ Dozens of thousands of Poles have also participated in the demonstration against so-called common courts system reform (including modification to the Supreme Court structure and operation) around July 2017. Engaging in protests is one of the new ways in which Poles are organising themselves in an informal way, instead of establishing new CSOs or becoming involved in already existing one. In the last years, the right to assembly has been restricted in Poland with an amendment to the Act on Assemblies adopted on 13 December 2016. The law

IN OCTOBER 2018 THE CHAIRMAN OF THE PUBLIC BENEFITS COMMITTEE ISSUED A NEW REGULATION ON REPORTING REQUIREMENTS FOR PUBLIC BENEFIT ORGANISATIONS, WHICH ALLOWS THE GOVERNMENT TO INITIATE INSPECTIONS OF THESE ORGANISATIONS WITHOUT JUSTIFICATION

²³ See: Korolczuk E. (2017), *Spółeczeństwo obywatelskie w Polsce – kryzys czy nowe otwarcie?* [Civil society in Poland – a crisis or a new opening?], Warszawa: Instytut Studiów Zaawansowanych Krytyki Politycznej.

²² This sub-chapter is based on Pazderski, F. (2019), *CSO Sustainability Index 2018: Poland*, op. cit.

According to the WHO's air quality audit, by the end of 2018, only Bulgaria scored worse than Poland amongst the EU member states for quality of air. In this smoggy spot on the map of Europe around the year 2013 a group of local activists in one of Polish touristic-jewel cities, being in the same time the most polluted town in the country back then, have established a civic movement called **Krakow Smog Alert**. They started by organising social campaigns trying to educate their fellow-inhabitants on the problem as well as to advocate in the local authorities for adopting any remedies. Right after, similar initiatives began popping up like popcorns in numerous other Polish cities. Local authorities of growing number of cities in Poland started adopting special programmes dedicated to the fight. Over the years, the Kraków group has grown, expanded and now operates as a registered association cooperating with the activist from other Polish cities under the umbrella of Polish Smog Alert. It is quite an achievement for a civil society organisation operating in a difficult environment and facing the government's reluctance to take any significant step against the potential mass extinction of our planet by changing the mode in which our economies operate nor the sources used to produce energy.

Filip Pazderski – Institute of Public Affairs

ADVOCATING FOR THE RIGHT TO CLEAN AIR VIS A VIS STATE INACTION

The interest in environmental protection was sparked by air pollution

Interview with Krakow Smog Alert

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When did your fight for clean air start and what demands did you have?

Our fight for clean air started in December 2012. Firstly, we were focused very locally in Krakow: we wanted a clean environment with clean air. We went through all the data that was available and all the reports, and it appeared that because of its location – Krakow is located in the valley with very bad ventilation – the best solution would be to ban the burning of solid fuels in domestic furnaces. That was the main source of air pollution in winter-time. So we went out with this proposition to ban burning solid fuels.

Was there any episode that sparked your activism?

Well, it started in December, the air was quite bad back then, starting from Autumn through winter and until early spring. The air in Poland really stinks, and when you look at the monitoring stations,

the data they provide is sometimes very appalling and shocking. Back then, the air was also bad, [so] we decided to act. That was also good timing: it was the time when the air quality programme for the region was consulted. We thought it would be a good time to start acting because this regulation could be incorporated into the new law. Some of us were [already] active in ecological movements or human rights movements, but for the majority, this was the critical moment when we decided to take action.

Have your objectives and strategies changed over the years due to changing external conditions?

We were quite lucky: we were the first ones who picked the topic, so local media were very interested. Also, people were struggling with the problem: we addressed an issue that really bothered them. We were approached by many Krakovians, by



Krakow Smog Alert protest in Krakow.

© KAMIL KRAJEWSKI

medical doctors, by artists, by people who were running companies. They all helped us. We had a big campaign calling for people to sign a petition to ban solid fuel in Krakow. So through 2013, we were acting more in the public space. Of course, we were meeting with the politicians, but this was not so visible for the public.

Our first actions were very much in the public space, calling people to take action, to sign the petition, and when the time of voting came, we took people to the streets. There was a march, and there were 1500 people. It was a funeral march for clean



Magdalena Kozłowska, Krakow Smog Alert

air so everything was very photogenic and the media really liked it. Thanks to our activity in Krakow, people started to be active in their communities, and an alliance started to emerge all over Poland: we created a coalition of Alerts called Polish smog alert, and we are the secretary. These alerts work at the regional and local level: they usually act in the public space and meet with local politicians. But at the national level, we mostly meet with politicians, we organise conferences, we write reports. This is a different kind of work.

Why do you think you were able to mobilise so many people on the right to clean air? What strategies have become the most beneficial for you?

I think, as I said, we were able to mobilise many people because we were addressing the issue that was burning for them. They were [already] thinking this was a problem. They did not really know whether it was harmful or not, but it was bothering them. What helped us was creating awareness among people that [this issue] was not harmless and that there are serious health consequences connected with air pollution. Thanks to our work,

the media started to be more interested in the topic: we created a critical mass and then, when the topic was all over Poland, it also helped.

In your opinion, what is the biggest success of the group and what made it happen?

The thing which gave us power was our first success in banning burning solid fuels in Krakow. But then really other successes started to happen, so it is hard for me to distinguish them. The regulation in other regions started to happen. We managed to make some regulations happen at the national level: regulation for the new solid fuel boilers, norms for coal which is sold to individual buyers. These are also big achievements. Another thing is the program at the national level, which is called *Clean air* and helps people to get their houses renovated and make them energy efficient. [Now] we need to control how they are implemented, but, well, these are things that have not been caught by governments for years, so I think that any regulation is a big success. But what gave us strength was the first success.

Poland is often on the international headlines for issues concerning the

SOME OF US WERE [ALREADY] ACTIVE IN ECOLOGICAL MOVEMENTS OR HUMAN RIGHTS MOVEMENTS, BUT FOR THE MAJORITY, THIS WAS THE CRITICAL MOMENT WHEN WE DECIDED TO TAKE ACTION.

independence of the judiciary and shrinking civic space, including pressures on environmental activists. How did your relationship with the authorities developed over time and did you witness any kind of pressure on your activities? If so, how did you overcome them?

Mmm... In the beginning, when we started, we put two things in our internal policy: we want to be free of any individual political sympathy: we can talk with everyone who is in power, and we also do not want to be connected with any political party. We made many disclaimers that we do not want to compete in national or local elections because politicians were afraid that we would use our political capacity on our activity. So we made it clear to all the politicians that we were not interested in seizing power, but we were interested in changing the regulations. We also do not wanna be associated with any business or business associated sources so we cannot be accused of being lobbyists. And I think it helped. As I said, at the national level we usually write reports, those things which I mentioned are very technical, e.g. regulations for boilers... they are not as sexy maybe. Because we have the knowledge, and we have the back-up of experts working in the field, it is difficult to say *“You are not right, we don’t want to speak with you”*.

Do you think that these kinds of pressures are happening in other organisations?

Maybe in other organisations, yes.. but it depends on the issue. Organisations that work more in the public space and engage more in protests are more targeted, I guess.

Do you or other Smog Alerts face other challenges?

I think the biggest challenges are faced by alerts active in small municipalities and villages where people are usually afraid

to be activists, where everyone knows each other etc. For them, pointing out that some behaviours are inappropriate or that things must change is really brave. I really admire them!

We are observing a new civic enthusiasm and participation in environmental issues all across Europe. Do you see this happening also in Poland? If so, do you think that your organisation played a role in creating a sense of urgency for action?

Yeah, well it is maybe not very humble to say this, [but] I think we did help in creating this interest. Now there is a lot of talks on climate warning, but the interest in Poland started with air pollution. I think that it was really a debate and it helped

WE MADE MANY DISCLAIMERS THAT WE DO NOT WANT TO COMPETE IN NATIONAL OR LOCAL ELECTIONS BECAUSE POLITICIANS WERE AFRAID THAT WE WOULD USE OUR POLITICAL CAPACITY ON OUR ACTIVITY.

to incorporate the issue of climate in the public debate. Maybe I am not the right person to answer the question related to participation, there are a lot of things

happening, but I am not a regular citizen: maybe they are not aware of that, but I think that there are more of those initiatives than when we started. There are many grassroots initiatives. Our alerts started to tell our successes in Krakow and other people started to take action all over Poland on air pollution. But I think it also [happened] in other areas: some people are concerned with regulating rivers, some with deforestation, some with climate. I think that something is happening.

What are your organisation plans/aims for the near future? What would you like to achieve, now and how you want to make it happen?

For Krakow, we need to monitor how the regulations are implemented when the law enters into force in September

Funeral march in Krakow, 25 October 2013.



© KAMIL KRAJEWSKI

THERE ARE MANY GRASSROOTS INITIATIVES. OUR ALERTS STARTED TO TELL OUR SUCCESSES IN KRAKOW AND OTHER PEOPLE STARTED TO TAKE ACTION ALL OVER POLAND ON AIR POLLUTION

this year. We will see how it goes, how it is implemented, and how the authorities check if people actually are using solid fuels or not, if they are giving them

finances. When it comes to other actions, we are now focusing more on other sources of air pollution. Because of this regulation that we have on boilers, we can start thinking of other sources of pollution in Krakow, like transportation and industry. We want to start a bigger, nationwide discussion about transport and pollution related to transportation. [For example,] we would like to see traffic low emission zones implemented in Poland. Also, on a national level, we still need to improve and monitor the implementation of this *Clean air* program, which helps to make houses energy efficient. Another goal is to lower the alert threshold levels for PM10. This level is not European: each country can decide on their threshold levels of PM10, and ours is the highest in the EU. We have been campaigning for a long time to lower them down, and still, nothing happened. We would maybe like

to unionise them at the EU level so that the government must lower them at the national level.

Do you think that the European Union could be an ally to your fight and for environmental movements running across Europe? How?

Yes, I think it is a good ally because, thanks to European regulations, we have the target and limit levels when it comes to air pollution, and I think that many things started to happen also because the government was afraid of the fines from the European court. So, yes, the European targets and European law are very important in our activity. ■

Anti-Smog SOS Protest in Krakow.



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ROMANIA

Civic space in Romania is rated "narrowed" on the CiViCUS Monitor

In Romania, the presence of CSOs on the territory is unevenly distributed with most of the active organisations and the total income of the sector concentrated in urban areas. 75% of NGOs is in urban areas¹ while 62% of the incomes and 54% of the staff of the sector are located in the Bucharest, Northwest and Centre regions². Most CSOs struggle to have a stable income in order to secure their organisational capacity and, in particular, their ability to maintain permanent paid staff. 65% of organisations operates with an income which is less than 9,000 euros per year, and nearly 50% is below 2,500 euros. Since 2017, the situation of the CSO sector has further deteriorated due to worsening relationship with the government. Nevertheless, one of the biggest developments of recent years is the increase of civic participation in more informal ways, with a strong focus on community development, social issues and environmental protection.

¹ FDSC, Infografice „Romania 2017. Sectorul neguvernamental – profil, tendinte, provocari” (en), 2017

² USAID, CSO Sustainability Index, 2017

THE SECTOR IN NUMBERS

Population:
19.64 million

SOURCE: EUORSTAT, 2017

Number of NGOs:
107.774 (2018)

50% of these being active

Number of employees:
99 800 approx.

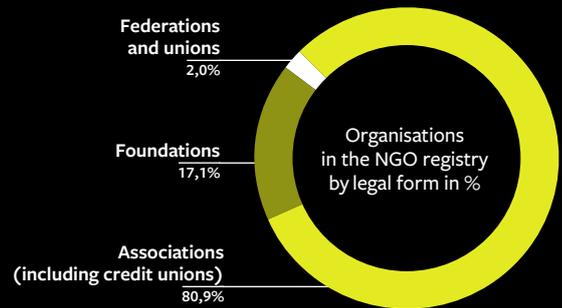
Only **32%** of organisations have employees

30% of the employees of the whole sector work in social-charitable NGOs

SOURCE: EUROSTAT, NATIONAL NGO REGISTRY, MINISTRY OF JUSTICE, 2016, PROCESSED BY CSDF, FDSC

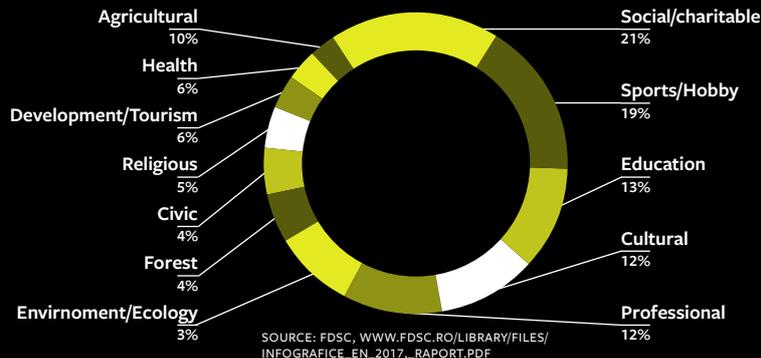
6% of citizens involved in volunteering in 2017 (-3% compared to 2016)

SOURCE: WORLD GIVING INDEX 2018



SOURCE: NATIONAL NGO REGISTRY, MINISTRY OF JUSTICE VIA THE 2018 CSO SUSTAINABILITY INDEX

DISTRIBUTION OF NGOS BY FIELDS OF ACTIVITY (2015)



SOURCE: FDSC, WWW.FDSC.RO/LIBRARY/FILES/INFOGRAFICE_EN_2017,_RAPORT.PDF

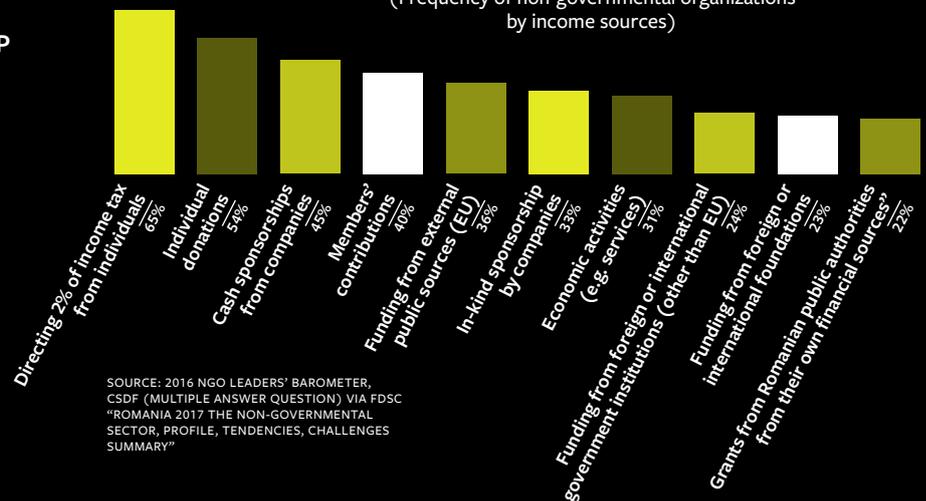
THE ECONOMIC WEIGHT OF THE SECTOR

Budget of the NGO sector:
2 539 million euros

It represents **1.6%** of national GDP

SOURCE: FDSC, HTTP://WWW.FDSC.RO/LIBRARY/FILES/INFOGRAFICE_EN_2017,_RAPORT.PDF

10 Most common sources of income for NGOs
(Frequency of non-governmental organizations by income sources)



SOURCE: 2016 NGO LEADERS' BAROMETER, CSDF (MULTIPLE ANSWER QUESTION) VIA FDSC "ROMANIA 2017 THE NON-GOVERNMENTAL SECTOR, PROFILE, TENDENCIES, CHALLENGES SUMMARY"

NAVIGATING A FRAIL POLITICAL ENVIRONMENT

Civil society reaches new peaks of civic engagement

By Andrei Pop, Civil Society Development Foundation

During the last few years, civil society reached new peaks in terms of civic engagement and public visibility. The most visible actions concerned the fight against corruption and the defence of minority rights. Hundreds of thousands of concerned citizens took to the streets to peacefully protest governmental actions. But small civic groups have started to develop and change successfully public agenda all across the country, especially concerning community development and social issues, often-times assisted by formalised organisations. Overall though, civil society has been operating in a very frail environment, looking at the 2018-2019 time-frame. During 2018 especially, despite a very large and diverse civic involvement, the government discouraged NGO activities as well as individual civic engagement. Since mid-2019 however, because of political turmoil in the main

governing coalition and of the governmental defeat in the European elections, civil society has been largely ignored by the establishment.

FREEDOM OF ASSOCIATION

In terms of legislation directly affecting the civil society sector, this period was certainly dominated by the clear gold plating attempted by the government in the transposition of the 4th EU Anti Money Laundering Directive. The government's proposal was also approved by Parliament, placing civil society in the same category of financial risk as providers of gambling services and banking institutions. With no legitimate cause and no risks assessment, the Romanian lawmakers expanded the EU directive and created reporting obligations that could not be fulfilled in real life, thus setting the legal basis for further discretionary control and sanctions. The draft law interfered with the right to protection of personal data, requiring NGOs

to report on the recipients of their services and assistance by including them, beyond the scope of the directive, in the sphere of beneficial owners. In case of non-compliance the extreme sanction was the dissolution of the organisation. Finally, in June 2019, after serious and repeated criticism expressed by civil society, as well as after an unfavourable verdict by the Constitutional Court, the draft law was amended. However, in this final version, while associations and foundations are no longer qualified as obliged entities and despite the definition of the beneficial owner was changed, there are still some other provisions likely to generate problems in implementation. As an example, foundations still need to report a large amount of personal data on the beneficiaries of their activities.

Civil society cooperation with the government has also been seriously impeded by the government's policy on anti-corruption, one of the most sensitive and

important topics for civil society in the past two decades. As part of an extensive reform of the judiciary and criminal code, the government and parliament used very opaque procedures to conduct drastic changes to the legislation in this field. Most of these changes were understood by the public as alleviating corruption-related offences, as well as weakening the independence of the judiciary only to increase governmental control over the justice system. The fact that the governing coalition disregarded significant civic protests as well as international criticism and hardly backed down on this reform was a strong message that cooperation with civil society is not on the government's agenda.

Civil society operation has also been impeded by the government's discouragement of private sponsorships for NGOs. At the beginning of 2018, new tax policies entered into force reducing the pool of companies allowed to deduct their sponsorships from the taxes owed. The measures, amended in the spring, temporarily favoured authorised social service providers, in a way that has been found discriminatory by many. In terms of individual philanthropy, the government also attempted to stimulate the tax redirection mechanism benefiting only those NGOs which are likely to be less critical towards authorities, since the services

THE DRAFT LAW INTERFERED WITH THE RIGHT TO PROTECTION OF PERSONAL DATA, REQUIRING NGOS TO REPORT ON THE RECIPIENTS OF THEIR SERVICES AND ASSISTANCE

they provide depend on regular approval by state agencies.

In August 2018, a governmental ordinance gave the Economic and Financial Inspection Department, directly reporting to the Minister of Finance, the role of monitoring the use of funds that CSOs collect through sponsorships, instead of the independent National Agency of Fiscal Administration. Critics fear that this could be used as a political instrument by the government¹.

On a positive note, civil society registered very significant success in terms of LGBT rights. Late 2018, with the support of most of the parliamentary parties, a referendum was held to narrow the constitutional definition of family and exclude LGBT couples. Following an intense no-vote campaign by civil society, the referendum failed to reach the validation threshold of 30% turnout.

FREEDOM OF EXPRESSION

Freedom of expression has also been under threat². While several media outlets, most operating as NGOs, have stirred more and more of the public attention with their political investigations, the government has started reacting with impromptu fiscal inspections or GDPR fines against such outlets. Rise Project, a non-profit journalism organisation whose investigations have untangled a number of cases of organised crime and corruption,

¹ USAID CSO, Sustainability Index, Romania 2018, published October 2019, http://www.fdsc.ro/library/files/index_usaid_2018_romania_ro.pdf, 2019.

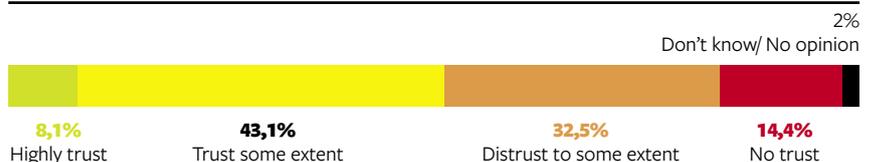
² Note of the editor: According to the RSF World Press Freedom Index Romania scores 47 out of 180 in 2019 (-3 as per 2018, +8 as per 2015).

THE PROTEST IN BUCHAREST STARTED PEACEFULLY BUT WAS MARKED BY THE VIOLENT REACTION OF THE POLICE. CIVIC SPACE WATCH REPORTED THAT 440 PEOPLE, OUT OF WHOM TWENTY-FOUR GENDARMES, RECEIVED MEDICAL ATTENTION ON SITE

has been threatened with a 20 million EUR fine for not disclosing its sources in a deep investigation impacting Liviu Dragnea, president of the Social Democratic Party. The same RISE Project had also been subjected to an impromptu fiscal inspection the very day it had announced to release a similar political investigation.

In spring 2019, independent journalist Emilia Sercan from the local news website PressOne has received a death threat from none other than a young police academy officer, following her contribution in disclosing the extended plagiarism tolerated within said Police Academy. The message urged her to refrain from investigating further, hinting at the fact that the harassment was linked with the content of her work. An investigation found that

Citizen's trust in NGOs (2016)



SOURCE: FDSC, [HTTP://WWW.FDSC.RO/LIBRARY/FILES/INFOGRAFICE_EN_2017_RAPORT.PDF](http://www.fdsc.ro/library/files/infografice_en_2017_raport.pdf)

the rector of the Police Academy, Adrian Iacob, and pro-rector Mihail Marcoci were behind the message.

As noted by the Civicus Monitor:³ “On 10th May 2019, *Reporters Without Borders (RSF)* and its Romanian partner, *Active Watch*, urged Romanian authorities to “combat the impunity and climate of violence against the media” and to take similar prompt measures to address other cases of serious abuse against journalists, as they did in the case of *Sercan*. They also encouraged the authorities to ensure that police officers are trained and made aware of the role of journalists and press freedom.”

FREEDOM OF ASSEMBLY

On 10 August 2018, a massive protest was organised and promoted by Romanians living abroad, who returned home calling the government to resign over corruption allegations. Up to 100,000 people gathered in front of the government headquarters in Bucharest, but major mobilisations took place also in other cities across the country. The protest in Bucharest started peacefully but was marked by the violent reaction of the police. Civic Space Watch reported that 440 people, out of whom twenty-four gendarmes, received medical attention on site. Sixty-five people, out of

³ CIVICUS Monitor, Anti-corruption activists targeted with death threats and judicial persecution in Romania, <https://monitor.civicus.org/newsfeed/2019/07/10/Anti-corruption-activists-targeted-with-death-threats-and-judicial-persecution-in-Romania/>, 10 July 2019.

MULTIPLE ACCOUNTS POINT TO HOW GENDARMES TARGETED MEDIA REPRESENTATIVES WHO WERE TAKING VIDEO RECORDINGS OF THEIR ACTIONS

FOLLOWING THE HIGHLY DISPROPORTIONATE AND VIOLENT REACTION OF THE RIOT POLICE, THROUGHOUT THE SECOND HALF OF 2018 AND THE FIRST HALF OF 2019, PEOPLE HAVE BEEN DRASTICALLY DISCOURAGED FROM EXERCISING FREEDOM OF ASSEMBLY

which nine gendarmes, had to be taken to the hospital. At least one person was severely injured by a tear gas grenade in his leg⁴. Water cannons, tear gas in huge quantities and varied shapes, as well as the traditional sticks, were the weapons used by the gendarmes. Pepper spray was used directly on people’s faces, from a distance of a few centimetres. The violence was unprecedented and indiscriminately used on innocuous people or even people holding their hands up as it emerges on footage made public. Multiple accounts point to how gendarmes targeted media representatives who were taking video recordings of their actions, including a camera operator from the Austrian public broadcast, ORF.

Civil society organisations have urged the Romanian Gendarmerie to investigate the events in full transparency and disclosure to the public. While the General Attorney opened a criminal investigation on the violence on August 10th, political

⁴ European Civic Forum, ROMANIA: police indiscriminate violence against anti-government protests, <http://civicspacewatch.eu/romania-police-indiscriminate-violence-against-anti-government-protests/>, 13 August 2018.

leaders close to the government refused to condemn the violence by the police. The political statements made by prominent governmental leaders, including Liviu Dragnea and Carmen Dan, the Minister for the Interior, are very concerning since they take no blame for any of the Gendarmerie’s violence, they consider it justified: a *coup d’état* had allegedly been set up, without providing any evidence. Civic protesters were called rats by the leader of the governing Social Democratic Party, while various fake news was systematically distributed by dozens of official Facebook accounts of this party. Liviu Dragnea announced that the legal investigation demanded by Romania’s President Iohannis to be an unfair pressure on the Gendarmerie. On the contrary, the ruling party called for investigation on the possible external financing of August 10 protest.



THE AUTHOR

Andrei Pop is a civil society expert who has been constantly mainstreaming efforts towards democracy strengthening and citizen involvement in the decision-making process. Programme Director at the Civil Society Development Foundation, the largest and oldest private NGO grant manager in Romania, he constantly advocates for more sustainability in the civil society sector, at local and European level.

Following the highly disproportionate and violent reaction of the riot police, throughout the second half of 2018 and the first half of 2019, people have been drastically discouraged from exercising freedom of assembly. With a very long history of peaceful anti-corruption protests in recent years, the sudden decision to stifle this protest was shocking to all civic minded Romanians that used to take to the streets in demand of better public service from their elected officials. Even more, it throws very dark clouds of popular doubt and discontent with anything related to civic activism. Moreover, Civil Society Europe⁵ even noted that the Minister of Interior had announced late 2018 upcoming modifications to the Law on public assembly that would limit and censor public gatherings based on subjective evaluations of the purpose of the protests, though such threats have not been enacted up until the current day.

CONCLUSION

In the medium and long term, the only path towards sustainability for the Romanian civil society sector is given by increasing constituencies, which would make the fragrant attacks on the civil society environment a very unpopular gesture for any politician. There is need for a more progressive political agenda to raise trust amongst the voters: progressive in both a mature understanding of the critical role civil society plays in a functional democracy, and in terms of support for the major civil society topics, such as strengthening anti-corruption, ensuring effective minority rights and truly integrating people at risk of social exclusion and poverty. ■

⁵ Civic Society Europe, Fact sheet: NGOs restrictions in Romania, 2018.

*“Romania has one of the highest figures of private ownership of houses in the world: more than 98%. Because social housing in Romania is less than 1%, there is a constant risk of forced evictions, especially of Roma people. Hundreds of thousands of people were evicted from their homes in Romania in the last thirty years. **Linda Greta Zsiga** is one of these people. She was pushed at the margins of society, nearby the landfills of Cluj, the second-largest in Romania, in what the City Hall called a social housing project for the “integration” of a Roma community. Pata Rat is a ghetto that has at this point more than 1.500 hundred people. Through protests, petitions and grassroots activism, but also connected to international activism, Linda Greta Zsiga, mother of four and a seller of flowers, she moved out of the ghetto with a tenth of the community. But still she fights for human rights and affordable housing until the ghetto is destroyed and the Roma community desegregated.*”

Adrian-Octavian Dohotaru, Member of the Chamber of Deputies
of Romania

FROM PATA RAT TO BRUSSELS: FIGHTING FOR THE RIGHT TO HOUSING FOR ALL

Linda Greta Zsiga, the first Roma running for European elections in Romania

Interview with Linda Greta Zsiga

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Can you tell us your story and the story of Pata Rat?

On 17 December 2010, 76 families were evicted from the Costei street in Cluj-Napoca to Pata Rat. When we arrived there, we saw that only 40 families received a small room of 16 mt² and the other 36 families were left outside under the sky. The families who received the small room invited the other families to live together until the spring, when it would have been possible to build something, a house. My fight started then, on 17 December 2010.

So who was affected by these evictions?

Mostly Roma people. One family of Romanians and one family of Hungarians. For the rest, only Roma people. We were a community integrated into the society, but the society pushed us five steps backwards. My whole family was all born and raised in Cluj and we paid our rent, our

utilities. We had social houses, we did not have troubles with our neighbours, they were very good. The municipality decided [to change] our lives in two days. Why? Because the Mayor at that time, Sorin Apostu, was disturbed by our presence. He was living in a street near us and our kids were playing with the ball in the street or going with the bicycle. And he was disturbed by this because he was racist.

On 15 December, they came to us to say we had to pack our things and on 17 December, two days later, around 200 policemen came at 5 in the morning with people from the municipality and told us we had to move. We did not know the location until the bus took us and transported us to Pata Rat. We were evicted and moved near the garbage dump, the chemical factory. Pata Rat is 200 meters from the garbage dump which collects all the garbage from Cluj-Napoca. It is a toxic area.

When did you become an activist?

When the eviction happened, my life changed and I suffered a lot. I was crying all day. I would look outside my window and see a big mountain of garbage, and I felt my dignity, my whole life would end there. I was thinking “*Oh my God, what did I do to deserve to live here together with my kids? How can the municipality think that people can live in this area?*”. There was a horrible smell. Imagine: after Bucharest, Cluj is the [second] biggest city in Romania. And all the garbage from the city was there. I suffered a lot. It took me a few months to think “*Okay, I need some change. It is time to do something, it is time to change something*”. These forced evictions only happen to Roma people, especially in Romania. In Tulcea, Baia Mare, in many other places there were evictions. So together with my friends we said “*Okay, we have to do something*”.

We started to organise, also with the support of other people. A lot of people came from Cluj-Napoca, a lot of activists, people from the academia, from NGOs came to support us and advise us on what we should do. Together all the community started a court [case] against the municipality. We did many actions: meetings, protests in front of the municipality. Many people supported us.

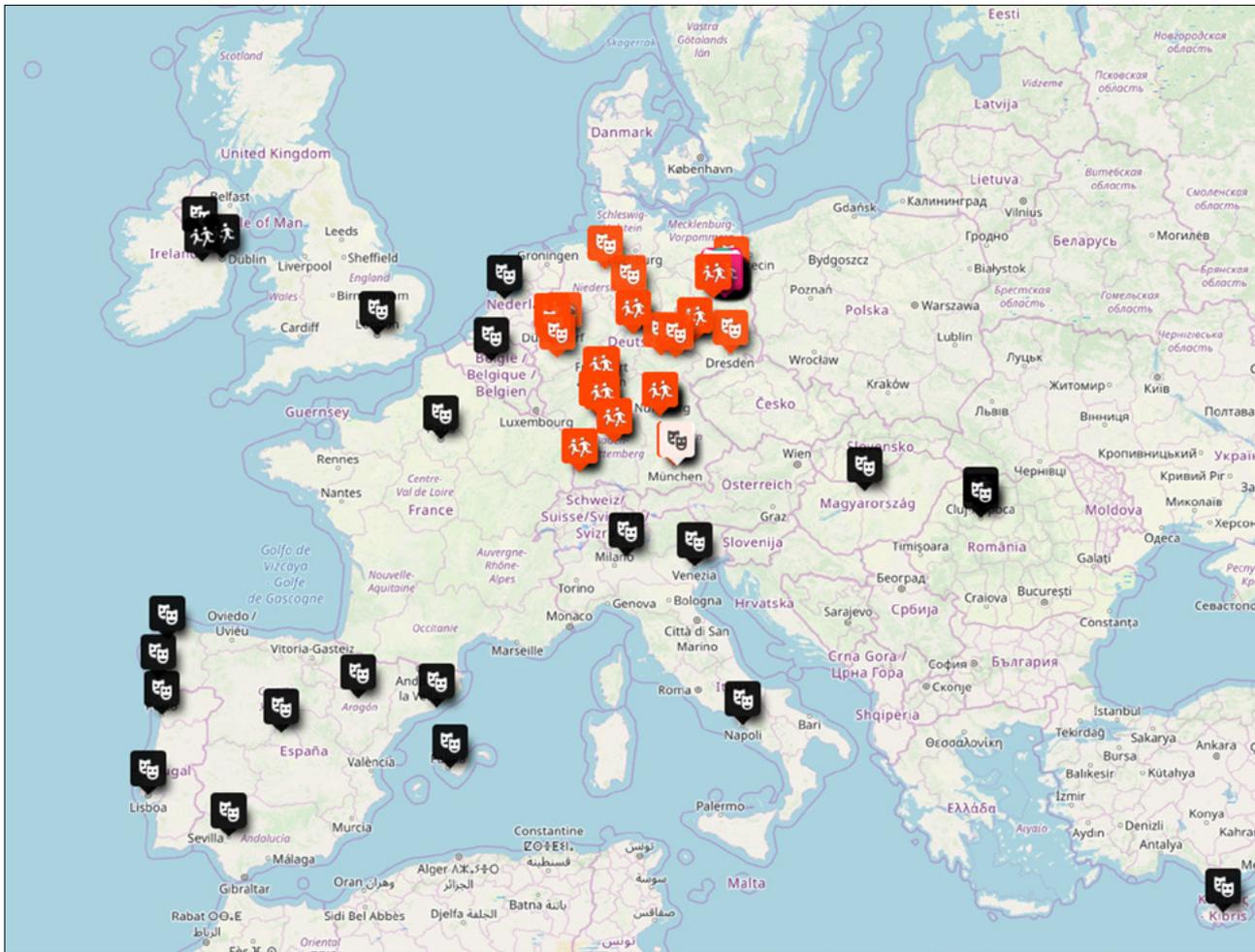
[In Pata Rat,] we only had electricity, we made fire with wood, we had to buy the wood. And then we only had water. We did not have access to internet, [nor] to cables, we did not have access to busses

because the station was really far away – 2 or 3 kilometers. So we started to organise. We created an association “Community Association of Roma from Coastei Street” and then we went to the municipality and we asked for a bus for the kids to go to school. And the municipality did it: it put a bus to bring the kids to school.

What was the response of the authorities?

Let’s say that it was positive because they saw that we were organised, we had the support of many people, including professors at the University. They opened us

WE STARTED TO ORGANISE. WE CREATED AN ASSOCIATION “COMMUNITY ASSOCIATION OF ROMA FROM COASTEI STREET” AND THEN WE WENT TO THE MUNICIPALITY



Pan-European action day against “rent madness”

Housing movements are emerging all over Europe. An example of the dimension of the movement is the action day “Together against repression and rent madness”. On 6 April 2019 and the week leading to it, they mobilised in major European cities as well as small towns.

SOURCE: [HTTPS://UMAP.OPENSTREETMAP.FR/DE/MAP/DEMONSTRATION-AM-642019-GEMEINSAM-GEGEN-VERDRANGUNG_299281#5/46.905/17.227](https://umap.openstreetmap.fr/de/map/demonstration-am-642019-gemeinsam-gegen-verdrangung_299281#5/46.905/17.227)

the door, they received us for meetings, but they did not change much: there are still people living in Pata Rat. Every year, we make many many protests. Four years ago, we made a big protest bringing 400 Roma teenagers from all over Europe.

Have you had troubles with the police?

No, we have a good relationship. They only follow us. They recognise us because we do this every year. Only once or twice it happened that someone was fined. But they never pushed us or beat us. Because they know the truth: we were evicted, now we live near the garbage dump. You do not have access to facilities of the town, you do not have access to hospitals. In general, [it is] during the evictions [that] policemen can be a bit aggressive.

IN GENERAL, [IT IS] DURING THE EVICTIONS [THAT] POLICEMEN CAN BE A BIT AGGRESSIVE.

Last year, a family with nine kids, two kids with disabilities, was evicted from Mesterul Manole Street and I was there together with others. I stood in front of the door and I told the policemen *“I won't move from here. You cannot take the family and move them out because they don't have where to go. This is their home”*. And the policeman pushed me and almost broke my hand. Another eviction [happened] this year again, I was there with my colleagues and the same happened. Sometimes there are people hurt or injured because they go in with force and if the people who oppose resist, then the police assaults them. Sometimes mothers [who resist] are threatened. But not by the police, by the social assistance. They say that they will take away their children.



Linda Greta Zsiga

Was this violence always there or did it increase over time?

The violence was always there. You have to think that for centuries Roma people were slaves. They opposed and resisted. [Even] in Auschwitz, they resisted, they clashed with the police with rocks, without weapons or guns. They resisted with their hands.

Are you and other activists from Pata Rat connected with other groups fighting for the same cause in other cities in Romania? Are these groups also led by Roma activists?

Yes! Now it is almost nine years that I am involved as an activist in all the evictions happening here in Cluj-Napoca and in other cities. The people contact me and I am there. In every city where there is an eviction there is a group of activists resisting, fighting for their rights. They are always Roma, but they are supported by non Roma people who have another vision. They think all people have the same right. It does not matter if you are black or white or gypsy or Romanian, you know?

Do you think that is becoming easier to be an activist as a Roma now compared to the past?

Mmm.. yes, I think it is thanks to the support of people that are not Roma. It is much easier because in the past people

thought that Roma were stealing, were dirty, and things like that. But now this is changing. For example, now in our communities we have the first generation from Pata Rat going to school. Their parents did not go to school; their grandparents did not go to school. Why? Because they did not have access to school. If you live in these houses, “houses” made of some wood and some nylon, without water, without electricity, without heating... How can you go to school? You go to school but you are smelling, you are dirty, because you do not have water to wash yourself and your clothes. But this is the first generation to go to school. We facilitate them to go to school. We provide clothes, transport, we [learn] to do the homework, and then we do afterschool. All the kids from our community go to school, to kindergarten, to middle school, to high school. Now we also have three kids in college. We have two kids that are champions in boxing, we have kids who play football. We are very proud! We did marches, we asked for our right to have a decent house, a decent life. The municipality stole our life and we want our life back.

IN EVERY CITY WHERE THERE IS AN EVICTION THERE IS A GROUP OF ACTIVISTS RESISTING, FIGHTING FOR THEIR RIGHTS. THEY ARE ALWAYS ROMA, BUT THEY ARE SUPPORTED BY NON ROMA PEOPLE WHO HAVE ANOTHER VISION.

Your story resonated nationally and internationally. Why so?

Yes, because my friends and many many people supported me. Amnesty, for example, facilitated the access to Brussels. Two years after the eviction, we had a forced eviction in miniature in front of the European Parliament together with Amnesty International. A flashmob. Then, we had breakfast in front of the European Parliament and we invited the members of the Parliament, to talk with them and to share our story about what is happening in Romania.

I have been to Brussels, to the European Parliament five times and this year, I was to the EU Roma Week. I spoke and all the people know the story. A few years ago, priests from England wrote to the Mayor to change the situation of Pata Rat. And I think that this is good pressure and it is working. The municipality is changing

its actions, its attitude a bit: they always receive us, to talk, to have meetings, to ask what the community needs. For example, to make the road, to put lights outside. To make the life in Pata Rat a little better.

But there is no discussion about bringing them back to the city?

No, the municipality always says that there is not enough money to build houses. But this year, the Council approved 2 Million Euro and the municipality will buy houses from big corporations and give social houses to the people. You have to bring papers to the municipality and depending on your score, you receive a house or not.

Affordable housing is increasingly becoming an issue also for a part of the Romanian middle class, although to a different extent and with different challenges. Do you think there is an opportunity to fight together for a change in housing policies?

Yes! We have a movement for social housing now and there we are [also] fighting [for people] living with rent. The rent is very very very expensive in Cluj: you pay your rent and you do not have money left to pay [for] your food. So, yes, we are together with the people who have a rent, with the people who do not have a house, with the people who do the paperwork to obtain social housing.

You are the first Roma running for European elections. Why did you choose to run?

I chose to run for the European elections because I think we need the political power to change the abusive law of Romania. I was not always involved in politics, because I always thought that politics are very big and my place is not there. I am an activist. But I saw that as activists, we [do] change some things, with small steps. But if I am an activist

with political power I can change many many things, with big steps not with small ones. Because when you are there, you can speak up for the problems in Romania, and not only in Romania, in all Europe.

Do you think that the European Union could be an ally in your fight and, more broadly, for the fight of the housing movement emerging all across Europe? How?

Yes, I think that the European Union has to put pressure on Romania and other countries with problems with housing. When we go to Brussels, we go with all the people: Roma people, non Roma people, and in my mind the European Union means protection. It means that someone can ask Romania to change things. ■

i WAS NOT ALWAYS INVOLVED IN POLITICS, BECAUSE i ALWAYS THOUGHT THAT POLITICS ARE VERY BIG AND MY PLACE IS NOT THERE. i AM AN ACTIVIST. BUT i SAW THAT AS ACTIVISTS, WE [DO] CHANGE SOME THINGS, WITH SMALL STEPS. BUT IF i AM AN ACTIVIST WITH POLITICAL POWER i CAN CHANGE MANY MANY THINGS, WITH BIG STEPS NOT WITH SMALL ONES

TRANSFORMATIONS OF HOUSING PROVISION IN ROMANIA:

Organizations of subtle violence

By Ioana Florea and Mihail Dumitriu, Common Front for Housing Rights (FCDL)

This article is based on empirical data and is a small part of an ongoing research project on housing struggles and transformations in housing policies in Romania. We look at these transformations within the wider historical and economic context, outlining some of the links between privatisation and austerity measures, individualisation and privatisation of housing provision, and the role of NGOs as subtle facilitators of such (often violent) processes.

WAVES OF HOUSING POLICY IN THE CONTEXT OF “TRANSITION”

In Romania, as in other ECE countries, “the implementation of housing reform became one of the first acts” of the post-89 governments, with “privatisation, deregulation, and cuts in state funding” as

its main principles.¹ Scholars of post-socialism have shown that these policies were cemented by the influence of international financial institutions such as the World Bank and the IMF overseeing the entire “transition” process.² In 1990, 30% of the housing stock was state owned³ – including buildings constructed during socialism (especially blocks of flats) but also buildings nationalised in the 1950s from the richer strata (especially villas, mansions, and small apartment blocks). After 1990, the housing reform followed three main paths:

1. The rapid and continuous sale of the state owned stock, which today stands at less than two percent of the country’s housing stock.

2. The deregulation and persisting lack of regulations with regard to urban development, working as a form of support for the private real-estate sector. In the mid 2000s, the retreating state informally shifted the responsibility for drafting urban regulations to the private sector (a process sometimes legitimised as participatory working group practice). This opened new legal doors for private accumulation through dispossession.
3. Re-privatization through restitutions (to former pre-1950 owners, their heirs, or their legal rights-buyers) of the nationalized housing stock, at first through financial compensation (for inhabited buildings) and in-kind (for unused buildings), and then through in-kind complete restitutions of buildings (despite the fact the state tenants were still living

¹ Stanilov, Kiril (ed.), *The Post-socialist City*, Springer, 2007, p. 177

² *Ibidem*, p. 176

³ Vincze, Enikő, *The Ideology Of Economic Liberalism And The Politics Of Housing In Romania*, *Studia Ubb. Europaea*, LXII, 3, 2017, pp. 29-54

there and no relocation solution was envisaged).

The restitution law (10/2001) – although appearing to have only localised effects – has been actually very destructive, producing waves of evictions, gentrification, rent increases, transformations in the function of buildings (from housing into profit making functions). This law was backed by the dominant anti-communist discourse which claims that the socialist regime wronged the interwar landlords when it nationalised their properties, and that these landlords and their heirs are rightfully entitled to these properties regardless of what may happen to



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the tenants of the state who currently inhabit them. Such tenants of the state who are affected by evictions from restituted buildings very often belong to vulnerable social groups. These evictions get almost no media attention and the evictees get almost no support from authorities and public opinion, because the right to property prevails over tenants’ rights, and because people belonging to vulnerable social groups are subjected to social stigma (invisibilized and marginalized).

In addition, for more than a decade, most of the national housing programs work to benefit the emerging/aspiring middle classes. Since 2009, “The First Home” (Prima casa) mortgage program and Bauspar program have been developed by the state in partnership with ERSTE financial group and Raiffeisen Bank, backed with about 4.5 billion euro in public funds. ANL (Agentia Nationala pentru Locuinte, The National Housing Agency) receives funds from the Ministry of Development – more than 1 billion euro since 2007 – to build flats, which are then sold to young families who can afford private mortgages. Another program supporting homeowners for the thermo-rehabilitation of blocks of flats has consumed billions of Euros (funds from the local and national authorities, plus EU funds) since 2009. In comparison, since 2007, less than 200 million euro were allocated for all kinds of social housing in total.

During the “transition”, the amounts spent on public housing declined, while overall housing construction rose. In 2015, 20% of Romania’s population was affected by severe housing deprivation. In urban areas, in 2014, there were over 67.000 applications for around 28.000 remaining, but already inhabited, social housing units. Moreover, following the liberalization of utility prices and their alignment with Western Europe since 1996, in response to the increasing cost of living, informal forms of housing amplified as ways of resistance and survival. It is



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estimated that almost half a million persons live without documents in informal types of housing.

Looking at housing provision within wider economic processes, we can say that since 1990, the IMF, World Bank and EU-imposed privatisation policies have also meant a constant drop in wages and a constant attack on labour rights. These culminated in 2011 with changes in the Labour Code and Social Dialogue

Code in the aftermath of the crisis, with severe impact on workers' lives and housing options. Since then, unionizing has become almost impossible, 44% of employees earn below the minimum wage, 25.4% of the population has fallen below the poverty line, over 40% of the population is at risk of poverty, and 42.6% of those employed spend more than 40% of their income on housing costs (2014-2016 data according to Eurostat).

After 2009, austerity measures brought cuts in most social benefits, legitimised by a rising discourse simultaneously for the “efficiency of the state” and against the poor. At the same time, most of the post-89 governments implemented tax-cuts for large companies, with recent tax-cuts for real-estate-developers enacted since 2017, and most of the post-89 governments deregulated the banking sector, paving the way for expensive and risky loans, which led to increased household debt. All these processes are part of Romania's integration into the highly financialised global economy. The transformation of housing from public provision into private real-estate investment is a key aspect in these structural processes. ■

Source: This article is an excerpt from *Transformations of housing provision in Romania: Organizations of subtle violence*, and it is published here with the permission of Left East, on which it was published 24 October 2018: <https://www.criticatac.ro/lefeast/transformations-of-housing-provision-in-romania-organizations-of-subtle-violence/>.



SPAIN

Civic space in Spain is rated "narrowed" on the CIVICUS Monitor

In 2011, in the aftermath of the economic crisis and the multiple cuts in public services, social movements took to the streets mobilising thousands of people. The answer was securitisation. The legislative framework has been hardened in its sanctioning and penal instruments based on arguments linked to security and maintenance of public order. The management of the crisis in Catalonia shows the same approach. The civil society reaction, after a first period of de-mobilisation, is now experiencing a new wave of civic participation. The third sector for social action is a mature reality with 60% of organisations having 20 years or more. Despite the funding cuts and the decrease in donations, the data show an expansion towards new areas like housing, integration and inclusion reflecting the social needs and political changes. Volunteering has increased substantially, representing a positive sign of citizens' engagement, but also a relative loss of professionalism for the associations. Parallely, many citizens have also been self-organising in these areas taking part in social movements or creating civic groups that often operate without formal registration.

THE THIRD SECTOR OF SOCIAL ACTION (TSSA) IN NUMBERS

Population:
47.3 million (2012)

Number of entities:
29 739 (TSSA Yearbook published in 2012)

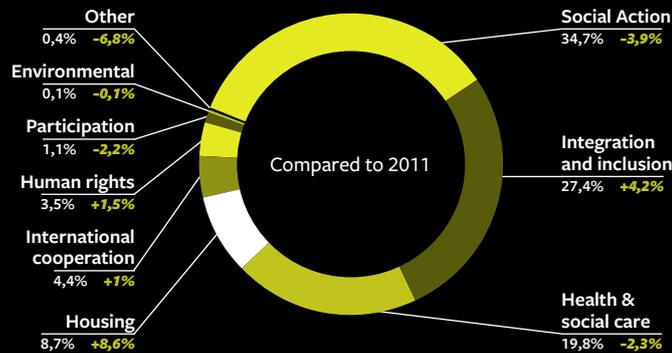
Total of **151 725** associations in Spain (2008),
of which **27 345** are part of TSSA

SOURCE: NATIONAL REPORT ON THIRD SECTOR BARRIERS

Number of employees:
644.979
(567.400 without the singular entities' employees), 2013

Number of volunteers:
1.3 million people (2013),
+18.3% compared to 2010

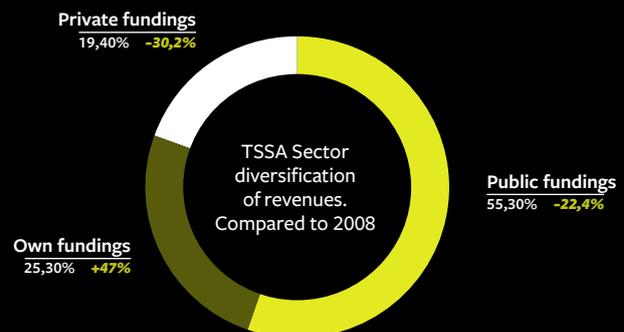
DISTRIBUTION OF TSSA BY FIELDS OF ACTIVITY (2015)



THE ECONOMIC WEIGHT OF THE SECTOR

The income of the sector amounted to:
14.5 million euros in 2013

It represented **1.51%** of national GDP (2013)



SOURCE: THIRD SECTOR OF SOCIAL ACTION IN 2015: IMPACT OF THE CRISIS, EXECUTIVE SUMMARY

FOUR YEARS OF GAG LAWS

Criminalising organised dissent

By Thais Bonilla and Serlinda Vigara, International Institute for Nonviolent Action (Novact)

In 2011, after the economic crisis of 2008 and the multiple cuts in public services, organised society took to the streets. Thousands of people mobilised against the austerity policies, the bank rescue, cuts in Public Health System, public education, retirement pensions, the growing cases of eviction, the increase of child poverty, homelessness, precariousness, gender violence etc. However, this mobilisation was framed as an attack on the State and not as an opportunity for bottom-up political participation. The answer was securitisation. The *status quo* was defended without prioritising the proposals of civil society. On the contrary, the legislative framework has been hardened in its sanctioning and penal instruments with the argument of security and public order in the streets.

LEGISLATIVE FRAMEWORK

In Spain, since 2015, three different legislative changes have distanced the country from compliance with its international human rights obligations:

- ▶ Organic Law 4/2015, of March 30th, on the protection of citizen security
- ▶ The double reform of the Penal Code, through the Organic Law 1/2015, of March 30
- ▶ The anti-jihadist Pact, which contained important legislative changes regarding the anti-terrorist and national security policies.

This package of measures, popularly called “Gag Laws”, has been harshly criticised by civil society organisations, human rights centers, and international bodies. Despite this, they are currently still valid.

These legislative changes were born to silence organised civil society in Spain¹. This legislative framework has treated social movements and critical voices as a problem of public order and security. The securitarian prism of the political and social reality of the country eliminates adequate safeguards of sanctioning and judicial procedures, granting broad powers to the police. The Organic Law on the Protection of Citizen Security uses such an ambiguous and unspecified language that, in practice, is allowing irregular actions in police interventions. For instance, journalists have been administratively sanctioned for recording police interventions in public spaces and people taking part in demonstrations have been arbitrarily identified.

¹ Defender a quien Defiende, Homenaje a la protesta. Análisis de una ley inspirada en ti, http://defend-eraquiendefiende.org/wp-content/uploads/2015/07/DOSSIER-MORDAZA_web.pdf, 2015.

VIOLENT POLICE PRACTICES

Understanding the political and social problems as security problems favors an increase in the excessive use of force by the police instead of a reduction.

One of the most recent and known example was the police brutality action against peaceful demonstrators during the popular mobilisation for the Catalan referendum on October 1st 2017. The police also made use of batons and rubber bullets.

The network of observers of human rights violations in contexts of protest – Som Defensores, launched by Novact in collaboration with other Catalan human rights organisations, compiled information regarding ill-treatment. Som Defensores published a report that showed 325 people injured by police action in Barcelona on 1st October² (the Catalan health service CatSalut registered more than a thousand people, precisely 1,066). That day, an activist called Roger Espanyol lost his eye because of the use of rubber bullets³. This network also denounced the difficulty to identify the police agents, in violation of the state regulation foreseeing the obligation of the police to wear uniforms and to carry their personal identification number or number of the Professional Identity Card (TIP) in a visible place, as well as irregularities in the use of riot gear with even sustained blows to people who were already on the ground.

Violence and mistreatment by state security forces are being repeated in all territories, not only in Catalonia, especially in contexts of resistance to the evictions of people from their home for failing to pay a mortgage or rent. The case of Argumosa 11 in Madrid on February 2019, is significant: the police did not only seek to remove the families from their homes, but also

² Som Defensores, *Violación De Derechos Civiles Y Políticos Cataluña*. Septiembre y Octubre 2017, https://novact.org/wp-content/uploads/2017/10/Informe-DDHH_1OCT.pdf, 2019.

³ El Confidencial, *El relato de Roger Español, el chico que perdió la visión de un ojo el 1-O en Barcelona*, <https://www.youtube.com/watch?v=DlpJTznBJI>, 14 Nov. 2017.

**UNDERSTANDING
THE POLITICAL AND
SOCIAL PROBLEMS AS
SECURITY PROBLEMS
FAVORS AN INCREASE
IN THE EXCESSIVE
USE OF FORCE BY
THE POLICE INSTEAD
OF A REDUCTION**

to give a warning to groups fighting for housing, and discourage the protests that have gained prominence in recent years against large investment funds. Six people were detained, many identified. The Police also created a security cordon and used batons to keep away the activists resisting the eviction⁴. While similar or even harsher violence has characterised other evictions in different Spanish cities, this became symbolic of the repression against solidarity against evictions.

SMEAR CAMPAIGN AND INTIMIDATION

Repression is not only the result of the use of force by the police, but also of police and/or government public statements that criminalise and delegitimise popular actions, generating an inhibiting effect (chilling effect).

Already in 2000, the mayor of Madrid, José María Álvarez del Manzano, said that his “*ideal*” would be to implement a “*manifestódromo*”⁵ that, according to him, would allow “*quieter*” traffic in the city. Years later, Cristina Cifuentes (2012), president of the Community of Madrid, recovered the idea by saying that the protests

⁴ El Salto, *Las lecciones de los desahucios en Argumosa*, 11 <https://www.elsaltdiario.com/desahucios/lecciones-desahucios-policia-sanchez-carmenta-argumosa-11>, 25 Feb 2019.

⁵ Delimited areas where to carry out protests.

bothered, that the law was very permissive. She called for the right to demonstration to be restricted inside a space where people could manifest without disturbing. Along the same lines, back in 2012, the commissioner of the *Mossos d'Esquadra*⁶ David Piqué threatened the protesters and student unions active in different general strikes in these years with the following words: “*You can hide wherever you want because we are going to find you, either in a cave or in a sewer, which is where rats hide, or in an assembly, which represents no one, or behind a university chair*”.

This security discourse would later justify the Gag Laws.

A 2015 report⁷ described how, during the years of economic and institutional crisis, the Spanish State had showcased authoritarian behaviours, at all levels, towards citizens’ protests. The attitude of the authorities towards social movements has been that of confrontation, delegitimation and, ultimately, criminalisation.

Many cases of harassment and smear campaigns induced by the authority often take place in public spaces, and impunity prevails. During October 1st referendum in Catalonia, the cameras of the National Police and Mossos d’Esquadra recorded the insults and words of humiliation to the protesters⁸. “*When a misfortune happens, do not say that the police has done it,*” said an agent to one of the voters after lamenting that a young woman was not moving from the doors of the school, exerting nonviolent resistance. “*Due to Sanfermines she will say that this is rape,*” said another agent in reference to the case of “La Manada”, a gang rape that took place during the celebration of Sanfermines in 2016.

⁶ Autonomous police force of Catalonia.

⁷ *Defender a quien Defiende, Leyes mordaza y criminalización de la protesta en el Estado Español*, http://defenderaquiendefiende.org/wp-content/uploads/2019/08/defender-a-quien-defiende_Libro.pdf, Sept. 2015.

⁸ Eldiario.es, *El 1-O desde las cámaras de los antidisturbios de la Policía*, https://www.eldiario.es/catalunya/politica/camaras-antidisturbios-Policia_o_317868387.html, 2018.

In Madrid, after the extreme right entered the local government with the coalition of the Partido Popular, Ciudadanos, and Vox, the current mayor Jose Luis Martínez-Almeida has expressly threatened the members of the *Ingobernable* Social Center. Almeida said that police intervention during the eviction of the building would be “*within the law but with all the force that the law gives*”. The same week Sofía Miranda, Madrid Sports Council, called them “parasites” on twitter.

After denouncing the police who tried to stop the entry of 187 migrants with kicks and blows at the Ceuta border, Helena Maleno, a human rights activist, received threats like this: “*I suggest you [stay] silent or you will die. You are bothering the authorities*”, accompanied by a photograph of a gun and a bullet. Even the Unified Police Union (SUP) contributed to the threatening messages that the defender was receiving on Twitter.

Environmental activists are also victims of criminalisation and defamation. Juan Clavero, from the organisation

Ecologistas en Accion, was a clear example of this persecution. He was arrested in August 2017 for alleged drug trafficking while he was returning from a protest. One of the officers from the *Guardia civil*, falsified a report to accuse the activist of a crime against public health by giving a false version of the facts and omitting relevant information from the judicial authority. Juan Clavero was declared innocent a few weeks after he was arrested, after extensive campaigning against criminalisation of climate activists by civil society organisations.

BUREAREPRESSION: ADMINISTRATIVE HARASSMENT OF PROTESTERS

The Organic Law 4/2015 on the protection of citizen security (LOSC) allows violations of the right of peaceful assembly and association. This law considers the complaints, attestations or acts formulated by the agents of the authority “*sufficient basis*” to impose sanctions unless there is evidence of the contrary. In practice this provision functions as “*presumption of truthfulness*” because it is very difficult to provide evidence to rebut the police version. As a result, people tend to prefer to pay the administrative fee without challenging the allegations – benefiting from a 50% reduction available if the penalty is paid within a short deadline. This discount further contributes to a high number of sanctions, which in turn discourages people from appealing the charges, thus serving the burearepression.

Article 36.6 of the LOSC introduces a serious penalty between 601 and 30,000 euros for “*disobedience or resistance to the authority or its agents in the exercise of their functions.*” According to the data published by the Ministry of the Interior, this infraction has been the fourth reason why the population has been sanctioned with a total of 12,094 sanctions in 2016 and 13,033 sanctions in 2017.

Before the entry of the LOSC, the majority of sanctions imposed in the exercise of the right of peaceful assembly was based on the alteration of public order or disobedience to authority. Now, the problem lies in the fact that some fines do not specify which of the infractions falling under the scope of the law (disobedience, resistance or refusal to identify oneself) is imputed, hindering the right of defence within the framework of the administrative-sanctioning procedure. For this reason, in recent years the Ombudsman has received many complaints, especially in the autonomous communities of Madrid and Andalusia⁹.

Police forces are also granted with certain discretion to assess which behaviours may be considered as disobedience, lack of respect or resistance to authority, without being accompanied by adequate mechanisms of control and accountability.

The broadening of concepts and the abundance of imprecise terms (“*indeterminate legal concepts*”) generate legal uncertainty. In accordance with article 30.3 of the LOSC, the concept of “*organisers or promoters of assemblies*” in the public space is extended, to guarantee possible responsibilities that may arise, and now includes not only natural or legal persons who have notified the assembly, but also “*those who actually preside, direct or perform similar acts, or who can reasonably be determined as directors of those by publications or declarations of convocation of the same ones, for the oral or written declarations that in them are spread, for the slogans, flags or other signs that they bear or for any other facts*”.

Moreover, the reform of the Penal Code modified the crimes against public order, of attempt and resistance. The parameters to consider behaviours as “*criminal*” were considerably expanded and, in some

⁹ Defensor del pueblo, Expedientes Sancionadores Según La Aplicación De La Ley Orgánica De Seguridad Ciudadana, <https://www.defensordelpueblo.es/resoluciones/aplicacion-de-la-ley-organica-de-seguridad-ciudadana-expedientes-sancionadores-75/>, 22 March 2018.

POLICE FORCES ARE ALSO GRANTED WITH CERTAIN DISCRETION TO ASSESS WHICH BEHAVIOURS MAY BE CONSIDERED AS DISOBEDIENCE, LACK OF RESPECT OR RESISTANCE TO AUTHORITY, WITHOUT BEING ACCOMPANIED BY ADEQUATE MECHANISMS OF CONTROL AND ACCOUNTABILITY



AUTHOR

Serlinda Vigara is a journalist specialized in International Politics at the Complutense University of Madrid. Her work in the struggle for civil rights began in Saharawi refugee camps (Tindouf, Algeria) and she really learned all she knows working with the grassroots social movements in Madrid. She is considered a very active activist on issues related to the environment, feminism and the right to the city. She works in Novact's area of non-violent civil resistance in Europe, and in Defender a quien Defiende (Defending who defends) based in Madrid.

cases, the scope of actions penally persecuted has been widened to also include the suspicion of criminal intent. These broader parameters may negatively affect freedom of expression and the right to assembly because, according to international standards, what constitutes a criminal offence is the "action" and not previous acts, except in very specific cases. With this reform of the Criminal Code, the incitement or reinforcement of the actions classified as public disorders, as well as the "*distribution or public dissemination, through any means, of messages or slogans that incite the commission*" of such actions are punished.

FREEDOM OF EXPRESSION

The Organic Law 4/2015 on the protection of citizen security and the Penal Code hinder freedom of expression.

Article 36.23 of the Citizen Security Law typifies as "severe infraction" the unauthorised use of images or personal and professional data of authorities or members of the Security Forces that may endanger the security of the agents or their families. This article has been used against journalists and activists, especially while covering protests.

For example, journalist Rubén Molina was denounced in May 2018 for exercising his profession for the local media La Burxa. He had photographed an eviction in Barcelona and published the images on social networks. Rubén said that two

agents approached him from behind, held him and forced him to identify himself. Meanwhile, a third agent, without warning, took his cellphone from his pocket. Then, one of the agents informed him that they were going to report him for the images they saw him taking and sharing on social media¹⁰.

Article 36.23 has been harshly criticized because it creates obstacles to documenting abuses or excesses by the police. The wording explicitly punishes the "*improper*

¹⁰ Amnestía Internacional España, SAL A LA CALLE... SI TE ATREVES. Tres años de la aplicación de la Ley Orgánica de Seguridad Ciudadana, <https://media-edg.barcelona.cat/wp-content/uploads/2018/07/18141649/AI-Mordaza.pdf>, 2018.

ARTICLE 36.23 OF THE CITIZEN SECURITY LAW TYPIFIES AS "SEVERE INFRACTION" THE UNAUTHORISED USE OF IMAGES OR PERSONAL AND PROFESSIONAL DATA OF AUTHORITIES OR MEMBERS OF THE SECURITY FORCES THAT MAY ENDANGER THE SECURITY OF THE AGENTS OR THEIR FAMILIES. THIS ARTICLE HAS BEEN USED AGAINST JOURNALISTS AND ACTIVISTS, ESPECIALLY WHILE COVERING PROTESTS



AUTHOR

Thais Bonilla is a communicator for social transformation specialized in human rights. She studied at the University of Valencia, the Autonomous University of Barcelona and the University of Bergen (Norway). Since 2011, she works at Novact and, since 2013, she focuses on the analysis of the collective defence of rights and the development of projects for the integral protection of activists. She coordinates the Novact's area of non-violent civil resistance in Europe and has very active participation in the platform Defender a quien Defiende (Defending who defends) since its beginnings.

DUE TO THE REFORM OF THE PENAL CODE, THERE WAS A MODIFICATION OF THE "CRIME OF GLORIFYING TERRORISM AND HUMILIATION OF THE VICTIMS" (ARTICLE 578). ITS APPLICATION IN PROSECUTIONS AND CONVICTIONS MULTIPLIED BY 13 TIMES FROM 2011 TO 2017

use of images" and not "the capture of images." However, media and police agents have repeatedly communicated that it is prohibited to take pictures, generating social alarm. The Socialist Party (PSOE) – before joining the government in summer 2018 – proposed to eliminate this article. The party later toned down its criticism and the promise remained unfulfilled.

In October 2018, the Secretary of State for Security prepared a police instruction on the interpretation of the Organic Law 4/2015, of March 30 (13/2018 of October 17), where this discretion and misinformation were addressed. However, the Law remained unreformed. Instructions alone are not enough.

It is important to remark that it has become a common practice for security agents in a first place to threaten those recording images under article 36.23. But later, activists and journalists do not receive a sanction for this article but for "resistance or disobedience to authority" under the above-mentioned Article 36.6 of the LOSC.

For example, journalist Juan Carlos Mohr was punished under Article 36.6 in

September 2017. The police accused him of skipping "the line of police security," "disrespect the agents" and "disobey their orders to identify himself". In this specific case, the resolution of the Government Delegation in Madrid establishes a sanction of 2,000 euros. The journalist Cristina Fallarás was also fined in 2017 for "disobedience to authority". She was accused of stepping on the road during a concentration against the murders of journalists in Mexico, against the instructions from a policeman. The Spanish Platform in Defense of Freedom of Information (PDLI) has been denouncing these actions for some time as part of a "camouflaged censorship" for, as they explain, "the perverse operation of the Law, [makes possible for] the police to act as judge and part, while sanctions against freedom of information tend to "camouflage" under generic violations". In addition, they point out that there is an aggravating factor in all of this: "The Police [forces] are ignoring the circumstance for which the person whom they are going to sanction may be exercising a fundamental right, such as informing, or participating in a protest, which makes a great part of these fines unconstitutional".

Due to the reform of the Penal Code, there was a modification of the "crime of glorifying terrorism and humiliation of the victims" (Article 578). Its application in prosecutions and convictions multiplied by 13 times from 2011 to 2017, and only in the last two years, nearly 70 people were found guilty. Users of social networks, journalists, legal professionals and musical artists have been prosecuted under Article 578.

In 2015, Ismael Moreno, the judge of the Audiencia Nacional, ruled in favour of the imprisonment of two members of the company *Tóteres de Abajo* for a theatrical performance at the carnival celebration in Madrid. They were charged with the crime of glorifying terrorism and another crime committed on the occasion of the exercise of fundamental rights and public liberties guaranteed by the Constitution.

After being released, the artists recalled that freedom of expression "allows you to say things that the next door does not like, or does not want to hear, or [is] even horrified to hear."

CONCLUSION

Spain is immersed in a political cycle in which the legal architecture, thanks to reforms of the penal code and repressive laws, has allowed the criminalisation of any organised form of political dissent alleging a national security problem. During the first years of this cycle, there was a considerable decline in the exercise of the right to protest, as a result of bureaucracy, persecution and fear of government reprisals. Protests in the Spanish state went through one of its most critical moments.

In recent years, the situation has changed markedly, and we are in a new political and social cycle: while repression has only increased, there has also been a revival in protest. Housing movements have put their struggles back at the centre of the debate. Feminist assemblies have taken millions of people out in the

IN RECENT YEARS, THE SITUATION HAS CHANGED MARKEDLY, AND WE ARE IN A NEW POLITICAL AND SOCIAL CYCLE: WHILE REPRESSION HAS ONLY INCREASED, THERE HAS ALSO BEEN A REVIVAL IN PROTEST. HOUSING MOVEMENTS HAVE PUT THEIR STRUGGLES BACK AT THE CENTRE OF THE DEBATE

last two years. Ecological groups such as Extinction Rebellion, Fridays For Future or Youth for the Climate are carrying out actions of civil disobedience challenging the imposed *status quo*.

At the same time, right-wing coalition governments have settled in dozens of municipalities and autonomous communities of the country and numerous fundamentalist groups have targeted the feminist movement and groups of sexual dissidence with criminal trials and harassment on social networks. For the time being, despite this alarming political context, calls to reform or repeal the laws that criminalise and persecute protests continue without finding much space in the political agendas of any party. ■

Four years after the approval of the package of the so-called gag laws in Spain (Citizen Security Law, Reform of the Criminal Code & Anti-Terrorist Law), the situation we are living is, more than ever, a serious regression of civil and political rights. Often the clearest image of the violation of rights in protest contexts are the agents of the State Security Forces aggressively attacking demonstrators, limiting the course of a demonstration or irregularly arresting people after a protest. However, the repression is also exercised through political and police public statements that feed a context of fear. This demobilises citizens when it comes to defending their rights. **Defender a quien defiende** contributes to breaking the fear by supporting social movements offering them tools of protection, organisation and working for political accountability on rights violation.

Albert Caramés Boada, Researcher and Professor on International Relations Peace, Conflict and Security Master Coordinator at Universitat Ramon Llull

SUPPORTING RESISTANCE AGAINST STATE REPRESSION

The feminist movement in Spain as counterpower disrupting the status quo

Interview with Defender a quien defiende

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Can you tell us about Defender a quien defiende and who is involved?

Defender a quien defiende is a platform formed by human rights defenders, journalists, psychologists, legal experts and social movements that fight against the criminalisation of organised civil society. Our main goals are to fight against laws and governmental actions that criminalise human rights defenders in Spain and violate their rights in the context of protests; to improve capacities, action, resources and coordination of civil society organisations to influence the protection of rights politically, socially and legally; to support the development of public policies and social practices that work for a “Human security” concept.

When did your fight start? And what motivates you to keep fighting despite the political

unwillingness to reform the Gag Laws?

We started to work in 2014, one year before the approval of the so-called Gag Laws in Spain in the face of the regression of rights we could face. Members of

the platform are movements and organisations that work on a multitude of issues related to human rights (environment, feminism, housing, migrations, institutional violence...) so this is not a new field of work.

However, it is the right to protest that brought us together!

What keeps us working and united is the feeling of fighting for what is fair, for social justice. All members and member organisations have the defence of human rights in their DNA and know the importance and necessity of having an organised society to maintain them. So, we know that, although the Government does not seem to move a finger to repeal the gag laws, our work is improving the day-to-day life of social movements and is generating useful tools for the defence of rights!

We are motivated, as well, by the feeling of unity and family even though it is very difficult to maintain it when we are not “physically” in the same territory. For

ALL MEMBERS AND MEMBER ORGANISATIONS HAVE THE DEFENCE OF HUMAN RIGHTS IN THEIR DNA AND KNOW THE IMPORTANCE AND NECESSITY OF HAVING AN ORGANISED SOCIETY TO MAINTAIN THEM

RED MALLA IS A DIGITAL PLATFORM, WORKING WITH A DIGITAL SECURITY CODE, THAT MAPS WHERE AND HOW REPRESSION IS HAPPENING. BUT, THE MOST IMPORTANT THING IS THAT IT CREATES THE POSSIBILITY AND THE CONTEXT FOR ALLIANCES AND SOLIDARITY THROUGH ITS NODES

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that reason, we work hard on the cohesion of the group even in separate territories. Thanks to Defensor de quien Defiende, we feel that Cádiz, Sevilla, Madrid or Barcelona are at the same time and in the same place, as a common front against the violations of human rights.

How has participation and repression in Spain changed since you started? And how did you adapt your strategy to this changing landscape?

Spain is inside a political cycle in which the legal architecture has allowed the criminalisation of any organised form of political dissent. The persecution of activists and human rights defenders had happened before. However, now the law has been modified in a way to legitimate the irregular practices affecting fundamental rights directly.

In 2015, a reform of the Penal Code and a new Public Security Law were approved alleging a national security problem. During the first years, there was a

considerable decline in the exercise of protests as a result of the *burrorepresión*, persecution, criminalisation and fear of prosecutions or/and police violence. It is the chilling effect some laws have on the population.

This week, one of our members, published a report where they pointed out that 69,6% of cases denouncing institutional violence they received as lawyers in 2018 happened in the context of protests. Our way of adapting work to the changing situation is based on the creation of working groups regarding specific incidents as well as on the confidence in the work that each member organisation does. For example, during this year we have created an advocacy group that produced reports that will be taken to the United Nations and a communication group that has been generating official statements on sensitive issues. [We also created] another one for the development of our new reporting and monitoring tool, Red Malla. We created these groups to adapt our strategy and capacity of work to reality.

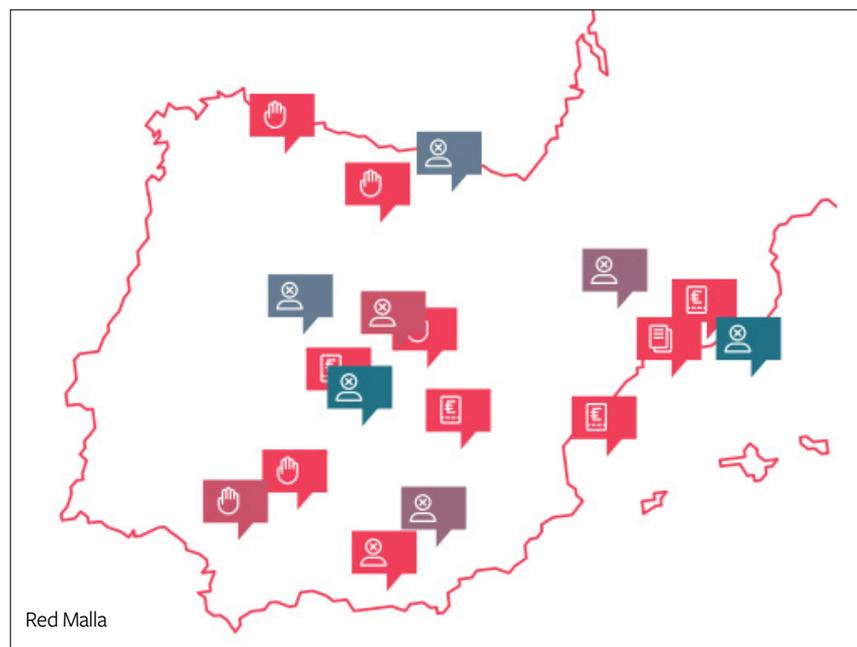
What is the role of the territorial nodes, and how do

you use the monitoring of the Red Malla for your activities?

Red Malla collects and analyses violations of the right to protest committed by police forces and private security companies in Spain. Red Malla is a support network and works with the data collected by the “nodes” and the information we receive through the specific form on the webpage. Now, we have nodes active in Madrid, Granada, Seville, Zaragoza and Barcelona.

Last year, we published our first report, which helped us to have comparable data on how the laws are applied and the specific vulnerabilities that occur in the context of protest.

Red Malla is a digital platform, working with a digital security code, that maps where and how repression is happening. But, the most important thing is that it creates the possibility and the context for alliances and solidarity through its nodes: If you have a problem, we connect you with a node to create community and integral protection. At the same time, nodes are connected between them thanks to the meetings of the General Assembly.



In the occasion of the 8 March, you ran a campaign called “Feminismos activos y seguros”. How is state repression against women, women’s movements and groups that are not heteronormal different from other forms of repression?

With the collaboration of Calala Fondo de Mujeres, we promote the campaign “Feminismos activos y seguros”, in order to contribute to the safe activism of feminist activists and movements in Spain. The campaign is focused on activists, movements and organisations that are being subjected to criminalisation, harassment, or any other form of violence because of their feminist activism and/or their work in defence of the rights of women, lesbians and trans in the Spanish State. The goal is to cover the legal costs of prosecution, the administrative fines. Last year, some women were fined or even prosecuted for organising and/or participating in mobilisations or other feminist popular actions and even because of hanging posters on street walls. The state itself is not the only actor against feminism in Spain. The political right-wing and fundamentalist groups are working very hard against the feminist movement. They have an open battle against what they call “the gender ideology”. In this sense, they are using courts as a way to limit the freedom of expression and assembly of the feminist movement. Many feminist activists are

THE POLITICAL RIGHT-WING AND FUNDAMENTALIST GROUPS ARE WORKING VERY HARD AGAINST THE FEMINIST MOVEMENT

DEFENDER
A QUIEN DEFIENDE

PROPOSES THE CREATION OF AN **EARLY WARNING AND RESPONSE SYSTEM** AGAINST HUMAN RIGHTS VIOLATIONS IN CONTEXTS OF SOCIAL PROTEST

1
COORDINATION AND TRAINING
IMPROVEMENT OF REPORTING TOOLS

ACTIVISTS
JOURNALISTS
JUDGES

2
DETECTION AND SYSTEMATISATION
NATIONAL COLLABORATIVE OBSERVATORY

3
REPORTING AND ADVOCACY
SOCIAL, JUDICIAL AND POLITICAL STRATEGY

COMMUNICATION ALERTS STRATEGIC LAWSUITS COUNTRY REPORTS

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www.defenderaquiendefiende.org

on trials accused of hate crimes or crime of offence against religious sentiment (Article 510 and 525 of the Criminal Code). Fundamentalist groups, such as Hazte Oír or the Catholic Lawyers Association, are also proactive with campaigns of harassment to the people and clinics where women can get abortion.

How do you reach feminist activists and what kind of support do you provide?

We started a communication campaign that we launched on March 7th, one day before the general feminist strike. During the previous months, we mapped feminist organisations throughout Spain, women journalists, lawyers, and decentralised strike coordinators to communicate the project to them. Many of the people who participate in Defender a quien defiende are feminists. Moreover, Calala – an active member of the platform – has been developing very much in this line for some time, especially since the feminist movement has re-emerged stronger on the streets.

What is the potential impact of these movements in the long-term on Spain?

The feminist movement – along with the referendum on 1st October in Catalonia



Barcelona, 21 December 2018.

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– has meant a break in the cycle of protests in which Spain was immersed. An era in which, because of the approval of the gag laws, there was a decline in popular action. Since two or three years, feminism broke this dynamic and reclaimed the public space throughout Spain, reactivating struggles, connecting grassroots. The re-activation of the feminist movement in the streets started when Alberto Ruíz-Gallardón was Minister of Justice, from 2011 to 2014. He tried to approve a new Abortion Law with a bill on the Protection of the Conceived and the Rights of the Pregnant, eliminating the right for women to decide freely. Finally, thanks to social organisations, the approval did not happen, and Gallardon resigned.

Currently, there are assemblies and groups of women, lesbians and trans in many Spanish cities. All propose a change of the system: roles, privileges, power and reclaim to put life at the centre of everything. There are more and more young people who call themselves “feminists”. Therefore, the potential of this movement is very high since they are an important and real counterpower that can disrupt the status quo. In fact, it is already

raising important legislative changes, for example, in parental conciliation laws and domestic work, but also very interesting practices of feminist economy and intersectional struggle (gender and race) with protests that linked migrant women and migration law. ■

SINCE TWO OR THREE YEARS, FEMINISM BROKE THIS DYNAMIC AND RECLAIMED THE PUBLIC SPACE THROUGHOUT SPAIN, REACTIVATING STRUGGLES, CONNECTING GRASSROOTS

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