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Erosion of civil society space across the EU

Greenpeace response to the Commission's stakeholder consultation on the 2020 Rule of Law Report

Over the last years, fundamental rights and the rule of law have increasingly come under pressure in the European Union (EU). This has also impacted civil society organisations, which fulfil an "essential" watchdog role in our democracies, according to the European Commission (EC, 2019). In many EU countries, these organisations have been subject to smear campaigns and legal restrictions.

This intentional "shrinking" of civil society space has become a trend that is not limited to a few countries but spans the whole of the EU. The trend has accelerated during the Covid-19 crisis, making it even more urgent for the EU institutions to act.

This autumn, the European Commission will present the results of its new rule of law monitoring mechanism in a first Annual Rule of Law Report. The mechanism is meant to be a "preventive tool" (EC, 2020) that should "assist early detection of emerging rule of law problems wherever they appear" (EC, 2019a).

The Commission acknowledges that "(n)o democracy can thrive without ... an active civil society". It views civil society as an "actor of the rule of law" and recognises that "attempts to weaken essential watchdogs such as civil society and independent media are warning signs for threats to the rule of law" (EC, 2019).

It should pick up these "warning signs" in its upcoming Rule of Law Report. A report that fails to consider limitations of civil society space, also termed "civic space", will not fulfil its preventive purpose.

The Commission has asked for stakeholder input on "developments on the ground in the Member States" (EC, 2019a). With this contribution, Greenpeace is providing both factual information on developments undermining civil society's role as an "actor of the rule of law" (EC, 2019) and recommendations on how the Commission can support civil society in this role.

Whilst our contribution focuses on direct attacks on civil society organisations, and fundamental rights that are of direct concern to them, we recognise that limitations of other elements of democracy, such as free media and an independent judiciary, also affect civil society space.

Civil society space is shrinking across the EU

In many EU countries, civil society is facing threats and growing restrictions. These include smear campaigns, funding cuts, strangulation by bureaucracy, restrictive laws on assemblies and criminal laws banning defamation or insult of the state or state officials (EU FRA, 2018). Whilst most of the attacks originate in government decisions, some are also brought by corporations and powerful individuals, such as in the case of Strategic Lawsuits against Public Participation (SLAPPs).

Civicus Monitor's global report (Civicus Monitor, 2019) assigns 12 EU countries a "narrowed civic space" label meaning that violations of the rights to freedom of association, peaceful assembly and expression take place. These countries include **Austria, Bulgaria, Croatia, France, Greece, Italy, Latvia, Malta, Poland, Romania, Slovakia** and **Spain**. One EU country, **Hungary**, is marked as "obstructed civic space".

This does not mean that all is well in the other 14 EU countries. The European Union Agency for Fundamental Rights notes that, when it comes to civil society organisations working on human rights, there are limitations of civil society space across all EU Member States. (EU FRA, 2018)

Civicus Monitor notes that: "Although the European Union (EU) remains the region of the world with the largest number of countries with open civic space, conditions for civil society continue to deteriorate." (Civicus Monitor, 2019)

During the COVID-19 pandemic, the trend is accelerating

Measures taken by governments to curb the spread of the virus have led to further restrictions of civil society space. Whilst some of these restrictions may be justified, it is a "basic principle of international human rights standards" that they must be "legal, proportionate and necessary" (EU FRA, 2020).

Worrying measures include:

- complete bans on public gatherings that undermine the freedom of assembly;
- new laws on disinformation that unnecessarily limit the freedom of expression and censor critical voices;
- the exclusion of citizens and civil society actors from decision-making processes, scrapping public consultations and suspending access to information.

Examples for such measures are provided below.

There is also a fear that new surveillance tools introduced to trace contacts with infected people could not only affect our right to privacy but also make it harder for civil society organisations to conduct safe exchanges with whistle blowers, or to support undocumented migrants and other vulnerable groups.

Governments obstruct fundamental rights that are critical for civil society

Here are some examples from across the EU of how governments – and sometimes businesses – are silencing critical voices and obstructing the work of civil society organisations. The European Civic Forum lists many more examples in its recent newsletters (ECF, 2019).

Restrictions of the freedom of association

Over the last years, several EU governments attempted to hamper the work of civil society organisations by imposing bureaucratic burdens that exhaust their resources, or by making it more difficult to access funding. According to the EU Fundamental Rights Agency (EU FRA), access to resources represents an integral part of the right to freedom of association (EU FRA, 2018).

The most striking example is from **Hungary**. The Hungarian government adopted a law in 2017, by which non-governmental organisations (NGOs) receiving more than 7.2 million HUF (approx. 22.000 EUR) annually from sources outside Hungary must register as “foreign-funded” and use this label on all their publications. Individuals donating more than 500,000 HUF (approx. 1,500 EUR) have their details published (AI, 2017).

The European Commission has taken Hungary to court over the law (EC, 2017). If the Court follows the Advocate-General’s opinion (CJEU, 2020), it will find that Hungary has violated the EU Charter of Fundamental Rights, among other things.

Also in other countries, laws were proposed that would require civil society organisations to report in detail about funding received, and especially about funding from foreign sources. Initiatives in **Germany**, the **Netherlands** and **Romania** have not moved forward, whereas laws proposed in **Italy** and **Slovakia** were softened before final adoption (ECF, 2019; ECNL, 2020).

More often than not, legislative restrictions are preceded by smear campaigns. The aim is to undermine civil society groups’ legitimacy and role in the political discourse (EEB, 2019; AI, 2019).

Between 2016 and 2018, US group Freedom House noted smears against civil society organisations and the media by ruling-party politicians or presidents in **Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania** and **Slovakia** (Freedom House, 2019). In 2018/19, officials of the former coalition government in **Austria** also used damaging statements and derogatory comments against civil society organisations aimed at de-legitimising their work (Civic Space Watch, 2019).

Amnesty International (AI) observes that civil society organisations defending the rights of migrants have been “subjected to unfounded criminal proceedings, undue restrictions of their activities, intimidation, harassment, and smear campaigns” in **Croatia, France, Greece, Italy, Malta** and **Spain** (AI, 2020). In **Spain** in particular, the authorities have misused administrative regulations to restrict rescue operations by civil society organisations, threatening them with fines of up to 901,000 euros (La Vanguardia, 2019).

Restrictions of the freedom of peaceful assembly

Several governments have also taken measures to deter peaceful protest.

In **Poland**, the government has banned certain peaceful demonstrations in the vicinity of “cyclical” pro-government rallies, under a revised Law on Assemblies. According to Amnesty International, public authorities prosecute a growing number of people for exercising their right to protest, and police have used excessive force against protesters (AI, 2018). The EU Fundamental Rights Agency recalls a case dating back to 2017 when public authorities raided offices of women's organisations that participated in anti-government protests (EU FRA, 2018).

In **Italy**, the government has re-introduced the crime of “road blocking”, which had been decriminalised in 1999, as part of a so-called Security Decree drafted by former interior minister Matteo Salvini. The crime can now be punished with up to 12 years in prison. In March 2019, a non-violent Critical Mass cyclist assembly was blocked and assaulted by riot police (EEB, 2019).

In **Germany**, authorities have raided two Greenpeace offices and private dwellings of activists who participated in an anti-coal protest in Berlin. Greenpeace Germany denounced the action as “an attempt to intimidate Greenpeace and to suppress peaceful protest” (Greenpeace Germany, 2018).

In **France**, the government authorised the large-scale use of rubber bullet guns that caused many severe injuries during demonstrations of the so-called *Gilets Jaunes* protesters. The UN High Commissioner for Human Rights, Michelle Bachelet, recommended the UN investigate France for excessive use of force by police (Le Monde, 2019). In April 2019, President Emmanuel Macron signed into law a new ‘anti-rioters’ law that restricts the freedom of peaceful assembly (Greenpeace France, 2019).

In **Spain**, two leaders of civil society organisations were sent to prison on charges of sedition, applying a broad interpretation of the crime that collides with the right to assembly and freedom of expression (AI, 2019a).

During the COVID-19 crisis, the freedom of assembly has sometimes been entirely suspended, as most EU governments stopped public gatherings to curb the spread of the virus.

In **Germany**, some public authorities banned even small gatherings, planned with a few participants only that would keep safe distances (Greenpeace Germany, 2020). The country’s constitutional court ruled against such a blanket ban on all public demonstrations, saying courts still had some “leeway” to weigh the health restrictions against the right to freedom of assembly (Bundesverfassungsgericht, 2020).

Restrictions of the freedom of expression and information

Many EU countries foresee criminal sanctions for the defamation of the state or its institutions, which are disproportionate according to international standards (EU FRA, 2018; FES, 2018).

In **Spain**, the so-called Organic Law 4/2015 on the Protection of Citizen Security, also dubbed “the Gag Law”, imposes restrictions on several fundamental rights at once, including the right to freedom of assembly and the right to freedom of expression. In February 2015, four United Nations Special Rapporteurs issued a joint statement against the law, which “unnecessarily and disproportionately restricts basic freedoms such as the collective exercise of the right to freedom of opinion and expression in Spain.” (UN experts, 2015).

In a letter of November 2018 to the Spanish Parliament, Dunjia Mijatović, the current Council of Europe Commissioner for Human Rights, stressed that Organic Law 4/2015 could have a chilling effect on the rights to freedom of expression and freedom of peaceful assembly (Council of Europe, 2018). Although changes have been proposed, they fall short of restoring the fundamental rights affected (Liberties, 2018).

In **France**, the government recently created a new police section called Demeter, in partnership with the biggest farmer association (FNSEA), to fight so-called “agribashing” or criticism of industrial farming (Le Monde, 2020).

Some governments introduced new restrictions during the COVID-19 crisis.

In **Romania**, the Presidential Decree on the Establishment of the State of Emergency of 16 March introduces a mechanism that makes it possible to “remove from the source” or “block the access of users in Romania to content that promotes false news about the evolution of COVID-19” (Greenpeace Romania, 2020).

In **Hungary**, new legislation introduced in April punishes the dissemination of “false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts” with up to five years in prison (Hungarian Helsinki Committee, 2020).

Gag lawsuits against civil society actors

Companies and powerful individuals use Strategic Lawsuits Against Public Participation (SLAPPs) to legally harass any civil society group, activist, journalist or academic they want to silence. Whilst the best-known examples of SLAPPs involve journalists, such as the Maltese investigative journalist Daphne Caruana Galizia, such lawsuits are also commonly used against civil society organisations and individual activists in the EU.

In **Portugal**, eucalyptus pulp producer Celtejo, part of the Altri Group, has sued activist Arlindo Marquês over accusations that the company pollutes the Tagus River (Civicus Monitor, 2018a). Since 2015, Marquês had been posting video and photographic evidence of the pollution in the river on social-media networks, as well as sending it to the relevant authorities (PPL, 2018; Movimento Pelo Tejo, 2017). Celtejo dropped the case in 2019 after a significant amount of negative publicity for the company (Publico, 2019).

In **France**, companies of the Bolloré Group have opened SLAPPs against civil society organisations Sherpa and ReAct to stop them reporting human rights abuses in Cameroon (Civicus Monitor, 2018b). The companies dropped their lawsuits in February 2019, three years after their initial charges (Sherpa, 2019).

In **Germany**, PayPal has filed a libel lawsuit against SumOfUs for a peaceful protest against the company's business relationship with neo-Nazi group Pro Chemnitz outside its Berlin headquarters (Spiegel Online, 2019). Pro Chemnitz used PayPal to raise money to finance the group's activities and hate speech (SumOfUs, 2019). In the meantime, PayPal has dropped the lawsuit.

In **Spain**, Coren Group, one of the most important agro-food cooperatives in the country, has sued a Galician farmer and environmental activist for one million euros after he denounced the poor waste management of the company's livestock farms (Europa Press, 2020). The case, opened in February, is still open.

Restrictions of participation in decision-making processes

In **Germany**, civil society organisations have been blamed for slowing down planning and construction periods of large infrastructure projects. The country passed a controversial law in January making it harder for citizens and environmental groups to stop such projects in court (Nabu, 2020).

As part of its COVID-19 response, **Slovenia** has restricted the participation of civil society organisations in planning processes for large construction projects. The newly imposed conditions exclude practically all organisations active in the country from these processes (Greenpeace Slovenia, 2020).

In **Romania**, several state authorities refused to respond to access-to-information requests although the COVID-19 emergency laws only extended the time periods for such responses (Greenpeace Romania, 2020).

The crackdown on climate activists

Over the last years, before the COVID-19 restrictions kicked in, an unprecedented number of people took to the streets to demand climate justice across the world. Some governments have responded heavy-handedly to these protests.

For example, in **France**, the government employed the office of counter-terrorism operations (Blat) to clamp down on a group known as Non-Violent Action COP21 (Climate Home News, 2019). French police also used riot shields and pepper spray against peaceful climate protesters from the Extinction Rebellion movement (Guardian, 2019).

In December 2018, **Poland's** authorities denied entry into the country to at least 12 members of civil society groups who were due to participate in the UN climate conference in Katowice (CAN International, 2018). The government had imposed a general ban on spontaneous assemblies during the conference (AI, 2018).

A year later, in **Spain**, over 300 civil society representatives from indigenous groups and environmental groups were barred from entering the venue of the UN climate conference (The Beam Magazine, 2019).

In the light of these developments, the European Commission should:

- **Report and discuss developments affecting civil society** in a dedicated section of its Annual Rule of Law Report;
- **Propose an EU strategy to support civil society.** This should include an ‘alert mechanism’ that can help the Commission detect and act on the first signs of attacks against civil society;
- **Continue to take legal action when an EU Member State obstructs civil society space** and associated fundamental rights. It should also develop guidance on how EU law can be used by civil society actors to protect this space;
- **Propose measures to protect those speaking out in the public interest from gag lawsuits** (so-called SLAPPs - Strategic Lawsuits Against Public Participation), including an EU Directive and funds to support victims;
- **Defend the rule of law in all its dimensions**, including also the independence of the judiciary and media freedom. Payment of EU funds should be conditional to respect for the rule of law, and alternative distribution channels created, if necessary, to ensure EU funds still reach their intended beneficiaries.

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