



# CIVIL SOCIETY AND THE FIGHT AGAINST DEMOCRATIC BACKSLIDING IN EUROPE

Lessons from the past,  
struggles of today,  
solutions for tomorrow



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## Nyt Europa

Nybrogade 22, st th  
1203 Copenhagen K  
Denmark

[www.nyteuropa.dk](http://www.nyteuropa.dk)  
[nyteuropa@nyteuropa.dk](mailto:nyteuropa@nyteuropa.dk)

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This rapport is edited by Emil Marc Havstrup and Lea Friedberg

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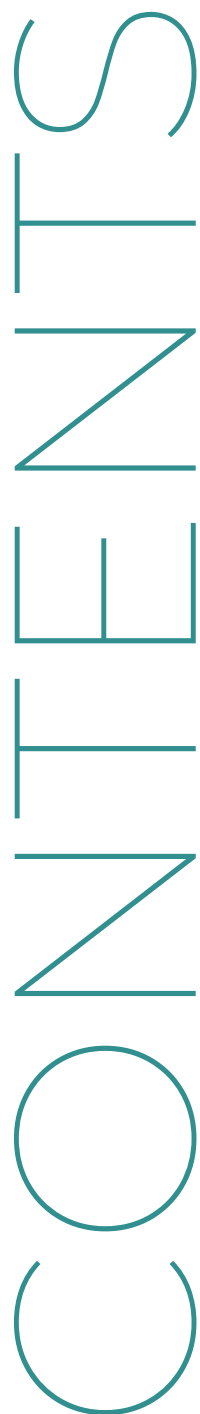
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# FOREWORD

## A History of Optimism

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*by Lone Lokindt, Chair of Nyt Europa*

With the collapse of the Soviet Union and the fall of the Berlin Wall a wave of optimism swept across the European continent. 1989 heralded a new era of hope and relegated the brutalities of authoritarianism to the pages of history. Finally, people who had lived under strict control and surveillance had earned a future of civil liberties under the frame of democratic rule. Civil society emerged in areas which until now have been devoid of such representation. Civil society activities no longer had to be disguised or defined by the narrow boundaries of the state apparatus. Optimism became a synonym for the time.

However, 30 years have passed and much have changed in between. In 15 years, the European continent went from disharmony and separation to unity and integration, the adoption of the Copenhagen criteria, EU charter of Fundamental rights, culminating in 2004 with the EU enlargement. An extraordinary achievement considering European history.

But the past 15 years have also seen dramatic changes. Skepticism and pessimism regarding the future have to a certain extent replaced the optimism that arose with the end of communist authoritarianism. Contemporary populist movements and isolationist forces threaten civil society, democratic values and the democratic freedoms associated with the EU, which emerged in the years between 1989 and 2004. Raising awareness of our history and the values our historical development has brought are essential to understanding and appreciating the democratic freedoms which have followed, and which are integral parts of the EU institutions. We believe that there is a need to address that the complexities within our European societies, and to emphasize that they are not created on the spur of the moment



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but rooted in the past as our union continues to develop and face different challenges to the very values it is funded on.

At Nyt Europa we have engaged with the history of democratic development in the EU as well as the current issues at hand of democratic backsliding. This have inspired us to gather inputs from our partners to create a report presenting not only a historic perspective on the current trends but also a multifaceted perspective entailing lived experience from the activist and CSO's currently dealing with the issues at hand.

This report has grown from the EU Commission funded project History of Optimism, managed by Nyt Europa from 2019-2021. The project specifically focuses on the role of civil society, in a historical context, providing a new and powerful approach to understanding EU values and assessing our collective historical past. And let people tell their stories by stimulating debate and reflection about the role of civil society in the EU – then and now.

This report is for those who take an interest in democracy. We believe that bringing awareness to the challenges facing democracy is a crucial step to mobilize action that can prevent the tendencies of democratic backsliding. To facilitate change civic engagement plays an important role, but further we need accountability on a political level. Therefore, this report addresses the political implications and steps that must be taken given the current situation that constitutes a concrete threat to our current democratic institutions and their legitimacy.

Throughout this report we have gathered testimonies from activists, experts, and scholars that we have encountered during our work, and with whom we have shared conversations about the future of European democracy. We have incorporated data to support their analyses to give you/the reader an insight into the current struggles we face as a democratic European fellowship, and how to understand the historic context of the concept it relies on such as rule of law, participatory democracy, and civic space. This report thereby connects the struggle of civil society today to a historical context, providing a new and powerful approach to understanding EU values and how we assess our collective historical past finally resulting in concrete recommendations going forward to support those democracy champions.

We hope that this report contributes to an increased awareness and insight in the democratic trends and conditions for the developments of democracy in Europe and the important role civic society have and continue to play in the fight for democratic rights and values.

It might be as crucial as ever that we succeed in supporting the civil actors' efforts to protect our democracy. While the analysis of democratic trends uncovers an unprecedented democratic crisis in modern time, we are also witnessing nothing short of a wave of citizens engagement

As director of the Open Society European Policy Institute Heather Grabbe writes in her chapter (Part I: Failed expectations and the struggles for civil society in Europe post 1989):

*“There are reasons for pessimism. The pressures on civil society are unprecedented. But there are also reasons for optimism. That people are prepared to go out on the streets and talk about issues that they really do care about.”*

Positives and negatives. No doubt this movement of back and forth of attitudes towards democracy highlight the precariousness of the concepts of rule of law and fundamental rights. They can never be taken for granted as they may have been in a not-so-distant past. This awareness must lead to adaption techniques, new ways of engagement on citizens level as well as the construction of new tools for protection of our shared European values. We see now as an example that the EU previously have focused almost exclusively on sanctions and condemnation as a response to democratic backsliding. But the spirit of new strategic framework in EU Rights and values-program to protect and promote EU values and promote citizens engagement and participation in the democratic life of the EU as well as to raise awareness of the common European history just may signify a change of policy where exactly the importance of a strong civil society has been rediscovered as a crucial part of the fight for democratic rights. And the fight continues.



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In this report we add the historic perspective of the role of civic society to the analysis of current trends of democratic backlash in Europe. These are exemplified with stories from the frontline of democratic battles across Europe. We end the report with concrete recommendations on how to support democracy champions based on the analyses of the report and experience of our European partners.

### **PART I: Historic perspective**

A central point for the report is to understand the current struggles through the historic lens of the role of civic society in the development of the modern European Union. To examine the major trends and historic events that lead to the enlargement process and systemic changes in Europe, Heather Grabbe, the Director of the Open Society European Policy Institute, takes a tour de force of the story of civil society from the times after the fall of communism to today's challenges of rule of law in Eastern European countries. Further, Søren Keldorff, member of the board at Nyt Europa and Professor Emeritus, Søren Riishøj afterwards examine the rise of a new liberal Europe as a lesson on how unmet expectations can lead to the disillusionment of a political system.

### **PART II: Democratic trends**

In this part the reader is introduced to an overview of some of the most significant current democratic trends on democratic backsliding, attack on rule of law and shrinking civic space identified by scholars and activist. Together these contributions provide a holistic understanding of the challenges of democracy champions. The concept and state of civic space in Europe is examined by Regitze Helene, Ph.D. Fellow at the University of Copenhagen. The chapter looks at the types of methods, distinguishing between formal and informal methods, used by nation state to halter the efforts of critical CSO's,



media, scholars and citizens, and the chapter describes them in a broader theoretical framework of democratic backsliding. Associate professor, Ph.D., Christian Franklin Svensson (Aalborg University, Denmark) examines the terms of threatened intellectuals and the shrinking of civic space, the articles focus on Hungary and Poland as cases. Svensson argues that scholars, CSO's and other democracy champions is under increased pressure from national states which highlights the role of CSO's as democratic stakeholders as nation-state institutional power not always guarantee autonomy for individuals.

The democratic backlash of central Europe and the role of civil society as democracy defenders is analyzed by Professor (MSO) Angela Bourne (Roskilde University, Denmark). Bourne introduces to the report the concept of 'militant democracy' and discusses how CSO's can adapt to the current state of illiberalism within democratic institutions. The importance of participatory democracy in the EU is discussed in the chapter by Jakob Erle, Director for the International Academy for Education and Democracy. He argues that the EU must take steps to acknowledge and ensure the importance of access to as well as citizens involvement in participatory democracy processes on a European institutional level to counter target populist movements and strengthen democracy. Finally, the concept of an emerging democratic trend is explained by Peter Christiansen, Secretary General & Sara Brandt, Policy Advisor on Civic Space and Human Rights from Globalt Fokus. They argue that the massive emergence of protest movements as a global megatrend is a reaction to democratic and systemic challenges, and that their agility and local ownership is the guarantor of their ability to create societal change.

### **PART III: The navigation of civil society in times of increased pressure**

As the trends shows, civil society all over Europe operate under increased pressure. In order to understand the challenges this poses, we present outlooks from our partners on the ground. To this end we present a range of cases from all over Europe that outlines the challenges that civil society faces throughout Europe. The cases have been chosen to cover a range of European countries but also to demonstrate that the identified trends are recurrent throughout Europe.

A more thorough explanation of the concrete issues facing civil society actors in Poland, the political developments and importance of European civil solidarity is outlined by Filip Pazderski, Senior Policy Analyst and Head of the Democracy and Civil Society Programme at Institute of Public Affair, Warszawa. Making use of two cases from the European Citizens Forums annual civic space watch reports we present stories of citizens activism in Slovenia and Spain: Firstly, we present the issues of criminalizing organized dissent in Slovenia. Civil society protest has risen in later years due to challenges of burearepression, meaning administrative harassment of protesters, smear campaigns and intimidation from public institutions. Also, freedom of expression is being threatened by new legislative procedures and excessive use of police force.

Secondly, the case from Spain shows the increased protesting sparked by the Covid-19 pandemic, criticizing the amplified social and economic inequalities and democratic backsliding in the southern European country. The Danish Youth Council present the findings from the Danish Democracy Commission that analyzed the state of Danish civil society and the state of the democratic conversation in Denmark. In the case provided by Amnesty International Denmark the activist Dezső Máté from Hungary present his firsthand experience being a Roma LGBT+ activist, mentoring Roma and LGBT+ youth activists and the double-sided pressure he is presented to.

## **PART IV: Recommendations**

To summarize the report, we have gathered the central points from through-out the report and reformulated these into concrete recommendations. These recommendations aim to strengthen the civic space and improve the conditions for democracy champions and civic engagement.

# HISTORIC PERSPECTIVES ON THE ROLE OF CIVIL SOCIETY IN MODERN EUROPEAN HISTORY



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PART 1

In this part we will focus on the historic perspectives on the role of civil society centering on the period from 1989-2004, the historic events taking place in this moment and the shaping of the democratic developments in the EU. Through understanding of the events and developments that shaped the EU of today and the perspective of the role of civil society in the key moments of democratic battles in Europe in recent times, we believe that we can extract important insight for understanding the current issue of democratic decline in some membership countries as well as lessons to be used to combat such trends.

The contributor Heather Grabbe, Director of the Open Society European Policy Institute, as well as Søren Keldorff board member at Nyt Europa and Søren Riishøj, professor emeritus examine the implications of the 2004-enlargement process as well as some of the current challenges that civil society especially in Poland and Hungary face. As the introductory quote demonstrates then perhaps some of these current challenges has root in the very liberal wave at the highlighted timeframe and the victories of the democracy champions of the time. The role and conditions of civil society was, if not taken for granted, then not as much a focus after the democratic transition and entrance to the EU as the democratic institutions themselves, the implications of which was examined in the conference “Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past” taking place November the 24th 2020.

The conference was part of a series of initiatives with the aim to mobilize established civil society in the fight against current challenges. During this conferences the partners of the “History of Optimism” project, Nyt Europa, MitOst e.V., Institute of Public Affairs and European Civic Forum, invited scholars, CSO’s, decision-makers and representatives of the EU institutions to partake in a dialog in three segments: Lessons learnt on the democratic transformation and civic engagement in Central-Eastern Europe (CEE); A current assessment of the state of rule of law and democracy in Europe; and finally a debate on how to support civil society as democracy champions going forward with rule of law initiatives. From the conferences many critical points were extracted that will feature throughout the report, nor the least Heather Grabbes keynote speech.

We hope that this part will provide an insight in what we believe to be a very critical historic perspective on some of the current democratic challenges facing the EU of today.

# FAILED EXPECTATIONS AND THE STRUGGLES FOR CIVIL SOCIETY IN EUROPE POST 1989

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*by Heather Grabbe – Director of the Open Society European Policy Institute*

*Keynote at the conference “Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past”, 24th of November 2020.*

We are taking stock of our European history - of how much has changed in the past 30 years and how the challenges to civil society have changed. Back in the early 1990's, both the European Union and the Open Society Foundations, George Soros, decided to take a big punt on civil society believing that it was going to be important as they put a lot of support of all kinds, infrastructural support, and political support, into civil society organizations in the region. Among us today (at the conference, ed.) are a number of people that have been involved in that process at least at some point over those decades. And among those of us who have been involved for a long time, there is a certain amount of liberal nostalgia for the days when civil society was the effective opposition in quite a lot of countries before the parties had consolidated that also, before the EU membership was a controversial topic. At that point it was universally supported for most of the 1990s, certainly in Poland and Hungary. It was only controversial in the Czech Republic and to a certain extent in Slovenia but at that point there was a big consensus about EU membership and generally a consensus that civil society was a good thing.

In fact, the liberalism that was very much in vogue at the time saw civil society as the absolute key actors for being an intermediary between politics and understanding what was going on at the political level, and the population and their daily lives and their concerns. I still believe that that is very much the case, but you hear many conflicting opinions about this subject, and this politicization of civil society and politicization of EU membership are at the heart of many crises that we are seeing right now in Poland, in Hungary, and increasingly at the EU level as well, as these battles have escalated and got right up to the European Council. This is in some ways a critical as it shows how bad things have gotten and how two member states are now prepared to block the whole EU budget and recovery funds on the basis of a rule of law mechanism that should have been put in place a long time ago. But also, it is good news that the whole EU is now paying attention to what is going on in Poland and Hungary. Everybody is much more aware that this is not just about a few local political difficulties; this is something that could threaten the whole European Union.

To go back to what has happened over the past three decades: The Open Society Foundations and George Soros saw early on that civil society organizations were the effective opposition in many countries. That they were also the liberalizing tendency in the organization. And his philosophy of philanthropy in the beginning was to find a good set of local people who believe in an open society and want to see civil liberties flourish in a thriving democracy where governments are accountable to their people. Once you have found a good group of people in that country you give them money and tell them to decide what to do with it while also giving them a governing board which makes sure that the money is not misspent, but fundamentally the local people in local civil society should decide where support should go.

The fundamental philosophy of the open society foundations is still in operation today which makes it a rather unique philanthropic enterprise, and it is now the largest funder of civil society globally from private sources. Of course, there's also government funding of civil society, but in terms of private sources they are still the biggest. In addition, Soros was significant in the sense that they were giving hundreds of thousands of scholarships to people in Central and Eastern Europe, emerging from a system where they could not study abroad, certainly not like in the West, to one where they could. Further, he also supported controversial issues at the time - among these the abortion laws of 1993, now so very prominently discussed in Poland. He gave scholarships to everybody who seemed to be bright and interested in moving towards liberal democracy - including a certain Viktor Orban who went to Oxford as a Soros scholar in the 1990s. In the following years these local foundations grew and funded all kinds of civil society organizations across the whole country, and then over time the foundations moved into other regions and countries.

## **Expectations and demonstrations**

The expectations of the time were that civil society would help to have the bridging function and be an independent intermediary between these big changes that were going on in society and people's daily lives. There was a belief at the time that an increase in freedoms in civil liberties - in freedom of expression, freedom of association, the fundamental freedoms that you find in the charter of fundamental rights for the EU - that these freedoms went hand in hand with economic prosperity. There were lots of studies published at the time about how democracies tend to have much more thriving economies, standard of living is higher in democracies - all these things were and still are true. But there was also a more fundamental belief on the part of the population that if you open to the world, you will become wealthier, you will become better off. And the Western model was both the liberal model in terms of liberal democracy, and it was the market economy - or certainly the social market economy model. They were almost synonymous - the idea of freedoms with economic and political freedoms. And as a fundamental political philosophy it still holds up, but, for many people in Central Europe, their living standards took quite a long time to improve. They did ultimately, and Poland is a clear example of turbo capitalism where living standards improved greatly. But there is still a lasting resentment from a lot of people that inequality also brew, and that was an issue that was severely neglected during the transition, even though civil society groups raised it quite often. What is interesting now when you look at the public opinion poll surveys is that people are still very interested in their economic wellbeing. They are much less interested than they used to be in their political and civil rights.

Mainly because once you have them you sort of take them for granted and you forget about how things were when there was an era where you did not have them. Although of course we see that young people in Poland today who never lived under socialism are out there in the streets, with *strajk kobiet* (Polish women strike, red.), arguing for their rights. But nevertheless, there has been a change in terms of how the population see these things. And in fact, within the research that I mentioned, the Voices on Values project, the report that Filip Pazderski authored on Poland is extremely interesting in looking at how particularly young Poles tend to consider living standards as being more important than democratic values. And they are an outlier - the younger generation in Poland thought that more than the younger generation in other European countries that we studied, so this is quite interesting.

There is still overwhelming support in most surveys for values, particularly freedom of expression, freedom of religion and media freedom. And what we found in this survey that we did from 2017 to 2019 was that there was very strong support in Poland and Hungary for the role of groups that are critical of government i.e., the role of civil society. This capacity to criticize the government, not just the freedom to criticize it but the capacity to do so, somebody who is able to do so because they have the arguments, they have the evidence, they have the intellectual knowledge, and they have the funding that they are able to operate as an organization rather than as an individual voice, there's still strong support for this. But of course, we can also see massive pushback going on. In 2019 for the first time since 2001, the Varieties of Democracy Institute recorded that there are more autocracies than democracies in the world. We also see more pro-democracy mass mobilization, more protests, that has also reached an all-time high. It is as though the two clearly go together, there is a correlation. The share of countries with pro-democracy mass protests rose from 27% in 2009 to 44% in 2019. But it does mean still that nearly half of the world population is living in an autocracy, and that is 30 years after the major change that brought both economic prosperity and freedoms to a very large amount of people in Europe.

## **New realities, hopes and pessimism**

Now in 2020 the Covid-19 crisis has increased pressures on civil society. It has increased demand because civil society groups provide many of the essential services to vulnerable groups, rural areas, to many parts of the population, where there is a demand for services. But there is also increasing political pressures - we can see that emergency measures in many countries are used to suppress dissent and activism to violate rights, to weaken checks and balances. This has been the case in the United States as well as in a lot of other countries around the world. A pandemic is an opportunity for the state to take control, for good reasons but it can also be for bad reasons. 2020 has also shown some absolutely incredible mobilization. In the United States the Black Lives Matter movement has really come to the fore, and Covid and its terrible impact on the African American population is an important catalyst there too. Access to healthcare as an issue for minorities and for vulnerable groups around the world is very much in the spotlight in 2020. We have also seen protests against the mismanagement of the Covid-19 crisis in a lot of countries. Some of these protests have been in the name of the right not to wear a mask, the liberty not to undertake public health measures, which I would not agree with. But there have also been a lot of protests against mismanagement, in terms of wasting of funds - if you think about Hungary and the contracts to supply personal protective equipment and several other issues. So there has been a lot of political mobilization around it and of course in Poland, because amid a health

crisis the government decided to remove incredibly important reproductive rights from Polish women, there have been the biggest mass protests since the fall of communism.

There are reasons for pessimism. The pressures on civil society are unprecedented. But there are also reasons for optimism. That people are prepared to go out on the streets and talk about issues that they really do care about. Climate action has also of course brought the younger generation in particular out on the streets, and we have seen some responses to this mobilization at EU level. There has been the European Green Deal and Ursula von der Leyen, the Commission President, said quite openly that if it had not been for Greta Thunberg and the youth climate activists, the EU would probably not have the European Green Deal.

Similarly, we have the first EU anti-racism action plan that came out in September, and that's because of protests and because of people seeing what is happening in the US and people protesting in Europe - a real concern about the terrible effect that racism has on our societies. We also see the way that support for would-be authoritarian governments like the ruling coalition in Poland have given the protests extra impetus by the need to defend rights and liberties.

So there is good news and there is bad news. What is interesting is the way that this crisis is catalyzing new forms of civic mobilization. I would recommend an interesting paper by Tom Carothers from the Carnegie Endowment for International Peace - he is of course well known especially in the US as an expert in democracy support and civil society. He notes that civil society actors in many countries are rising to the pandemic challenge in new ways, filling the gaps left by governments to provide essential services (think about all of the new mutual aid initiatives that there are in Poland). They have also been partnering with businesses, they are spreading information about the virus, protecting marginalized groups, and forging new coalitions, to hold stumbling governments to account. This is an important set of points about how civil society also has to adapt and has to evolve, as the crisis goes on.



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### Adaptions and recognition of civil society

On the whole civil society actors are very adaptable provided that they have the resources and the capacity to do so. This brings me to my next major point, which is about the role that civil society plays, and then the importance of support to civil society and to make sure that that happens. What is very clear from the current crisis in the EU over the budget and the recovery funds is that a thriving civil society is essential to the rule of law. Most of the EU countries would not know about what has been going on in Hungary or Poland in terms of damage to the rule of law and to the potential impact on the rest of Europe if it were not for civil society.



It is because of the reports that have been put out by groups like the Hungarian Helsinki Committee, the Stefan Batory Foundation, Political Capital in Hungary (a think tank), ISP and others, that people are aware of this. If there had not been civil society organizations in the countries spelling out what is happening and the implications of that, then it would be quite a lot simpler for the large member states and for the governments of the EU to simply continue turning a blind eye and pretending that everything is fine, and that this is just a little local political problem that does not affect the EU. It is only because of all of the reports and the way that civil societies have amplified the voice for example of the Polish judges and encouraged their voices to be heard that people are aware of this and that this has become enough of an issue to create a rule of law mechanism at the EU level - and to finally tie EU funding and its appropriate use to checks and monitoring of expenditures in the country. What we hope for now in the outcome is that it is not just an anti-corruption mechanism. It is important that taxpayers' money should not be wasted, especially if it is taxpayers in one country giving money to other countries - it is very important to have that. But this is also about the rule of law, which is a fundamental public good and is the foundation of the European Union. If the EU did not have its community of law it would have as much power as ASEAN or Mercosur does, which is much less than the EU does. It's the community of law that allows the single market, and it's the community of law that allows civil society to do its job well, because there is a mutual recognition of court decisions, because there are not arbitrary arrests, because countries across the EU can say "actually I do not want to send my citizen to be put on trial in Poland", as Ireland did because of the risk of there not being a fair trial.

The rule of law is a vital principle, but it is not just a principle - it is a system, it is a community of law that can only function if all the member states obey it, and that needs to be a fundamental issue for the whole EU. And it is so now, people have recognized this issue because of the work of civil society.

Catalyzing the voices and ensuring the denunciation of the abuses and the violations has been fundamental to ensuring that the founding values of Art. 2 are given life, and that there have been reactions, finally, at the EU level. The key thing is that it is the monitoring, the reporting, the strategic litigation, and the advocacy conducted by civil society that has brought it to the boiling point now. And it was a decision of certain ruling parties to hold the whole of the EU to ransom over it but nobody would know why that mattered and why the rule of law mechanism should not simply be sacrificed on the altar for getting money out faster to the countries that need it - this is only because of the way that civil society mobilized around the issue over many years.



The rule of law is a vital principle, but it is not just a principle - it is a system, it is a community of law that can only function if all the member states obey it

I want to highlight the recognition of civil society success at the EU level, just to mention a few specific things that have happened in recent year. And then I will finish with a few points about what else the EU should be doing, which I hope will be interesting for the discussion because this is where the EU needs more pressure from civil society in the member states. Just to give a few successes to cheer us up, to think about how far we have got amid all the difficulties and the pushback. One thing is that most recently there is an increase in the budget for the Justice, Rights and Values program, and this is a real historic victory after a long year of advocacy and transnational campaigning initiated by the Stefan Batory foundation and taken up by many of you in the audience today (at the conference, red.). The successful campaign shows how NGOs working on values can work together across countries which is also exciting. And the budget support at the EU level remains particularly important to ensure that civil society is not only dependent on national funding, especially if that becomes more controlled by a particular ruling party or ruling coalition. There has also been the historic ruling last summer, another important success, where the Court of Justice of the European Union ruled that the Hungarian law stigmatizing NGOs that receive foreign funds was not in fact in line with EU law. It was the court affirming for the first time that the right to freedom of association is protected by EU law and it affirms the role of civil society arguing that the right to freedom of association 'constitutes one of the essential bases of a democratic and pluralistic society' - that is really something for the Court of Justice, to rule about the role of civil society. In the Commission itself, the scope of vice-president Vera Jourova's mandate includes freedom of expression and freedom of association, which are vital to civil society and very much pushed by civil society.

To conclude what the EU need to do now, what kinds of pressure does it need to make sure that civil society can continue to thrive in what is in many member states becoming an increasingly hostile environment. I have been speaking a lot about Hungary and Poland because of the subject of this project (History of Optimism and the role of civil society, red.), but of course there are threats in other countries too. In Ireland there are real worries about the freedom of civil society organizations to operate. The UK has made changes to its charities law which have had a massive chilling effect on any NGO doing political activity that could fall in the period of an election - that has had a big chilling effect and made many charities pull in their horns. And of course, in France the most recent measures are genuinely concerning, and even in Germany there is the whole question about the law on foundations and civil society groups. So, things are not great elsewhere either, but things are especially bad in Hungary and Poland.

So, what can the EU do? Well one thing is of course actually to include civic space as part of the monitoring of the rule of law in the annual rule of law report the Commission is putting out. The first one put out four pillars in September this year, but it really needs to do regular and comprehensive monitoring on the space for civil society to operate. Then there is the law - civil society still needs legal protection from attacks, from harassment, prosecution, and violence, which we have seen extraordinarily in the EU itself. The judgement on the foreign funding law in Hungary is a very important step, but it needs to be implemented now and of course it took a lot of time to come, and a lot of harm was done to civil society in that time period. There is now a case of an NGO that was refused Erasmus funding by a Hungarian foundation, for example, because they did not comply with the requirement to identify as a foreign funded organization - which of course has now been declared as a breach of the EU law, so there is a concrete case of a harm caused by a noncompliance with the Court of Justice judgment.

What is important now is that the Commission takes action with more infringements where there are clear violations of EU law and gives the concrete example of what work should be replicated to limit the damage done by some of the national governments. And I will just finish by mentioning the link to the funding. So, we have now got a huge row going on about the EU budget but of course the Commission did take action earlier this year when it blocked EU funding to the LGBT+-free zones that were declared by certain local authorities in Poland, and the Commission froze EU funding for twinning programs with cities. So, it is a small thing but this linking of conditionality of money with the freedom for civil society organizations to act and offer the rule of law is vital to give teeth to EU conditionality. If it is just a slap on the wrist for government or a few difficult words in Brussels it is not going to do very much. Money remains vital both as a funding source for civil society but also as a leverage to ensure that EU values and the contribution of civil society are respected in all the member states.

# THE ROLE OF CIVIL SOCIETY IN EASTERN EUROPE

## Before, During, and After the Transition to Democracy

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*By Søren Keldorff, board member at Nyt Europa and Søren Riishøj,  
professor emeritus*

### The Role of Civil Society

Civil Society before 1989 played a key role in the breakup of the 'real-socialist' systems, particularly in Poland, Czechoslovakia, Hungary, and The DDR. In Poland we had the Workers' Defense Committee, the trade union movement Solidarność (Solidarity), as well as a reforming inside of the reigning communist party. This means that the transition to a democratic market economy happened somewhat peacefully through negotiation. In Czechoslovakia and The DDR, we did not experience such a negotiated transition, rather an unexpected and rapid systemic collapse. The Communist parties of both countries were unlike their Polish counterparts not prepared to negotiate. In Hungary we experienced the opposite, this being that the Communist party themselves dissolved the old system. Yet in spite of the suddenness of transition to market economy, in all three countries the transition took place relatively peacefully, which to a large degree can be credited to the work of the democratic civil society and key members of it - such as Vaclav Havel from Charta 77 in Czechoslovakia and Lech Walsea from Solidarność in Poland. Romania on the other hand bore witness to a violent transition from the old system and in Bulgaria there was talk of what for all intents and purposes looked like a coup within the ruling Communist party. Civil Society in the two countries did not possess the same degree of strength here as in the aforementioned countries in Central Europe that had peaceful transitions. Civil society played a strong role in the mobilization of pro-democracy manifestations and calls for change and were vital for the transition from communism to democracy.

Around 1989 there was a prevalent belief that the transition towards a consolidated democratic state would take place without major incidence. As Professor Francis Fukuyama famously put it - history was dead, and the road ahead paved the way for the final victory of the liberal market economy and democratic models. That democracy would be at risk and that we could experience regression was not a popular belief at the time. But the optimism did not last long. Shortly afterwards we experienced the wars and the accompanying ethnic cleansings in the Balkans, and civil society and those fighting for fundamental human rights would prove to generally be weaker than expected.

Civil society was further weakened when many earlier dissidents, for example Vaclav Havel and Lech Walsea, chose to enter politics and assume leadership roles and thereby leave the civil sector for the political sector. With the downfall of Communism, we experienced a political demobilization. Many instead focused on economic improvements which in and of itself weakened civil society. Solidarity in Poland quickly fragmented into various parties and groups, the same occurred with Charter 77, a similar group in Czechoslovakia. Illiberal societies grew stronger as social frustrations began to manifest themselves. Inequality rose noticeably, some became winners of the transition to European democracy, while too many remained losers.

Critics claim, that in the midst of the euphoria that swept “old Europe” in the years following the fall of the wall in 1989, we forgot that the countries of Central and Eastern Europe had, and still have, a different historical political experience in regards to democracy. Only Czechoslovakia had experienced democracy before, during the interwar period under the rule of President Tomas Masaryk. Many believed that elections alone would constitute the foundations for a democracy. In countries that lacked support for democracy among civil society organizations and have persistently high levels of inequality, elections can mobilize populist and authoritarian forces in society, which is what we see today – which in terms challenge democracy champions of the civil society.



Civil society played a strong role in the mobilization of pro-democracy manifestations and calls for change and were vital for the transition from communism to democracy

### Unmet expectations, liberal democracy under pressure

In the years following the turn of the century, the countries of Central and Eastern Europe became members of both NATO and the EU. The expectations were again high, too high it would later seem. Many expected that the countries of the former East and their populations would soon transform into ‘good mainstream Europeans’ adopting the democratic values of the union. It would prove itself to be far more difficult than that, with the events following 1989 that would come to repeat themselves.

Economic development has taken place, yet it has been unequal in nature and significant citizens groupings felt abandoned both economically and culturally. With post-membership frustrations and Euroscepticism quickly gaining ground, populists established parties and new xenophobic groupings were taking shape in the 1990's, and began expanding at an unprecedented rate in the 2000's.

The traditionally left-wing parties have seen their vote share decrease in favor of nationalist parties that are skeptical of the globalized norm that has taken root in Europe and the world. Politics has in many ways evolved into a Bazaar where all ideologies are on the table, single issue politics combined with never-ending scandals dominate the media. While parties still undoubtedly agree to the goals that society needs to strive towards, such as addressing climate change, fighting corruption, and improving the health of their citizens, there is now a mentality of "we can do everything better than you" that decreases any parties propensity to cooperate with what they perceive as the opposition. Polarization is the name of the game now.

The tale of Europe after the fall of the old soviet order should not be seen as the rise of a new liberal Europe but should rather be viewed as a lesson on how unmet expectations can lead to the disillusionment of a political system. But further civil society should seek to regain their role as political dissident and to remobilize respective societies in an effort to promote democratic values and push back against the inequalities that feed this political polarization. Once again, we see civil society play a key role as champions of democracy. We must strive to learn from the lessons of the past, so that we may pave a better path for tomorrow.



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# CURRENT TRENDS OF DEMOCRACY IN EUROPE

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PART 2



*"Democracy needs constant investment; it has never been achieved fully" <sup>1</sup>*

*- Roy Virah-Sawmy, Civitates*

Democracy, as shows the quote, is more than just a term for describing how to organize a society, it also presents itself as an ideal for a better life, an utopia that we as a society must always strive towards. In years past there has been a perception that as Heather Grabbe put it, democracy was seen as unavoidable, and it marked the ultimate culmination of a process that all nations seek. Yet the past years have sadly proven this assumption to be misguided, countries that were previously held up as role models for successful democratic transition, have now been branded as so called 'autocratizers'. The world has trended further away from democracy embracing more authoritarian governance, prompting institutes such as Freedom House to reference 2020 with the title 'dropping the democratic façade'.<sup>2</sup> Research institutes such as Freedom House and Varieties of Democracy have raised the alarm concerning the democratic backsliding of these countries. Especially European Countries such as Hungary and Poland, that were earlier held up as examples for how to transition to a democratic society.

Yet this trend of democratic backsliding has not been taking place in the traditional way we picture misuse of power. Within the EU, there has been no secret police enforcing draconian laws or a president ruling by decree, merely paying lip service to the idea of free and fair elections. This was illustrated most pointedly stated by Head of International IDEA's Europe Programme Sam van der:

*"It is driven by populists who use the instruments of democracy, winning elections, having control over parliament, even using the constitution as it is to hollow out democratic institutions". <sup>3</sup>*

In Hungary, the ruling party of Fidez have been able to seize greater control over society by introducing legislation that on the surface appears to prevent unwanted foreign interference in the country's democratic system by creating new oversight commissions for media

<sup>1</sup> Conference on Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past. 24.11.20

<sup>2</sup> Freedom House report 2020

<sup>3</sup> Conference on Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past. 24.11.20



companies and for judicial appointments,<sup>4</sup> yet removes the ability of either to act as effective checks on the government's power and influence. Poland too has showcased prominently the risks of one party gaining too much power. They managed to leverage their election wins to issue judicial reforms that allowed for partisan control over the appointment and dismissal of judges.<sup>5</sup>

2020 in particular helped to illustrate how European politicians have taken advantage of a crisis in order to leverage greater control over society. Covid has demonstrated how crises allow for state of emergencies and executive orders that put the guardrails of democracy to the test. We have seen how checks and balances in the form of judicial oversight and parliamentary inquiries, such as Czech judges declaring the state of emergency in the country illegal,<sup>6</sup> being pushed to the limit. The crisis has exasperated an existing trend and has allowed would-be authoritarians to seize greater control of key institutions under the cover of public safety.

This phenomenon of democratic backsliding is not exclusive to countries such as those that are already famous for their democratic deficits. The Covid-19 epidemic has allowed for a decline in democracy in countries within western Europe, particularly Portugal and France. The Economist's Democracy Index downgraded the two countries from their previous status of 'full democracy' to 'flawed democracy'.<sup>7</sup> This helps to illustrate that concerns and threats to the rule of law and the rights of individuals are at risk even in countries with respectively strong democratic institutions and traditions. This demonstrates that the modern threats to democracy are more nuanced than what may be initially thought. The epidemic has given governments a mandate to limit the freedoms of citizens, the task for us as civil society organizations is in how we are to approach these new challenges, how do we help to find a

balance between public health and fundamental values that ultimately does not weaken our rights? This requires a new approach reflective of these changing and new dichotomies.

This part will reflect on these threats towards democracies. Through contributions from our partners, we hope to show you not only the threats Europe faces to the fundamentals of our democracies, but also how we as civil society can turn the page. Only by realizing the true scale of the issues we face; can we collectively stand up against them. The contributions in this report will help to highlight the need for us as collective democratic societies to never falter in our efforts to promote democracy, if there is one lesson that has been gleaned from the past decade, it is that democracy must never be taken for granted so that we may never lose it.



This phenomenon  
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<sup>4</sup> Varieties of Democracy 2020

<sup>5</sup> Poland lower house approves controversial judges law - BBC News

<sup>6</sup> Czech Republic: Court Puts Government in its Place – Friedrich Naumann Stiftung für die Freiheit Brüssel – Friedrich Naumann Foundation for Freedom Brussels (fnf-europe.org)

<sup>7</sup> Economist Democracy Index

# METHODS OF SHRINKING CIVIC SPACE AND ITS CONSEQUENCES

## Actions undertaken as part of the democratic backsliding in Hungary and Poland

*By Regitze Helene Rohlfing<sup>8</sup>, PhD Fellow at Centre for European Politics (Department of Political Science) & iCourts (Faculty of Law), University of Copenhagen*

Hungary and Poland have come to represent a depressive democratic trend. The Fidesz government of Hungary and the Law & Justice government of Poland - countries who were both granted EU membership in 2004 based on their democratic reform efforts - have in the last 5-10 years actively taken a U-turn on democracy. This is increasingly referred to as democratic backsliding<sup>9</sup>. Backsliding is affecting a country's democracy on different levels but a growing concern is the consequences it has on civil society – the network of organisations and movements distinct from government and the private sector – and the civic space, which is shrinking with an alarming degree and speed. The civic space is the operational space where civil society works on shared values, interest and purposes to hold the state accountable, participate in politics, shape public debate and express needs and opinions.<sup>10</sup>

In the following, I will outline the government's employed methods that are causing the civic space to shrink. I describe the methods in a broader framework of democratic backsliding and discuss how the methods have not just led to a smaller space available but also to a change in the values and organisations occupying the space.

Democratic backsliding as a term has been increasingly used in the last couple of years. It frames a trend of democratically elected governments using the constitutional and legal framework to dismantle the very same democratic system that put them in power. This is a global trend, but Hungary and Poland stand out in a European context.<sup>11</sup> Backsliding is marked by an incremental process specifically targeting the 'liberal element' of democracy, in effect stripping it down to 'nothing but elections'. In Hungary and Poland, the governments have especially targeted the judiciary and the part of civil society, which is promoting human rights and democracy, working for transparency and accountability and /

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<sup>8</sup> I would like to thank Larissa Muriel Versloot, Paw Havgaard Hansen and Helene Misja Saitz Vork for their constructive feedback and comments.

<sup>9</sup> Bermeo, Nancy 2016: On Democratic Backsliding, *Journal of Democracy*, 27(1): pp.5-19; Ginsburg, T. 2018: Democratic Backsliding and the Rule of Law, *Ohio Northern University Law Review*, US.

<sup>10</sup> Horner, L., & A. Puddephatt 2011: Democratic Space in Asia Pacific: Challenges for Democratic Governance Assistance and Deepening Civic Engagement, (Working Paper for Discussion), UNDP

<sup>11</sup> Cianetti, L. & S. Hanley 2020: We must go beyond the 'backsliding paradigm' to understand what's happening to democracy in Central and Eastern Europe, *EUROPP*; Daly, T. G. 2019: Democratic Decay: Conceptualising an Emerging Research Field, *Hague Journal on the Rule of Law*, 11(1): pp.9-36

or grounded on values opposite to the government.<sup>12</sup> I call this the government-critical parts of civil society. With serious attacks on the judiciary and civil society, democracy is in risk of being hollowed out. In a liberal democracy, the judicial systems work as a check-and-balance against the executives and is in place to ensure people's right, while civil society serves as a watchdog and a sphere where people can entertain those rights. While the judiciary is of paramount importance for the backsliding discussion, the focus is here on civil society, as it at times seems forgotten in the discussion. The backsliding has led to a limitation on civil society's capacity to function and perform, meaning that the operational space for civil society is severely limited, in effect making it increasingly difficult for civil society to act against the backsliding actions of the governments.<sup>13</sup> But how are the governments shrinking the operational space of civil society?

**Methods of shrinking civic space vary and are highly context dependent**, but it is possible to group them in two overall categories; formal and informal. Where formal methods are of legal, bureaucratic and regulatory form, informal methods take the form of more discursive means and a 'chilling' of certain freedoms incl. freedom of speech, association and peaceful assembly.<sup>14</sup> Chilling of rights happens when coercion or threat of coercion, such as harassments or threat of lawsuits, cause individuals and organisations to hesitate in their exercise of rights for fear of repercussion. Where amended or new repressive laws are easily visible, it can be more difficult to detect informal methods, as they for instance targets individuals and thus requires these individuals to be vocal about it. For an overview of the methods, see table 1. In Hungary and Poland, civil society has experienced both formal and informal methods.

**Table 1:** Formal and informal methods of shrinking civic space. The methods are executed by the government or government-loyal actors, such as the media or GONGOs and PANGOs. The methods have different degrees of effect on the civic space dependent on the context and how they are employed.

FORMAL METHODS	INFORMAL METHODS
<ul style="list-style-type: none"> <li>Funding restrictions;</li> <li>Anti-protests laws;</li> <li>Disproportionate reporting and operation requirements;</li> <li>Restricting laws;</li> <li>Use of counter-terrorism legislation aimed at regulating association and limit the exercise of fundamental public freedoms;</li> <li>Closure, de-registration and expulsion of specific organisations</li> </ul>	<ul style="list-style-type: none"> <li>Physical harassment and intimidation<sup>10</sup> of organisations and/or individual of specific organisations;</li> <li>Intimidation;</li> <li>Stigmatisation and negative labelling;</li> <li>Creating and/or supporting GONGOs<sup>15</sup> and PANGOs<sup>16</sup> to pressure the available civic space and counter the narratives of government-critical organisations;</li> <li>Co-optation and closure of newly created space, incl. online</li> </ul>

12 Levitsky, S. & D. Ziblatt 2018: How Democracies Die, Penguin Books, London: Viking, UK; Scheppele, K. L. 2018: Autocratic Legalism - The Limits of Constitutionalism: A Global Perspective, University of Chicago Law Review 85, nr. 2: pp. 545-83.  
13 van der Borgh, C. & C. Terwindt 2012: Shrinking operational space of NGOs – a framework of analysis, Development in Practice, 22:8, pp. 1065-1081  
14 Hossain et.al 2018: What Does Closing Civic Space Mean for Development? A Literature Review and Proposed Conceptual Framework, IDS Working Paper, 515, Institute of Development Studies.  
15 Government-organized non-governmental organization  
16 Party-affiliated non-governmental organization

Since 2012, funding in Hungary, from the National Cooperation Fund, has been allocated increasingly selectively, limiting funding to the government-critical parts of civil society. New laws, such as Act V of 2013 on the Civil Code and Act CLXXV of 2011 on the Right of Association, Non-profit Status and the Operation and Funding of Civil Society Organisations, have further created bureaucratic hurdles on e.g. registration procedures and the bar to claim 'public benefit status'. Where these laws might seem to apply broadly to all of civil society, a new law from 2017 - The Law on the Transparency of Organizations Supported from Abroad - and the Anti-NGO bill from 2018 are concretely stigmatising the government-critical parts of civil society by introducing further bureaucratic obstacles and criminalizing organisations assisting refugees. This includes the introduction of a punitive tax of 25 pct. on funds received by organisations working on such matters. In addition, since 2013 the government-critical parts of civil society have increasingly witnessed smear campaigns and harassment, including unlawful surveillance and police raids. It is also argued that organisation such as the Civil Összefogás Fórum and Alapjogokért Központ have been purposefully established to counter the work and narratives of the government-critical parts of civil society.<sup>17</sup>

In Poland, increasing bureaucratic hurdles have been implemented since 2015 in order to exclude the government-critical parts of civil society from the process of drafting laws and from general cooperation with policy-makers. The 2016 dissolution of The Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance and The Human Rights Protection Team has concretely limited organisations' work on these matters. Funding possibilities for the government-critical parts of civil society have also been limited due to changes in the process of distributing funds. Further deterioration of funding has been put in place with the introduction of anti-terrorism and anti-money laundering regulations in 2017.

In addition, with the creation of the funding-distributing National Freedom Institute, it has become possible for state authorities to sweep powers over organisations. Since 2016, there has also been an increased criminalisation of anti-government protests and the 2017 amendment to the Law on Assemblies effectively placed a ban on counter-demonstrations and made it possible to give preference to demonstrations organised by state or religious institutions. It is further feared that the 2018 amendment to the law on the National Remembrance Institute will be used against organisations who are voicing critical opinions about the government.<sup>18</sup>

With serious attacks on the judiciary and civil society, democracy is in risk of being hollowed out.

<sup>17</sup> Kovács, J. M. & B. Trencsenyi (eds) 2019: Brave New Hungary - Mapping the "System of National Cooperation", Lexington Books, US; Krekó, P. 2017: Hungary: Crackdown on Civil Society à la Russe Continues, Center for Strategies and International Studies; FIDH 2016: Hungary: Democracy under Threat - Six Years of Attacks against the Rule of Law, November 2016 / N° 684a.; Amnesty International 2019: Laws designed to silence: The global crackdown on civil society organizations, Amnesty International Ltd, London; Helsinki Foundation for Human Rights 2017: The Situation of Civil Society Organisations in Poland; Open Society (Justice Initiative) 2018: U.N Human Rights Commission - Submission for the Periodic Review of Hungary

<sup>18</sup> Civic Solidarity 2018: Polish authorities reduce the space for the activities of NGOs including human rights organizations in the country; Warso, Z., D. Bychawska-Siniarska & Godzisz P. (eds) 2016: Information on the recent challenges faced by human rights defenders and civil society in Poland - Overview of challenges faced by human rights defenders and civil society, Human Rights Defenders; Human Rights First 2017: Poland's New Front - A Government's War against Civil Society; Amnesty International 2019: Laws designed to silence: The global crackdown on civil society organizations, Amnesty International Ltd, London; Amnesty International 2018: The Power of 'the Street' - Protecting the Right to Peaceful Protest in Poland, Amnesty International Ltd, London.

Like in Hungary, the government-critical parts of civil society has increasingly experienced harassment, unlawful surveillance and raids of offices as well as physical violence targeting individual members.<sup>19</sup> Lastly, smear campaigns, such as the 2016 October smear campaign, have also increasingly attacked the government-critical parts of civil society. The outlined methods show that the governments are actively engaged in a shrinking strategy targeted the government-critical parts of civil society. Figure 1 further shows how the methods employed through the years in combination have caused the civic space to shrink, as indicated<sup>5</sup> by Coppedge et.al's degrees of repression.<sup>20</sup> The consequences of this will be discussed in the following.

As figure 1 shows, Hungary and Poland has gone from almost no repression to increasing repression of the civic space in the last 10 years. This is a consequence of the methods outlined in the previous section. But the civic space has not just become more scarce, it has also changed in character. As discussed, most of the actions undertaken by the governments aim at the government-critical parts of civil society. As a result, many organisations working against the governments and/or on human rights, democracy and

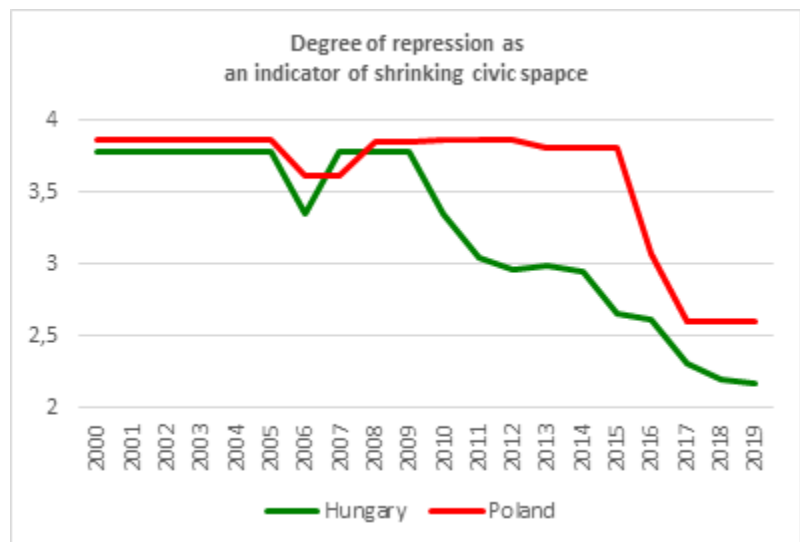


Figure 1: The figure illustrates the shrinking civic space in Hungary and Poland through the governments' attempt to repress civil society organizations. 0 indicating severe repression, 4 indicating no repression. Based on Coppedge et.al 2020.

transparency issues have met fierce opposition, in some instances resulting in organisations ceasing to operate entirely. In addition, the governments' funding and support of government-friendly organisations, so-called GONGOs or PANGOs, means that an increasingly bigger proportion of the Hungarian and Polish civil space is occupied by organisations loyal to the values of the governments.<sup>21</sup> In consequence, the civic space is moving from representing traditional pro-democratic and right-based norms to more conservative and illiberal values.

This changed political topography has two overall effects. Firstly, by packing the civic space with GONGOs and PANGOs, the governments can make it appear like there is still a vibrant civil society at play, which can help thwarting off critique from e.g. the EU. Secondly, with the limited space available to the government-critical parts of civil society, there are few left to challenge the governments' attacks on democracy. This is in many ways also the aim of shrinking the civic space. By getting rid of critical watchdogs and replacing them with loyal supports, it becomes possible for the governments to further dismantle the democracy. A shrinking civic space is therefore not just a consequence of democratic backsliding but is also enabling further backsliding. This is why it is important to extend support to the targeted parts of the Hungarian and Polish civil society.

19 Butler, I. 2017: Participatory democracy under threat: Growing restrictions on the freedoms of NGOs in the EU, The Civil Liberties Union for Europe, Berlin; Helsinki Foundation for Human Rights 2016: Attacks on Polish NGOs, Human Rights House Foundation; Serwisu, R. 2017: Information on unprecedented attacks on civil society organisations in Poland, Open Dialogue.

20 Coppedge, Michael et.al 2020: "V-Dem [Country-Year/Country-Date] Dataset v10". Varieties of Democracy (V-Dem) Project.

21 Hegedűs, D. 2019: Closing Spaces for Civil Society – A Multidimensional Game The Hungarian experience spells out the dangers facing CE societies, Visegrad Insight; Hunyadi, B. & V. Wessenauer 2017: Deepening crackdown on civil society in the European Union – the case of Hungary: The environment in which CSOs in Hungary have to operate is quite challenging since the state's primary goal is to silence and eliminate independent voices, Visegrad Insight; Kapronczay, S. 2017: Wars on NGOs in Eastern Europe – Coalition building as a possible answer, International Journal on Human Rights, SUR 26, 14(26): pp.109-118; Schreier, C. 2015: 25 Years After: Mapping Civil Society in the Visegrad Countries, Lucius & Lucius, Stuttgart, DE

# THREATENED INTELLECTUALS AND THE CONSEQUENCES OF SHRINKING CIVIC SPACE.

## - Challenges and recommendations

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*By Christian Franklin Svensson (Ph.D.), Department of Sociology and Social Work, Aalborg University, Denmark*

Scholars, artists and writers are globally threatened by imprisonment, torture, capital punishment and 'disappearance' in their countries of origin. Civil society organisations like Scholars at Risk, International Cities of Refuge Network, Artists at Risk and Reporters Without Borders are largely responsible for initiating support to these individuals and for giving attention to the current state of freedom of expression and human rights globally. Prevalent themes include the benefits and challenges of encountering new cultural settings in host countries; the inbetween position of simultaneously being a personally persecuted migrant and a privileged intellectual invited to a host country; motivations to continue their work despite obvious danger to oneself, family, friends and colleagues.

The civil society initiatives exemplify global initiatives that are locally rooted whilst transcending territorial boundaries. The civic space relates to the UN's global goal no. 10, which aims to promote social, economic and political inclusion irrespective of age, gender, disability, ethnicity and economic status. In addition, no. 16 aims to ensure public access to information and protect fundamental freedoms in accordance with national and international agreements. Furthermore, The UN Declaration of Human Rights contains the right to communicate one's own opinions and freedom of expression, including the right to participate in cultural life and scientific development.

Because nation-state institutional power does not always guarantee autonomy for individuals, civil society organisations are often the main stakeholders in securing participation in democracy as well as social commentary. The organisations thus provide an important facilitating role in order to establish relations between national and local actors and also between different sectors and the target group. Initiatives differ quite a bit, as some are of a long-term nature, whilst others are in a more investigative phase to solve pressing challenges, so how can both forms be accommodated? How to become more action-oriented, and how can better collaboration contribute to a focus on solutions and results?




Ideally, legitimate civic space occurs in collaboration between several stakeholders; in this case including the intellectuals themselves, who do not wish to be mere clients or users. Collaboration is well under way, but not always on target. The diversity among stakeholders is the great strength in collaboration, but in addition to a common understanding of goals, there must be an agreement on how to solve specific problems as well as what actions are required. The role and function of civil society and stakeholders must be dynamic to adapt to the often changing circumstances in this complex field. Progression depends on the ability to act collectively all the way from the initial invitation of the intellectuals to the testing of new solutions and the subsequent accumulation of experiences and finally the implementation of innovation. This focus on collaboration can advantageously be facilitated by the civil society actors and be communicated to all stakeholders to ensure the unification of core competencies.

Civil society may well be starting up many of the interventions in this field but cannot implement them alone in the long run. The present collaborations demonstrate strong commitment among stakeholders in the initial phases, but over time the level of involvement often seems to transform. In my research in the Nordic countries, I have found that some CSO stakeholders feel that there is occasionally too little activity in especially the public sector. Clarification of mutual expectations is important, but this can be difficult as there is frequently uncertainty about roles, which is often related to challenges due to the bureaucratic legislatures that the public sector is subject to. More research and evaluation of results may accommodate these mechanisms in order to provide documentation.

Regardless of the challenges, it is important to venture beyond dissimilarities in order for problems to be solved in unison and to focus on tangible solutions. The CSOs are often the driving force, because they frequently have the most contact with the target group and thus the best sense of challenges and needs.

In this process, they are crucial in creating swift action and easily accessible knowledge. Overall, a greater visibility of effects can generate further action and commitment from all stakeholders.

Finally, although some initiatives ostensibly are creating little change, it is still success that should be communicated broadly in order to generate awareness about the impact of efforts and the plight of globally threatened intellectuals.



The civil society initiatives exemplify global initiatives that are locally rooted whilst transcending territorial boundaries

# DEMOCRATIC DEFENCE AND ADAPTION TECHNIQS OF A CIVIL SOCIETY UNDER PRESSURE

## - Militant democracy and civil society in Germany

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*By Professor (MSO) Angela Bourne, Roskilde University*

How should democratic communities respond in the face of threats to the rule of law and a shrinking civic space? This question is not new in politics or in scholarly debate. The courts and political parties have generally been seen as the key actors confronting this question, but more recent work aims to bring civil society into focus.

The work of Karl Loewenstein on the provocative idea of 'militant democracy' has long been influential. This tradition of scholarship addresses the fear – instantiated by the Nazi's rise to power – that democracy may become the 'Trojan horse through which the enemy enters the city'. Militant democracy entails legally authorized but exceptional restrictions of certain basic rights – particularly those of association and expression – to pre-emptively marginalize those who threaten to undermine liberal democratic institutions and values. It typically includes measures such as party and association bans, limits on provocative speech (such as Holocaust denial) or displays of extremist symbols (such as the Swastika). Militant democracy has constitutional backing in some of the most established liberal democracies – notably Germany and is seen by the European Court of Human Rights as compatible, under certain conditions, with the European Convention of Human Rights.

Nevertheless, many practical and principled objections have been raised about militant democracy. Militant democracy justifies use of repressive measures against those exercising their ordinary political rights. It thereby creates the possibility that measures purportedly protecting democracy in fact undermine the very quality of the democratic system they aim to defend. There is also the risk that militant democracy will be applied arbitrarily. Another problem is that militant democracy may be an unsuitable response for contemporary challenges to rule of law and incursions into the autonomy of civil society. In Europe, these challenges often come from populists who claim to better represent the democratic will of the people better than the elite, albeit through illiberal means. There are few extremists of any significance who openly aim to replace liberal democracy with a dictatorship. Furthermore, in important cases, populists are not opposition parties that can be banned or marginalized. Many populist parties govern.



In this context the work of scholars proposing a more broadly defined strategy of 'democratic defence' may be more insightful. This strategy has often been described as more 'tolerant', 'accommodative' or 'persuasive'. It is more inclined to consider a role for political <sup>5</sup>parties and civil society in confronting the dilemmas of promoting liberal democratic institutions and values than merely leaving it in the hands of the courts. For example, Stefen Rummens and Koen Abts develop a 'concentric containment' model for 'defending democracy' where the informal public sphere outside of government should be one of inclusion and understanding of new ideas. They argue this is the place where the concerns of those who might



Civil society actors  
can engage those  
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autonomy of civil  
society in a variety of  
different registers

support populists can be discovered and where participation in politics, debate and persuasion might build a stronger democratic ethos among citizens. It is only when those seeking to undermine rule of law or the autonomy of civil society approach the seat of power that more repressive, militant measures should be complicated.

Finally, the study of civil society responses to populist parties in Europe point to both 'intolerant' and 'tolerant' modes of engaging with populist parties. Intolerant 'social combative' strategies, treat populist party as a 'threat', undeserving of the normal rights and privileges granted to parties in liberal democracy. For example, the Alternative for Germany has struggled to find venues to hold party conferences and undertake ordinary party business in some parts of Germany. More commonly, civil society organisations undertake tolerant 'social persuasive' strategies, which treat populists parties as they do other political opponents, despite fundamental disagreement with that party's policies or behaviour. This strategy aims to convince populist parties or their supporters to change their views and can include public demonstrations, boycotts, civil disobedience, information and consciousness raising campaigns. They may involve exclusively local actors or transnational networks. A recent example from Italy is the 'Sardines' movement which emerged in Bologna in 2019. It packed city squares in protest at the policies of the Lega's Matteo Salvini and other rightwing groups.

Civil society actors may lack the legal authority and political power of the courts, public prosecutors and political parties. Nevertheless, civil society actors can engage those challenging the rule of law and the autonomy of civil society in a variety of different registers. Civil society actors can create practical difficulties for the organization and communications of those who do this, challenge their moral authority and legitimacy, and pressure others with more formal power to do so on their behalf. In relation to populist parties, we can evaluate the effectiveness of civil society initiatives by looking at their ability to constrain those who succeed in capturing control of public authorities, or challenging political ideas and political cultures supportive of populist party agendas.

# ENSURING PARTICIPATION IN THE EUROPEAN DEMOCRATIC INSTITUTIONS



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*By Jakob Erle, Director of International Academy for Education and Democracy*

Adjectives are often added to the word democracy. Direct democracy, representative democracy, liberal democracy, illiberal democracy, deliberative democracy, parliamentary democracy and so on. This is a misunderstanding. Democracy is one. The adjectives are ways of underlining or defending particular aspects of democracy - to get an upper hand in the interpretation, but this undermines democracy, because power and action comes from unity. We need to be united in our diversity.

Democracy comes from ancient Greece, the word has two parts - demos = people and kratos = power. It's the power of the people. It is enabling common action in relation to threats or challenges. Democracy is about unity of the citizens even if they have great diversity and disagreements. This collective power is essential for the survival and positive development of community.

The European Union treaty has its provisions on democratic principles in articles 9 through 12. Article 9 relates to the fundamental equality of the citizens. Article 10 states that the Union is founded on representative democracy, with direct representation of citizens in the European Parliament, Member States represented in the European Council. Article 12 describes the way national parliaments participate in consultation and ensure subsidiarity to keep all decisions as local as possible.

Participation is well described in article 11, which establishes the obligation for the institutions to give citizens and associations the opportunity to make their views known and have dialogue on these in relation to all areas of Union action. The EU institutions are likewise obligated to maintain open, transparent, and regular dialogue with civil society, as well as to carry out broad consultations with parties concerned - to ensure that the Unions actions are coherent and transparent. Furthermore, to give more direct participatory access to citizens it is established that one million citizens can submit a proposal for legal action of the EU. This is not about accommodating the emotions of the citizens, this is a sine qua non to have strong institutions, power



Participation is weak  
and very often token.  
This undermines the  
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is needed

power ultimately comes from the will of the people.

Constitutionally there is no problem with participation in the European Union. The treaty has a great balance between the rights of the individuals and the representative power of the parliament as well as the governments of the member countries, and it includes the participation of civil society and the role of national parliaments taking account of subsidiarity. Sadly, the reality is quite different. Participation is weak and very often token. This undermines the European Union at a time when strength is needed. As individuals, local communities, states we need strong and relevant action at the European and global levels to meet the huge challenges before us. The world as we know it will change radically within the next few decades. The actions we take now will be decisive for the kind of future we will have, paradise or hell.

Institutions need to act decisively to deliver on article 11 of the treaty if the article is to have any real meaning. To recap:

- Institutions must give citizens and associations the opportunity to make their views known and have dialogue on these in all areas of Union action
- EU institutions are obliged to maintain open, transparent and regular dialogue with civil society and carry out broad consultations with parties concerned to ensure that Union action is coherent and transparent.
- One million citizens can submit proposals for legal action of the EU.

The European Union and its institutions and agencies can not expect civil society and citizens to come visit. Most institutions are in Brussels, and the agencies are placed in the member countries. If you are a citizen interested in environmental issues and live in Palermo it does not help much that the environmental agency is placed in Copenhagen 2.800 km away. To give citizens and associations the opportunity to make their views known and have dialogue can only happen if they are invited - and that can only happen in a meaningful way where the citizens live and work. As it is now the 27 EU commissioners visit member countries once in a while, including dialogue meetings. That is a good thing - but with around 450 million citizens this is only a token. Real dialogue needs to happen and that is a totally different story. It's a huge operation that has been in the treaty for more than 15 years, but has not been delivered on. The infrastructure for this kind of work is present in many if not all EU-countries e.g. in the form of civic education, folk-high schools etc. but the union needs to invest in real presence in this infrastructure, combined with strong mechanisms for aggregation of the dialogue, for representation of the views of the citizen in the Union.

Civil society and citizens have the task of participating: bringing their knowledge, experience and convictions into the dialogue to ensure the development of a better, more sustainable, world. The responsibility of contradiction - but also listening. Humans are born with two ears and one mouth, so individuals as well as institutions should listen twice as much as they talk.

National governments have the difficult obligation of enabling the open, transparent and regular dialogue between the EU institutions and the citizens and civil society. This is a challenge, This is exactly the same dialogue they need themselves, with the same constituencies so obviously there is a competition for the scarce resource of attention. But the participatory dialogue is needed - at all levels, local, national, European. And if this is done in a sincere way by all parties involved it will give more power to everyone, power does not need to be a zero sum game.

Opening up for real and strong participation is essential to have a stronger European Union - and for having stronger nations as well.

# THE RISE OF PROTEST MOVEMENTS

## – A global megatrend

*By Peter Christiansen, Secretary General & Sara Brandt, Policy Advisor on Civic Space and Human Rights at Globalt Fokus<sup>22</sup>*

### Protest movements on the rise

We are living in unprecedented and challenging times. The COVID-19 pandemic, increasing inequality, climate and environmental changes and democratic backsliding are just a few examples of an ever-changing reality. Simultaneously, we are also witnessing a truly global megatrend: an increase in protest movements in opposition to the new reality. At the same time, we also see more coordinated and calculated attacks on citizens and democratic freedoms from governments using the pandemic as an excuse to silence voices of dissent.

A recent study from Global Focus shows that the amount of protests has grown with an annual average of 11,5 % from 2009 to 2019.<sup>23</sup> In other words, in the last ten years, political protests have become more widespread and more frequent. The size and frequency of these protests surpass historical epochs with mass protest such as the late 60s and late 80s. Compared to earlier, the protests are more fluid, informal and community-oriented and not so much a response to global trends but rather to local injustice. The new activism is just as much about culture and the values of society, as it is about more classic case-oriented advocacy. Systemic corruption, economic inequality and austerity, discrimination and marginalization, injustice, human rights violations and the need for political reform are some of the causes of protests we have seen around the world. The root causes of these global protests suggest they will continue and likely to increase in 2021 and beyond.

The word “protest” is widely defined, but we draw on this definition: “[the] continuous [...] gathering of a group of individuals committed to using non-violent tactics to effect some political, social, cultural or economic change that diverges from mainstream or extant political positions or practices”. We acknowledge that gatherings can exist in both physical and online space and therefore gatherings are understood as “public and physical as well as online”.<sup>24</sup>

Within and close to the EU, we have also seen a rise of protest movements. In Poland, feminist movements organized mass-protests against the anti-abortion laws and the rise of autocratic institutions, in Belarus, citizens joined mass-protests against President Lukashenko and his decision to run for President in 2020, in Czech Republic, protests were held against Prime Minister Andrej Babis

22 Global Focus is an association of Danish non-governmental organizations that are engaged in global development, environmental and humanitarian activities. Global Focus represents 80 civil society organizations. Our aim is to facilitate cooperation, coordination, and planning between them. In a time of massive change and reorientation, the role of Global Focus is to be a relevant, focused, effective, and unifying platform that, through networking and collaboration, strengthens the influence and capacity of a diverse civil society to promote a more just and sustainable world. Globalt Fokus - Home

23 Global Focus 2021: Protestbevægelser: analyse af en global megatrend

24 CIVICUS 2018: Keeping up the pressure: enhancing the sustainability of protest movements.

facing criminal investigations over fraud and in Hungary, citizens have protested against a crackdown on fundamental freedoms, independent institutions and separation of powers. Common for the protests in these countries is governments' attempt to violate human rights and democratic freedoms.

#### **Crackdown on protest movements:**

With the rise of protest movements, we have simultaneously seen how governments and autocratic leaders have learned from each other to restrict and crack down on the movements. Six overall structural factors that undermine the longevity of protest movements<sup>25</sup> include: 1) Excessive use of physical force against protest movements, 2) Arbitrary arrests of activists, 3) Legal restrictions on the freedom of assembly, 4) Governments' negative communication about protest movements, 5) Restrictions on independent observers and journalists, 6) Government infiltration of protest movements.<sup>25</sup>

Groups of people that already are discriminated against and excluded from society experience double layers of crackdown in and around protests. In Egypt, female protesters were, during the revolution in 2011, in an act of defamation, accused of being sex workers on national TV because they camped out on the square where the protest took place.<sup>26</sup> Those facing double crackdown also includes people already facing discrimination due to either their sexual orientation, gender identity, ethnicity, being part of an indigenous group, belonging to a religious or non-religious minority etc. These groups are more often denied from permits to protest peacefully, face defamation and increased police brutality and attacks from counter protesters including gender based violence.

While the Internet and tech in general have been enablers for fast mobilization and documentation of violations, it has also been used by authoritarian leaders to repress movements through surveillance, censorship and internet laws restricting freedom of speech and manipulate public opinions about them. Protest movements and human rights activists are therefore forced to think more creative than just using social media to mobilize large crowds.

#### **The EU and civil society should support protest movements**

Given how central protest movements are to bring about changes in society and holding governments accountable for human rights violations, they must be supported, protected and seen as key in collaborations for change going forward. The European Union can play an important role if it started engaging in this work and civil society must rethink and reevaluate their support for protest movements to be true allies and supporters.

Leaders of protest movements have called for strategic planning and organization as ways in which civil society can better support them. They also point to the need for greater criticism from international actors when governments restrict freedom of assembly and exercise excessive power. This shows that there is a clear need for increased dialogue and cooperation between protest movements and international actors who could potentially provide various types of support.

While some donors have supported protest movements, we see more reluctance than willingness to truly support and protect protest movements. This is likely due to the unstructured nature of most protest movements that do not have a single organization or entity leading the work and therefore doesn't live up to the donor traditional donor requirements. However, such expectations are out of touch with the strength, agility and power of protest movements; it is exactly due to their loose structure and opportunities for all people to engage differently that they are successful.

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<sup>25</sup> Ibid

<sup>26</sup> CNN 2011 <https://edition.cnn.com/2011/11/25/world/meast/egypt-women-sexual-harassment/index.html>

Therefore, EU aid must look beyond the traditional forms of aid and instead provide flexible support that is unpredictable in nature but brings about opportunities for much bigger impact. We recommend moving away from a project-based model that does not allow sufficient<sup>5</sup> flexibility to collaborate in changing environments where protest movements and civil society organizations can quickly respond to crisis situations and arising opportunities. There should also be support for cross-border alliance building between actors and different thematically focused groups. EU's foreign policy should support protest movements by criticizing EU governments and other governments that crackdown protest movements.



Since civil society's most important role is to bring about positive change in society, collaborating with protest movements is key

EU Delegations around the world should develop the skills of employees in order to better support protest movements by attending court hearings when protesters are wrongfully accused, criticize crackdown on freedom of assembly and online activism, as well as, supporting safe spaces at EU Delegations for protest movements in danger to meet. The EU should furthermore work towards a complete ban against the export of surveillance technology to authoritarian regimes and make the procedures for the approval of exports of surveillance technology more transparent.

Many civil society organizations have collaborated with protest movements all around the world and been important stakeholders for change. However, a great number of civil society organizations have not yet done so. This is likely also due to the unpredictability that does not fit well with the requirements that civil society organizations must live up to towards donors. Additionally, there might be reluctance to collaborate with protest movements that are often a target of crackdown by governments. But since civil society's most important role is to bring about positive change in society, collaborating with protest movements is key. This could entail providing legitimacy and positive exposure to protest movements, exchanging experiences on digital security, organization, leadership development, documentation of violations, advocacy, alliance building and facilitating access to international institutions and ensuring international criticism of violations against protest movements. It is additionally important to respect the premises of the protest movement without an expectation that they should become organizations or other formal institutions. Their agility and local ownership is the guarantor of their ability to create societal change.

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# THE NAVIGATION OF CIVIL SOCIETY IN TIMES OF INCREASED PRESSURE

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PART 3







# NON TUT D O R T N

As we have shown throughout the previous part, we see how democratic institutions, in particular through the use of legislation, has become a tool to weaken democratic guardrails. Citizens have borne witness to European governments using legislative initiatives to weaken existing civil society organizations. A prominent case for this is the “Lex NGO”- law adopted in Hungary that was ruled as a breach of the right to association as based in the EU charter of Fundamental rights by the European Court of Justice.<sup>28</sup>

The law set strict requirements for NGO’s that receive funding from outside of Hungary in an attempt to starve government critical organizations, such as the Hungarian Helsinki Committee, from funding. Civil Society is directly dependent on the rule of law, to continue to play a strong role in society. Without it we risk being replaced or shut down by arbitrary legal procedures whose anti-democratic intentions are disguised under the illusion of democracy. A lesson of the current times seems to be, that to continue defending the rule of law, we must bring the concept out of the far-off parliamentary halls in the various national capitals and into the living rooms of everyday Europeans.

*“We have to find a way not only to protect the rule of law, but to explain it as well”<sup>29</sup>*

*- Sam van der Staak, Head of International IDEA's Europe Program*

In past years notions and terms such as rule of law were largely removed from the discourse of the public. Yet for civil society to effectively continue to represent society and its interests, it needs to be better at explaining its role and duties in society. Heather Grabbe made it clear in her chapter (1.1), that the role civil society currently plays is still enjoys broad support. The general population wants civil society to play a larger role, yet to do so civil society must be more inclusive and open, and better at explaining our role in society. If we fail to explain terms such as the rule of law, we risk further deterioration of our own standing in society.

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<sup>28</sup> Activecitizenship 2020

<sup>29</sup> Conference on Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past. 24.11.20



*"For the Orbans and the Kaczynskis rule of law is about accountability, so what they want to prevent are the mechanisms of accountability, vis á vis their own people"<sup>30</sup>  
- Louisa Slavkova, Executive Director of the Sofia Platform*

By explaining the rule of law, we not only help to strengthen it by bringing awareness of its importance but also help to bring increased accountability to institutions. Civil Society has a role in holding government accountable, as they provide an important check on the powers of leaders that seek to pushback democratic norms. It is done not due to any inherent source of power, but by simply shining a light on their actions so that people can be informed about a government's actions. We must continue to promote institutions and legal mechanisms that allow for greater degree of transparency throughout Europe.

Yet in order to understand these challenges we also need to understand the perspectives from our partners on the ground. It is not enough to simply talk about the theoretical needs of civil society without giving it a base within reality. To this end we have presented several cases outlining the challenges that civil society faces throughout Europe. From cases hindering the equal treatment of individuals, to those detailing the political culture in a given country, we hope to both shed a light on not only the negative aspects of our jobs, but also what works and the positive developments in an effort to share our experiences and those of our partners so that we can begin a process of building a more resilient and interconnected European civil society.

We also hope to present how a uniquely European perspective and network can help us all to combat democratic backsliding and ensure the continued wellbeing of civil society throughout the EU. By working together, we can provide greater assistance for societies most vulnerable and to a greater degree advocate for the rights of everyday citizens across Europe.

We will expand upon the role of civil society in the coming chapters by highlighting some of the cases of our partners throughout Europe, that help to highlight the role that civil society currently plays, and the opportunities that we have for an expanded role in the future. Furthermore we share examples of the lessons learned by our Danish partners in promoting a culture of democracy in Denmark, to exemplify good practices and conditions for CSO's and citizens engagement.



To understand these challenges we also need to understand the perspectives from our partners on the ground

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<sup>30</sup> Conference on Civil society in turbulent times – New solutions in the EU inspired by the lessons from the past. 24.11.2020

# CHALLENGES FOR THE CIVIL SOCIETY IN POLAND

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– and possible ways to overcome them with a little help from abroad

*By Filip Pazderski, Senior Policy Analyst / Head of the Democracy and Civil Society Programme, Institute of Public Affair, Warsaw.*

## Introduction

In several European Union (EU) member states democracy has been deteriorating in the recent years (IDEA, 2021). In each of them the process of democracy backsliding (Bermeo 2016: 6; IDEA 2019: 33) started at different moment and reached various level. Probably on the forefront of these trends are two Central Eastern European countries - Hungary and Poland. However, several other states in different parts of the European Union are following this path in its various aspects. Thus, it is important to observe more precisely cases, where democracy has declined more significantly to get prepared to counter further deterioration in states where things have not yet gone that far.

Moreover, examples from history show that things can turn around even in the darkest of times, when there is little prospect of the situation changing for the better. It is also one of the lessons that can be learnt from the events that took place in Central-Easter Europe in 1989, when a group of countries belonging to the communist bloc started to break down the gaps in the wall separating them from the West and restore democracy. These events were naturally facilitated by favourable geopolitical circumstances, but support from various foreign actors also helped.

Similarly, also at present there are several possible ways, how civil society in the countries that have undergone so serious deterioration can be supported from abroad. Civil society organisations can play an important role here. This chapter aims to discuss such solutions, while focusing on the developments that recently took place particularly in Poland. It will try to work out some conclusions and inspirations for possible actions that can help to counteract the emergence of similar events elsewhere.

## Threats to the functioning of democracy and civil society organizations in Poland – an overview

Right after winning national elections that brought this party to power in Poland in late 2015, Law and Justice (Prawo i Sprawiedliwość, PiS) has started changing constitutional order in the country (without having a constitutional majority in the parliament) into the concept of majoritarian democracy and dismantling the most important check and balances and rule of law institutions. It included capturing the Constitutional Tribunal, National Council of the Judiciary,<sup>31</sup> Supreme Court, common courts, public media, limiting some civic liberties (starting with the right to assembly) and modifying electoral administration. Also, civil society organizations (CSOs) critical of government policies were attacked by smear campaigns and their access to public funds as well as decision making processes were limited. At the same time new GONGO-style organisations close to the ruling party started to be organized and supported with state funds (Pazderski 2019a: 5). All these changes were additionally fostered by strong pro-governmental propaganda in public media controlled by the ruling majority and pursuing a conservative historical policy (i.e. see: Hackmann 2019; Etges, Zündorf, Machcewicz 2018). Such narratives were accompanied by attacking dissident voices, namely civil society, and independent media, and pointing the public attention to the enemy, which usually were the most vulnerable social minorities. At first, in 2015 these were migrants and refugees. And when the public emotions about it began to deflate, so that this fuel ran out, ruling party in Poland (and Hungary) turned against the LGBT+ community. Both these minority groups were presented as a threat not only to Polish nation economic prosperity, but also its traditional values and commons. Despite robust social protest movements against PiS policies that have appeared over the last years, due to the conservative ideological orientation prevailing in the society, strong dissatisfaction of the state of domestic politics and some social transfers they offered, populists could have maintained their influence in Polish society and won several consecutive elections until 2021.

In this period a number of developments threatened in particular functioning of Polish CSOs. The rule of law crisis, ongoing since the end of 2015, has affected both the legal environment in which CSOs operate as well as their ability to influence the content of emerging new regulations. The freedom of assembly was restricted due to the 2016 legal amendments (including introducing so-called cyclical assemblies that gained priority over all other assemblies), and then the practice of this law application, e.g. by the police. In addition, the participation of CSOs in the public debate and the law-making process has been significantly hampered - as a result of a general deterioration of the practice of public consultation, social dialogue and easing of legislative standards. CSOs involvement in public debate has also been hampered by the ruling majority narrative that such CSOs are politicised and by dividing civic sector into good ('conservative' and 'working for Polish values') and bad ('liberal' and 'leftist') parts. There was a fertile ground for such division due to growing political polarisation of Polish society (Sierakowski 2018; Czeńnik, Grabowska 2017). Under these circumstances, there is also a growing group of right-wing organisations, even extreme ones, that enjoy the favour of the government party and privileges in accessing public money (e.g. distributed by governmental agency responsible for supporting and controlling CSOs - the National Freedom Institute-Centre for Civil Society Development that was newly established in 2017).

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<sup>31</sup> It is a constitutional body obliged to uphold the independence of the courts and judges, responsible for appointing judges to the Supreme Court.

Such challenges were compounded by the additional problems that emerged in the wake of the COVID-19 pandemic. It concerns not only more pragmatic problems that many other entities had to contend regarding the need to reorganise all activity to remote work or the difficulty to maintain existing staff. But CSOs faced also specific challenges. They were unable to hold mass physical meetings, often used to attract financial support or new volunteers. Individual CSOs faced also more general problems with maintaining social mobilisation and activity around them. All these changes, especially in terms of the apparent decline in the volunteer base of many organisations, are also shown by research carried out in very end of 2020 (Gumkowska, Charycka 2021).

Of course, the picture of CSOs in Poland is heterogeneous. There is a group of organisations that have managed in recent years to successfully raise money from individual donors, which has provided them with the financial means to operate on a permanent basis. However, the pandemic may undermine their efforts, as well - if the financial crisis becomes more noticeable, people will be less willing to spend money, including to support CSOs (despite the fact that their work is even more needed now than before the pandemic). In addition, financial condition of local administration is also deteriorating - as a result of the pandemic, increased spending for implementing governmental policies (e.g. 2016 education reform) and reduced revenues from taxes (that government lifted for some social groups). And local authorities are important source of CSOs funding. All these trends may deteriorate the CSOs future financial situation in a long-term. Therefore, there is a need to create new sources of funding that can be channelled into the CSOs ongoing activities, not just projects. Such resources would also allow CSOs to react swiftly to current events, especially potential further deteriorations.

Moreover, despite a number of various challenges that have emerged in recent years, many CSOs have not stood still. They tried to work out solutions (see Pazderski 2019b). The CSOs have also done a great deal of work directed at documenting the phenomena taking place in various areas of state functioning. In addition, many CSOs, especially engaged in relief activities, promptly reorganised their work to assist citizens in difficult situations caused by COVID-19 pandemic (Gumkowska, Charycka 2020). CSOs got also involved in identifying and publicising irregularities that took place in the country.

In this way CSOs try to sustain social energy and prevent slackness. One example is the mobilisation of around the election of a new Ombudsman. More than 1200 of CSOs from different parts of the country, supported an initiative to propose a social candidate for this position as the previous Ombudsman's term of office expired in September 2020. Thus, in this difficult times (of the rule of law crisis and the COVID-19 pandemic), many organisations have shown that they can respond to social needs and it is worth creating conditions conducive to their further development.

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Despite a number of various challenges that have emerged in recent years, many CSOs have not stood still. They tried to work out solutions

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32 (see <https://naszrzecznik.pl/>)

## How to strike back: A role of the European institutions, robust civil society and legal activities

When discussing the situation observed in Poland, we cannot forget about the role played by the European institutions. While it is true that the EU have not taken explicitly fast steps against the EU's fundamental values violations, the actions that the European Commission and the Court of Justice of the European Union (CJEU) undertaken finally have at least slowed down the pace of action by individual governments. Moreover, it could also have adhered to the rejection of solutions that would violate the rule of law principles more drastically (see: Pech and Scheppele 2017; Bozóki and Hegedűs 2018: 1175-76). It was only in 2020 that both the Polish and Hungarian authorities took their white gloves off and decided not to comply with the CJEU rulings (concerning the functioning of the disciplinary chamber in the Supreme Court and the so-called "anti-NGO" law, respectively). But even then, each of these governments in their official statements wouldn't admit this openly. They even invoked legal arguments to explain that, in fact, the CJEU ruling is being implemented, although its legal meaning should be understood differently. The Polish government strategy started to change throughout 2021, when it began to openly challenge the competence of the CJEU and submitted a motion to the Constitutional Court to verify the compatibility of EU law with the Polish constitution. Thus, regardless of governmental declarations even these EU's sluggish responses make a difference.

The second factor important to understand the situation in Poland is related to the state of civil society. In contrast to Hungary, protests with tens of thousands of participants erupted in Poland from the very beginning of the Law and Justice government (first took place already in December 2015). Later on, of their own protests were organized by various social and professional groups, including judges and lawyers. The latter groups took to the streets in January 2020 after the government proposed the "muzzle law" extending the disciplinary liability regime for judges (on this law - see EURACTIV 2020a and Venice Commission 2020). In the March of a Thousand Togs participated also judges from other EU member states (EURACTIV 2020b). Although the government's policy hasn't changed, these manifestations slowed down course of its implementation or postponed certain activities. In addition, these protests raised awareness of the rest of population on the state of rule of law and the role of civil rights protection. In this way a specific process of Polish society civic education was enabled.

The events that took place at the end of 2020 in answer to the attempt to tighten up the abortion law contributed even more to change Poles social awareness, especially young people. This almost total ban on abortion was introduced in late October through the judgement of the Constitutional Tribunal controlled by the ruling party since 2016 (see: Motion to declare the normative act of November 19, 2019 unconstitutional with the Constitution of the Republic of Poland, K 1/20)<sup>33</sup>. This pushed people to the streets and demonstrations have begun to spill over to the whole country (see: CIVICUS 2020).

These manifestations have met with a violent reaction from the police, including use of tear gas and pepper spray. Forceful response from the law enforcement was also observed during subsequent protests. Moreover, a number of measures were taken to discourage people from further protesting. Demonstrators, often minors, were prevented from leaving the protest site by the police, who locked them in kettles, what violated protesters' civil rights according to Polish Ombudsman.

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<sup>33</sup> See the Constitutional Tribunal judgement at <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>.

The police also unjustifiably used tear gas, while plain-clothes officers of the anti-terrorist unit used telescopic batons against women and minors. Demonstrators were detained and transported to police stations several dozen kilometres away from the place of manifestation in order to take statements. Their parents were informed about minors' detention with a delay, hindering their access to children. Direct coercive measures were also used by the police during manifestations against MPs who hold parliamentary immunity. Additionally, people participating in the demonstrations, especially pupils and students, faced harassment from teachers or school management, particularly in smaller towns (Pazderski 2020). The police visited such people at home, also minors whose parents were threatened with filing a case with the family court. Cases were reported concerning school teachers and school principals facing harassment for participating in protests from governmental education system control bodies.

Regardless of these events, the demonstrations continued, although their intensity has started to decrease over time. It has also brought some positive results. Firstly, the government failed to publish abovementioned Constitutional Tribunal ruling right after it was issued. And according to the law, it is only after its publication in an official gazette that a judgement becomes legally binding. Normally, this publication happens automatically, but it requires an order from the Prime Minister. This time it took him until February 2021 to issue respective decision. Moreover, support for the ruling party (PiS) decreased steadily by 10% (for the first time since they took power in 2015). In addition, Polish Women Strike, coordinating these protests has developed more long-term activities. They organised legal assistance for people facing restrictions for taking part in demonstrations with many lawyers offering their services pro-bono. Financial private donations have grown significantly. Organisation has also started to work on collecting demands appearing during protests to formulate more coherent programme. Even though Constitutional Tribunal ruling has been finally published and ban on abortion become reality in Poland, all these events can be taken as another sign of resilience of Polish civil society. Many young people in different parts of the country, including smaller towns, gained also experience of participating in or organising protests. It's likely to result in further activity in the future.

There is also another strategy that has been successfully used particularly by Polish judges and lawyers. It concerns using the variety of legal measures. One is a direct application of the Constitution by common courts (bypassing laws deemed to be unconstitutional), through complaints to the Supreme Court and Supreme Administrative Court. Another successful strategy of this kind includes submitting the preliminary questions to the CJEU. Good example is the March 2, 2021 CJEU ruling, stipulating that legislation that removed effective judicial review of decisions by the National Council of the Judiciary in competitions for Supreme Court judges may violate EU law.<sup>34</sup>

Thus, there are several hopes that the situation in Poland will not deteriorate completely. On the other hand, Poland entered a path similar to Hungary five years later and is quickly advancing in it. Thus, it is difficult to predict where country will be in next five years. Although, in Poland the political opposition is stronger than for a long time it was in Hungary and there is still a vivid environment of independent media of various kinds (but the ruling party made already first steps to increase its control over private media – see Cieński, Tamma 2020; Ciobanu 2021).

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<sup>34</sup> (Judgment in Case C-824/18).



We have to admit also that some recent developments in Poland show that a lot can still happen in the following months and years. So, although CJEU imposed the interim measures on Poland on 8 April, 2020 stipulating that *“Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges”*,<sup>35</sup> the Disciplinary Chamber remains active. Throughout 2020 it proceeds to take decisions in cases related to lifting immunity of selected judges (mostly those openly criticizing the actions of the parliamentary majority related to the common courts). It includes not only cases launched against judges of the common courts (district and county), but also judges of the Supreme Court (Jałoszewski 2021).

Moreover, the seizure of control by the executive power over the judiciary and the common courts in Poland got almost completed amidst the pandemic. One of the last events concerning that was related to appointing new First President of the Supreme Court as the term of former one ended up in April 2020. A selected person (former vice-Ministry of Justice in current ruling majority's government) was firstly voted only by so-called “new judges” of the Supreme Court (appointed by the “new” NCJ) and after she was appointed by the president. The whole revised procedure was criticized by legal experts, pointing out numerous procedural irregularities in the nomination process (Rakowska-Trela 2020).

Notwithstanding this, if favourable political conditions arise again, it should be possible to restore the rule of law in Poland. The constitutional revision was made in Poland through amendments in ordinary laws and were disregarding constitutional procedural requirements (Drinóczy and Bień-Kacała 2020). Moreover, it also happened by the ruling party appointing own people to the main state institutions, what can be reversed. Thus, we can agree that “the legislative dimension of constitutional capture in Poland is rather weak” and “the national legislative framework can be readjusted in a much simpler way to the previously existing democratic standards” than in Hungary (Bozóki and Hegedűs 2018: 1177). Moreover, decisions taken in violation of constitutional principles can still be challenged through appeals to the CJEU (as was the case in the aforementioned judgment of March 2, 2021).

It is difficult to predict where country will be in next five years

<sup>35</sup> CURIA - Resultatliste (europa.eu)

## SUMMARY: Prospects for Polish civil society in the future and how to support it from abroad

Taking into account the situation concerning civil society and rule of law in Poland as presented in this text, it is important to support civil society in its efforts to stop democracy deteriorating further. The following is a set of observations in this respect and ideas for activities developed during an expert roundtable for civil society representatives and foreign diplomats based in Warsaw. This event was held on November 23, 2020 ahead the international conference "Civil society in turbulent times<sup>36</sup> - New developments in the EU inspired by the lessons of the past" A group of almost 30 participants discussed the following:

- In response to the challenges in the country (presented in this text) there is a need to develop international cooperation and mutual support, using also the context of current political trends visible at the European level (such as strong criticism by EU institutions of discriminatory activities against sexual minorities in Poland and Hungary, and supporting ecological policy);
- It is worth emphasising more strongly the need for foreign sponsors to support first and foremost organisations working for democracy and rule of law in Poland. In this respect the priorities of such support should be set appropriately - e.g. within the EEA/Norway funds. A step into good direction was establishing new EU Citizens, Equality, Rights and Values (CERV) Programme (Regulation EU 2021/692);
- It is necessary to get back to counteracting corruption in the broader sense, offering support to CSOs working in this area both at the EU and national level. This issue should be also remembered in the context of discussions concerning the rule of law and the conditionality mechanism related to EU funds spending. If we are looking for priorities for support under the new EU Multiannual Financial Framework, these things cannot be disconnected, and it is worth to include anti-corruption activities into CERV Programme;
- It is worth disarming the rhetoric of the ruling majorities claiming that the West cannot impose any ideologies and solutions on countries like Poland as absurd, as such views are expressed by people who in the times of anti-communist opposition (e.g. the Solidarity movement) often willingly benefited from various international forms of support (including financial);
- We need civic education to be developed in Poland, which will respond to the visible deficits in civic knowledge, skills and attitudes. Given the approach to such measures by the current ruling majority such education should take place mainly outside public schools, and CSOs should play a major role in it;
- In shaping civic attitudes, it is important to practice them on a daily basis. In this perspective, the protests at the end of 2020 seem to incline some optimism. They showed that the practice of civic life is quite good, also among young people (although it is difficult to say to what extent it will be stifled by the restrictions that authorities placed on demonstrators)

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<sup>36</sup> See <http://civic-forum.eu/events/civil-society-in-turbulent-times-new-solutions-in-the-eu-inspired-by-the-lessons-from-the-past>.



- Optimism can also be drawn from what CSOs manage to do today despite the difficulties they face. It is about mobilising for action that not only responds to the current crises, but also tries to come forward and try to impose own narratives in the public debate;

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- Courses or trainings for people involved in civic organisations, including their leaders are also very important to build civil society. At present, there are at least a dozen schools for activists and people engaged in civic activity in Poland. All of them are run by right-wing or conservative organisations, what will impact on the worldviews formation of people in civic organisations in Poland in the long term, especially since organisations of conservative orientation also receive significant financial support from the state budget. Also the staff of CSOs working on the values enshrined in the EU treaties should be educated and strengthened. On a similar level, support and establishing dedicated offer are also needed for teachers committed to the EU values, including rule of law. It is certainly an area where Polish civic organisations could receive support from their counterparts from other EU member states and beyond.

# RAISING VOICES AGAINST INEQUALITIES IN SLOVENIA

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## – Defending Freedom and Democracy

*By Nika Kovač, Research Institute 8th of March*

The following case is a rendition of the challenges facing our partners in Slovenia. We hope that this case will help to demonstrate to our readers some of the multitude of challenges that democracy champions face across Europe, and how even in countries that have previously been heralded as true success stories when it comes to democratic transitions, we continue to face challenges to our rights and the potential for democratic backsliding.<sup>37</sup>

### **What sparked the protests and what messages did they initially want to convey?**

In early March, during the lockdown, our Institute started protests called 'Out of the window'. We invited people to put banners on their windows and send us photos. As an institute, our main focus is on women's rights, but we also deal a lot with social and economic inequalities. What sparked our action was the fact that when the lockdown started in Slovenia, the Government decided not to help people who are self-employed and precarious workers. As elsewhere in Europe, many people lost their jobs, but the Government did not take care of them. Instead, soon after coming to power the Government decided to raise the salaries of the ministers by about 400€. The Government's PR response was flat out denying this simple and verifiable fact. On 23 April, the main public television's investigative and political weekly TV show Tarča (The Target) made contact with whistleblower Ivan Gale, an employee at the Agency Commodity Reserves, responsible for the purchase of masks and respirators, who exposed opaque and corrupted practices involving visible politicians' part of the Government, including the Minister of Economy.

The public outcry was huge but the Government was not shaken. People got very angry because the economic situation for many is extremely difficult. This is when the protests moved from the balconies to the bicycles.

Since then, every week on Friday there is a protest and so far, there have been fourteen in total. At the beginning, people were cycling around Ljubljana. But then the protests spread across Slovenia. Our Institute asked people to send pictures from their villages and cities, and we are getting them from around 20 towns every week. Other groups started contributing to the protests, each in their way. We say that the protests do not have organisers; they have initiators. Last week there was an action for women's rights and there we were very involved. The main concerns are the actions of the Government and growing social inequalities, but there are different formations and groups inside. For example, the culture sector is hugely represented because it has been harshly affected by the Governmental cuts.

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37 The following text is an edited version of an article first published in ACTIVIZENSHIP #5 – CIVIC SPACE WATCH REPORT 2020. To read the full story, visit our partners in European Citizens Forum[]: Welcome to the European Civic Forum homepage, our latest news here ([civic-forum.eu](http://civic-forum.eu)).

They organised protests in front of the Ministry of Culture under very different forms: once, they were clapping their hands; another time, artists brought things from theatre performances and concerts in front of the Ministry as a symbol of the death of culture in Slovenia. One of the most visible people in the protests is a street artist that during the quarantine was recording videos of himself running to the Parliament and doing sports activities as a form of protest because the Government said we could only do recreational activities. These videos became viral on social media, and now he is one of the animators of the protests. People are following him.

Trade unions are also active in the protests. Every week the main protest is at 7 pm, but before there is always a special action connected with the most recent developments. So, at every protest, there is some new group emerging. The Government is doing a lot of shady things right now. For instance, it decided to change the law in order to impede environmental organisations to take part in environmental assessment plans when building construction or in development plans. A group called 'Balkan River Defence' together with the national platform of NGOs, CNVOS started a huge movement called 'We do not sell our nature'. They held a protest in front of the Government when the law was discussed in the Parliament. This was the beginning of this movement. They also did a petition and other actions, such a sit-in in front of the Ministry of environment. During that gathering, the police came, threw them in their cars, brought them away and arrested them. The people became very angry because these were peaceful protesters. So, the week after the protest was about the environment. Every week the protesters pick up some new content. That week there was a huge sign stating 'we do not sell our nature' and people were screaming this message as well.

#### **Are there messages that are recurrent?**

Yes, the main message is that we do not want this Government. It could be argued that many people are not anxious because of Covid-19, but because of what the new Government might do and implement under the cover of this pandemic. As a popular banner from one of the protests reads: 'the virus will leave, but the dictatorship might stay'.

The second message of the protest is to end the corruption. Since the Government took office, there have been many scandals, the biggest one concerned the masks that the Government purchased. The third main message is to end police repression. Until now, we never really saw police violence in Slovenia. This changed with these protests. There have been a few cases of police misbehaviour, although the protesters are very calm and very aware of the issue of social distancing. One day people were trying to enter the Parliament saying, 'this is our house' and the police were pushing them away quite roughly. Another time, there was an action in the main square against police repression: people were sitting in the square reading the Constitution for one hour. Then the police took them away. For the first time, they also put a fence around the square, and they wear anti-riot gear. They are also giving penalties for silly things. For example, one of the first actions was to bring drawings of feet and to leave them in front of the Parliament to show how many people were angry. The Police officers were giving penalties, and when asked why they responded: it is not okay to voice their opinion. People got 400 Euro penalties for this. This never happened before. Once, protesters were painting on the streets with crayons, and the police started fining them. They said that it is forbidden in Slovenia unless it is performed by children. Nevertheless, the people keep coming.

We have a history of protest against right-wing governments in Slovenia. In 2012-2013, we had four huge demonstrations against the then right-wing Government. They were called 'Rising up'. People managed to make the government fall. But what is unique about today's protests is that people are coming to the streets every Friday. At the beginning, I thought that they would die down during the summer, but this did not happen.

### **What kept these protests alive?**

The Government does not stop. Last week, for example, the Minister of Interior said that it is the victims' fault if they are raped. Every week something like this happens. In addition, social inequalities are getting bigger and bigger, and people are seeing that some are getting richer while most of us are struggling. In Slovenia, we have a lot of self-employed people, and before COVID, one out of 4 of them lived under the poverty rate. Now, the numbers are getting higher and higher. Many had to close their shops. Many lost their contracts. Many have been out of work since March. In the beginning, the Government did not provide any funding to support them; then they did - 700 Euro per month. But now, not anymore, and people are still losing their jobs. I have a job in the public sector which means my salary was not affected. I could work from home and I was not afraid of the Coronavirus. I also managed to save some money. But self-employed people do not have this privilege, and the number of those experiencing economic hardship is growing. Among the most affected groups are also NGOs because they lost a lot of funding during the lockdown. The cultural sector was also heavily affected. There were huge difficulties for those that kept working during the crisis: police officers, shops that remained open. They have low salaries and did not receive enough support. A lot of small businesses are closing. Just today on the news, it was announced that police officers would get 100% higher salaries during the lockdown period. However, only those in higher positions will get this money, while normal police officers only got a 20% increase. Now they are also angry.

There was also a big problem in elderly homes: people there were the most affected and the Government did not take care of them. Another good point is that many initiators are from the cultural sector and at every protest, they think about some special action. Thus, people come even out of curiosity to see what will happen. For example, one day, the Government said they would fly NATO airplanes across Slovenia to thank the health sector for their work. This was non-sense. People made paper airplanes and threw them at the Parliament.

### **How many people take part in the protests? What kind of constituencies do they mobilise?**

In Ljubljana, there are usually between 3'000 and 10'000 people in each protest; it depends. But most of the time, there were about 10'000 people on the streets. In other cities, it also depends, in some cases 500 or 1000 people. In some small villages, it is 40-50 people. There are many young people from the group 'Young people for environmental change', but also elderly people. Another beautiful action: while we march across the city, elderly people from the balconies wave and support us. So, there are many different people. There are also political parties, from the liberal and left side of the political spectrum. And then there are people from the NGO sector. I think that most protesters are already politicised. Though, some people take the streets because they lost their jobs and their income and did not receive support from the state. For example, the Institute works a lot with self-employed mothers. Many of them have beauty salons or are hairdressers. I asked them why they were marching, and they told me that they could not pay their bills.

**Is there a desire to get also organised transnationally in Europe?**

I can only speak from our point of view. We do not have many international contacts, but I think that it will be important in the future. For example, our Minister commented on what is happening in Poland with the Istanbul Convention saying that we should also do the same. So, we should fight together. I think it would be important for us to get in touch with people organising protests in other countries and learn from their experience.

**Do you think that the European Union can be an ally in your struggle? In what way?**

I think that the European Union should intervene in much more concrete ways and punish States that do not respect human rights. For me, the EU is currently not really fighting this hard enough.

**What lessons can be learned from this initiative that can potentially inform a post COVID-19 institutional and societal response?**

I think that we need to tackle the issue of social inequalities. The COVID crisis showed us how big they are, and it made them more prominent. People get angry when they do not have enough money for food and rent. We are not caring enough for the self-employed and the precarious workers. A lot of these mobilisations occurred because people are afraid of how they will live through this year. Governments need to take care of their people. The interview was carried out on 29 June 2020.



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We  
should  
fight  
together

# CRIMINALISING ORGANISED DISSENT IN SPAIN

## – Four years of gag laws

*By Thais Bonilla and Serlinda Vigara, International Institute for Nonviolent Action (Novact)*

The following case is a rendition of the challenges facing our partners in Spain. We hope that this case will help to demonstrate to our readers some of the multitude of challenges that democracy champions face across Europe, and how even in countries that have previously been heralded as true success stories when it comes to democratic transitions, we continue to face challenges to our rights and the potential for democratic backsliding.<sup>38</sup>

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.

### 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

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. These legislative changes were born to silence organised civil society in Spain. This legislative framework has treated social movements and critical voices as a problem of public order and security.

<sup>38</sup> The following text is an edited version of an article first published in ACTIVIZENSHIP #5 – CIVIC SPACE WATCH REPORT 2019. To read the full story, visit our partners in European Citizens Forum.

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.

### **Smear Campaigns 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” 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 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 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 report 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.

### **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 – benefitting 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 Andalusia. 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 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.

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 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. 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 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.

## 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 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.

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Protests in the Spanish state went through one of its most critical moments

# ANALYSIS OF THE STATE OF DANISH DEMOCRACY



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## - Findings from the Danish Democracy Commission

*By Daniel Honoré Jensen, political consultant, the Danish Youth Council* <sup>39</sup>

From 2018-2020, the Danish Youth Council (DUF) put together a Democracy Commission, consisting of 24 members from some of the most central democratic actors in Denmark: representatives from all political parties in parliament, from the world of media, from civil society as well as academic experts. The Democracy Commission was established, in the light of ongoing democratic set-backs around the world and within Europe and so the Commission was tasked with assessing the state of Danish democracy – and importantly - provide recommendations for how it may be strengthened.

The full report<sup>40</sup> from the Democracy Commission was published in January 2020 and included an in-depth analysis on a wide range of different democratic themes. For this short presentation, two themes will be elaborated on. Namely, the Democracy Commissions analysis on 1) the state of Danish civil society and 2) the state of the democratic conversation in Denmark.

Civil society is a foundation for a strong democracy – but it's under pressure

With regards to civil society, the Democracy Commission views Danish civil society as playing an absolutely central role in terms of learning the young generation about democratic culture and our responsibilities as democrats. More concretely, it is in civil society organization that citizens may practice their democratic capabilities: voicing one's opinion, listening to others and compromising with dissimilar members of the group. Importantly, it is in civil society organizations – be it scout organizations, humanitarian NGOs or student movements – that the belief in your ability to make a change in society is nurtured and made evident. In other words, that democracy, both as a form of governance, and as a type of culture, is capable of solving problems for you and your community.

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<sup>39</sup> DUF – The Danish Youth Council is an umbrella organization with more than 70 children and youth organizations as members. The member organizations of DUF range from scouts to political youth organizations, voluntary social organizations, cultural organizations, environmental organizations, organizations for youth with disabilities and many more. About DUF - Danish Youth Council.


<sup>40</sup> Demokratikommissionens\_betaenkning.pdf (duf.dk)

With such a large responsibility held by civil society organization for the nurturing of a democratic culture among citizens, the Democracy Commission sees a great need for new initiatives which can ensure that everyone has access to and get exposure to civil society organization in their local area. Because<sup>4</sup> while a large majority of Danes are a member of some volunteer-based organization, less people are actively engaged (1/3 have never been volunteers) and civil society organizations in Denmark fail to include all citizens, particularly Danes with shorter educations, low income and ethnic roots outside of the country. In sum, the Democracy Commission sees no shrinking space for (Danish) civil society in a strictly legal sense, but rather a worry that the limited involvement and inclusion of some citizens in civil society organizations, may lead to a weakening of all citizens democratic capabilities and a deterioration in democracy as a form of governance.

Our conversation online is poisonous for democratic participation and free speech  
As for the strength of the so-called “democratic conversation” in Denmark, the Democracy Commission sees worrying challenges in both professional media outlets and on the social media platforms, like Facebook, Twitter and Instagram, where a lot of the public debate concerning political subjects is taking place. In particular, the Democracy Commission notes that more than half of Danish citizens – and more so for young people and women - refrain from taking part in the public debate, due to fear for hateful comments online. This puts a de facto limitation on free speech, which in itself should be a concern for democrats everywhere, as it hinders democratic participation and sows the seeds for polarization among citizens.

In addition to the issues online with misinformation campaign and echo chambers, the Democracy Commission considers our digital democratic conversation in need for repair. This is a responsibility not just for the Danish government, who the Commission encourage to roll out a national plan for digital education including focus on strengthening online behaviour. But also a responsibility for the companies behind the social media platforms and the professional media organizations using them, who the Commission advice to work harder on ensuring an inclusive conversation that allows for respectful disagreement, rather than hateful shouting competitions.

In total, the Democracy Commission provides 27 recommendations which aims at strengthening Danish democracy across a range of different topics. And while these recommendations by no means are an exhaustive list, they do provide a path for some first, meaningful steps that political parties, media outlets, civil society actors and academia, can take together to ensure democratic progression in Denmark.



Democracy,  
both as a form of  
governance, and as  
a type of culture,  
is capable of solving  
problems for you  
and your  
community

# RULE OF LAW ACTIVISM UNDER PRESSURE IN HUNGARY

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Case provided by Amnesty International  
Denmark<sup>41</sup>

The rule of law and human rights are two sides of the same principle. The rule of law protects human rights and ensures that all human beings are equal before the law. Equality and equal treatment are essential aspects of the rule of law but in Hungary, the undermining of the Rule of Law in the country, has also meant that ethnic and sexual minorities are under pressure, with minorities facing stigmatization, hate propaganda and lack of equal opportunities. Romani children face segregated education, same sex marriage is prohibited by the Hungarian Constitution and a recent law is a direct attack on transgender rights.

Dezső Máté from Hungary has experienced this firsthand. He is a Roma LGBT+ activist, mentors roma and LGBT+ youth activists and is a researcher on marginalized minorities. Here is his story.

In the past 10 years, the number of roma children studying in ethnically segregated school classes has been constantly increasing in Hungary. Thinking back on his school years spent in segregation, his experience was, that the teachers didn't see him as a person who would hold a degree and conduct social research. While 34% of Hungary non-roma population possess a university degree, this number is 1% among Roma people.

He can tell of experiencing how one keeps being told by people in college and the media who the Roma are and that such information is rarely questioned. There is instead this identity attributed to Roma people that has been created among stereotypes. He believes that the only way for a society to move forward is by asking questions: "When we are mindful of our identities that's when we can become successful. That's also when we are not afraid to ask questions anymore."

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<sup>41</sup> To learn more about Dezső visit: Defending rule of law in Hungary | Amnesty International

He himself learnt to ask questions and value his identities when without asking for it, when his mother bought him a pink track suit as a child. All this structured heteronormality attributed to the romani culture got challenged by his mother buying that pink outfit. “She probably suspected even back then, that I was going to like boys. But even back then, she loved me the way I was. Like a parent. Like a mother. And it did not matter in that context whether she was Roma or not.”

Sadly in Hungarian society, it is not valued to be born Roma or LGBTQ+, and this is problematic because these are identities of value. It takes enormous bravery, knowledge and a great sense of identity for a transgender person to own and publicly declare their identity. In May 2020, the Hungarian Parliament adopted a bill, the 33rd section of which prohibits the legal Gender recognition of trans people. What scares Dezső about Section 33 is that the government can have the audacity to make decisions about people's own identities. “What gives them the right to define or question anyone's existence? This goes against our fundamental human rights.”

In Hungary it also shows the decline of rule of law, that the institution of marriage is broken. The fundamental law of Hungary prohibits same sex marriage and to get married, Deza and his husband had to travel to Denmark to get married. “I don't need anybody's approval. I want to be true to myself, to my partner, to my friends, but I don't need the approval of the society.”

Dezo has been targeted by the Hungarian government's smear campaign by the pro-government weekly Figyelő, listing NGO workers, activists, researchers and academics as “Soros mercenaries” in April 2018.<sup>42</sup>

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<sup>42</sup> To hear Dezső: <https://www.amnesty.eu/news/defending-rule-of-law-in-hungary/>



# RECOMMENDATIONS FOR A STRONGER CIVIL SOCIETY IN EUROPE

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PART 4



To summarize we have gathered some of the more central points from throughout the report and reformulated these into concrete recommendations. These recommendations aim to strengthen civic space and improve the conditions for democracy champions and civic engagement. The recommendations target a) political institutions, both national and on an EU-level b) civil society working to protect our fundamental rights in Europe.

1

Fundamental rights must feature more prominently in both EU-level and national policymaking. We have showed how the absence of legal protections for minorities and at-risk groups, as well as government sponsored hostility to CSO's, has contributed to more discrimination against these groups, particularly against people of LGBT+ and those with ethnic minority backgrounds. We need more robust protections on EU-level and also on a national level that help to protect societies' most vulnerable groups. Doing so would not only give them better legal protections, but also allow for advocacy that can lead to long-term improvement.

2

National governments must not hinder the work of CSO's working to protect and strengthen fundamental rights. We have seen how civil society is prevented from providing services for at risk groups, or well-informed advocacy for a government, when there is a lack of government support for their work, or even politicized roadblocks that prevent civil society organizations for offering their services. Governments across the EU must not inhibit civil society through unnecessary or harmful policies that prevent them from functioning and providing essential services. Particularly legislation such as the lex-NGO law from Hungary that forces unnecessary financial requirements on civil society organizations must be avoided and discouraged.

3

There must be a reprioritization of budgets towards support for CSO's throughout Europe. For civil society to continue to play an important role we need the resources to provide support to society's most vulnerable. Particularly the covid-19 crisis and the economic recession that has accompanied it, has meant that CSO's are unable to access reliable funding or have been cut out of previous revenue streams. Funding sources for civil society could come from providing increased resources for programs such as the EU's MFF, Rights and Values Program or the EU4Health Program. This also entail government critical organizations to ensure that the work of each CSO is free from political pressure.



4

EU institutions and civil society must take proactive steps to support the freedom rights in Europe. The EU must play an increased role, by both calling out European states on illegal behavior, as well as initiating legal proceedings where fundamental rights and the rule of law in the EU are at risk. The EU Commission should not hesitate with bringing infringement proceedings where the treaties of the EU give it the authority to do so, as this has been proved as having a positive effect on preventing or delaying legislation and policies with malicious intent from within EU member states.

5

Political institutions and society in general must support mechanisms and procedures that will facilitate dialogue and communication with CSO's. It is not enough that civil society is allowed to exist in a society, they must also be given a platform from institutions to promote their specific cases. National institutions should introduce procedures akin to the European Semester from the EU. Here CSOs are given a direct link to legislators and can better lobby and bring their expertise on a given subject to bear. We should also seek to further citizen-driven, democratic initiatives that would allow for a more bottom-up approach to the input for legislation and allow for the public in general to feature more prominently in the democratic process.

6

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7

Civic Education should feature more prominently, and civil society should take the lead. Civil Society should be more proactive in educating the general population in how they can become active citizens. Democracy and the freedoms that it provides for goes deeper than free elections. Citizens should be involved in grass roots movements and raise awareness concerning their own personal roles in upholding their fundamental freedoms. Doing so will help to protect rights and the rule of law in respective European States. Further the concept on civic education can be strengthen by adopting best practices like the Folk High School concept that emphasize democratic values as a key part of the teaching.

8

Political institutions and society in general must support mechanisms and procedures that will facilitate dialogue and communication with CSO's. It is not enough that civil society is allowed to exist in a society, they must also be given a platform from institutions to promote their specific cases. National institutions should introduce procedures akin to the European Semester from the EU. Here CSOs are given a direct link to legislators and can better lobby and bring their expertise on a given subject to bear. We should also seek to further citizen-driven, democratic initiatives that would allow for a more bottom-up approach to the input for legislation and allow for the public in general to feature more prominently in the democratic process.

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10

Civil society should strive to help establish a culture of democracy wherever they operate. It is not enough for Civil Society to advocate for human rights and democratic norms, they must also seek to build the democratic cultural foundations in society that can support them. To this end Civil Society should push for the embracement of public discourse on political subjects through events and educational programs, that seek to emulate and promote democratic traditions such as debate and inclusivity. Especially the inclusion of youth groups in these events would allow for a sense of ownership in democratic countries and improve the public commitment to democratic values.





# THANK YOU

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We want to give a warm thank you to all contributors to this report.

It is truly a community effort to continue to raise awareness around the issues of citizens' rights and the increasingly worrying trends of the democratic backsliding that we all witness in different measures throughout the continent. Therefore, we wish to acknowledge everyone that have played a key role in the efforts of the report, whether it have been with contributions to the chapters of the report or through guidance and advice.

A special thank you to the democracy group of Nyt Europa that have been instrumental in the initial phases with the creation of the report. The initial purpose was to gather the key learnings from our work with the Remembrance funded project, History of Optimism, that examined the role of civil society in the democracy processes around the fall of the Berlin wall and till the time of the eastern enlargement process. Throughout the project we discovered trends of democratic backlash that concerned and motivated the creation of a collection of perspectives on the shared challenges that faces our European democracy.

Throughout the creation of the report, we have relied on the expertise and efforts of our partners. We have reached out to different democracy actors for their perspectives and experiences as CSO's, activists and think-thanks as well as made use of different reports and analyzes by our partners that contributed to create a more holistic overview of the different trends that we have witnessed in our own work.

All over Europe today they are working with a tireless effort to ensure that the values uniting us on a European level, and that have come about by tremendous courage and sacrifice by our democracy champions throughout history, is still uphold as a fundamental value despite the great cost of many of our colleagues. This is as much a testimony of our gratitude for their tireless efforts.

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# RECOMMENDATIONS

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1. Fundamental rights must feature more prominently in both EU-level and national policymaking.
2. National governments must not hinder the work of CSO's working to protect and strengthen fundamental rights.
3. There must be a reprioritization of budgets towards support for CSO's throughout Europe.
4. EU institutions and civil society must take proactive steps to support the freedom rights in Europe.
5. Political institutions and society in general must support mechanisms and procedures that will facilitate dialogue and communication with CSO's.
6. Secure greater accountability in EU member states and support rule of law mechanisms.
7. Civic education should feature more prominently, and civil society should take the lead.
8. Organized civil society must show solidarity by cooperating with unorganized civic engagement aimed at protecting fundamental rights.
9. Civil society must organize and show cross-border solidarity and strengthen structures for cooperation.
10. Civil society should strive to help establish a culture of democracy wherever they operate.