

LIBERTIES

RULE OF LAW REPORT

2024

#ROLREPORT2024



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Executive summary

The Liberties Rule of Law Report 2024 is the fifth annual report on the state of the rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties) – the most in-depth reporting exercise to date on the rule of law in the EU by a civil society network. The report, jointly drafted by Liberties and its national member and

partner organisations, is a ‘shadow report’ to the European Commission’s annual audit of the rule of law, aimed at providing the Commission with reliable information and analysis from the groups to use in its annual audit, as well as offering an independent analysis of the state of the rule of law in its own right.

Governments weaken democratic accountability to citizens and oversight by institutions

Rule of law requirements aim to force governments to serve the interests of their people. However, the findings of our report indicate that national governments seek to weaken rule of law standards, which inevitably has a negative impact on the well-being of citizens. Rule of law infringements are detected in every Member State covered in this report, although their seriousness and frequency vary from country to country.

In this section, we will discuss the challenges that rule of law violations pose to the Member States depending on the countries’ resilience to rule of law backsliding. In the next section, we will summarise the common trends in each area of the rule of law covered by this report.

Governments are supposed to use their powers for the good of citizens. This is reflected in the EU Treaties. Article 2 of the Treaty of the European Union provides that the European

Union (EU) is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Article 3 explicitly says that the aim of the EU is to promote the well-being of its people.

There are various elements of the rule of law that ensure that governments work for the benefit of citizens, which are covered in this report. Effective anti-corruption measures are necessary to ensure that shared resources are allocated to fund the things citizens rely on and are not misappropriated by politicians or their allies. Media freedom and pluralism are indispensable for a healthy democracy, as independent and free media give citizens the information they need to hold their leaders accountable and make informed decisions about who governs and how they use their powers. Citizens can tell their leaders what they want from them

by participating in law and policy-making, through consultation or by expressing their views through protest or civil society organisations. Fundamental rights protections, including the right to non-discrimination, ensure that all citizens have an equal voice and worth and that politicians cannot scapegoat marginalised groups. Well-functioning and fully independent justice systems are crucial to ensure that justice works for the benefit of citizens and businesses, and additionally that EU values are enforced equally throughout the European Union. Furthermore, the task of constitutional courts, national human rights institutions and other actors of the checks and balances is to make sure that these and other protections for citizens are enforced.

However, this year's country reports show that governments seek to weaken the legal and democratic control over political power-holders by violating the requirements of the rule of law. Of course, Member States do not constitute a homogeneous group; each has a different rule of law track record. Although problems are detected everywhere, some countries are more resilient to rule of law infringements than others. The resilience of Member States depends largely on their political and legal culture and their constitutional design. Countries with a longer democratic tradition and a more complex institutional power structure seem to be more resilient to rule of law backsliding, but not immune.

Even the most resilient established democracies show some blatant violations of the rule of law. Take the example of the pension reform in **France** that was enacted in a manifestly

undemocratic legislative process due to the abusive application of the government's procedural prerogatives. Or look at **Germany**, where journalists face criminal prosecution if they publish judicial decisions which are not publicly accessible, even if they make sure that the privacy rights of the parties involved in the case are protected. We could also mention **Belgium**, where the political authorities' refusal to comply with validly rendered court decisions in the field of refugee law reached a record level last year.

In our previous report, there were early signs from the new governments formed in **Italy** and **Sweden** pointing to the risk that, if checks and balances do not stay strong, ruling coalitions may turn towards authoritarianism. Our member from Italy reported further regression of the rule of law in the field of the justice system, media freedom and pluralism, civic space, and human rights. Our Swedish member also signalled regression in all areas of the rule of law, except for anti-corruption.

Rule of law violations in established democracies are serious, but they have so far not been carried out in a systematic manner that is designed to undermine the rule of law and democracy as a whole. Nevertheless, such rule of law infringements **are concerning for two reasons**. Firstly, because they serve as a bad example and may be used by would-be autocrats to justify their illiberal measures. Secondly, as such weaknesses in the legal system can be exploited by extreme parties if they get voted into power.

In those countries that are less resistant to rule of law backsliding, we can see that infringements of European standards add up and constitute a negative trend in certain fields. For example, in **Greece**¹ worrying trends are detected, among others, regarding the media sector: the level of media concentration remained high and it was strongly influenced by politicians, attacks against journalists persisted, the practice of initiating abusive and costly litigation was used against journalists who reported on the so-called Predatorgate scandal, and serious defects tainted the election of the new members of the media authority, raising concerns about political interference.

In other countries, governments seem to act with the intention of undermining the rule of law. For example, the justice system in **Slovakia**² shows many defects: the replacement of the non-judicial members of the Judicial Council by the new government without any justification, the continued verbal attacks against judges, the criminalisation of the vaguely defined ‘abuse of law’ by judges, the intended abolition of the Special Prosecution Office, and the alleged interference of the Prosecutor General in cases involving high-ranking officials.

If infringements of EU values are tolerated for a long time, the erosion of the rule of law can reach a point where a Member State may (almost) completely lose its resilience and it

becomes extremely difficult, if not impossible, to reverse the negative trends.

Poland may have avoided this catastrophic situation at the last minute when the Polish people voted into office a new government that expressed its commitment to the values of the EU. However, it will be particularly challenging to bring the Polish legal order in line with EU law without violating the rule of law, as is evidenced for example by the dismissal of the members of the public media supervisory boards and the media chiefs by the new government, the legality of which was heavily contested. Similar challenges will exist in the restoration of judicial independence, given the high number of unlawfully appointed judges and the decisions delivered by them.

By contrast, **Hungary** does not show any genuine positive change. Although the freezing of EU funds has proven the most effective tool so far, as it successfully forced the Hungarian government to put in place some legislative changes regarding the justice system, domestic civil society organisations (CSOs) argue that the makeshift solutions offered by the Hungarian government cannot resolve long-standing rule of law concerns and should not serve as grounds for the European Commission to legitimise the remaining shortcomings of the judicial reform. Legislative reforms will have very limited impact as long as the actors in the

1 <https://www.europarl.europa.eu/news/en/press-room/20240202IPR17312/parliament-concerned-about-very-serious-threats-to-eu-values-in-greece>

2 <https://www.europarl.europa.eu/news/en/press-room/20240112IPR16770/parliament-concerned-about-the-rule-of-law-in-slovakia>

system of checks and balances are captured by the illiberal government, which highlights that top-down pressure from the EU needs to be accompanied by support for democracy at the grassroots level, such as through EU funds for civil society.

Governments are reacting to external events by restricting rights, and often this is not well-intentioned. The **Israel-Hamas conflict** and the

climate crisis have provoked strong public feeling expressed through protests, and rather than facilitating these as part of public debate, governments have reacted by selectively restricting the right to protest. Other governments have reacted to the **arrival of migrants** by fomenting a climate of fear and division for political gain and introducing pushbacks or criminalising CSOs that provide humanitarian assistance.

Key findings

Politicised, under-funded and unfair justice systems

A well-functioning and fully independent justice system is indispensable for the enforcement of EU law, the protection of fundamental rights, judicial cooperation in the EU, maintaining trust in cross-border operations, as well as for the functioning of the single market and the EU's legal order.

Based on our member organisations' reports, we see three trends in Member States. Firstly, in various areas of the justice system, including the selection of judges and prosecutors, their promotion and the accountability mechanisms, the undue influence of the political branches remains a non-negligible concern in several Member States. For example, in **France**, the recent trial of the sitting Minister of Justice raised concerns again about the impartiality and independence of the Court of Justice of the Republic. In **Bulgaria**, experts call for the selection of new members of the Supreme Judicial Council and the Supreme Prosecutorial

Council in a transparent process free from procedural irregularities. A new legislative proposal drafted in Belgium envisages the introduction of a security check of judges and judicial staff carried out by the State Security Service. What is more, high public officials in **Greece**, **Italy** and **Slovakia** verbally attacked the judiciary, and the public authorities in **Belgium** and **Bulgaria** even refused to comply with validly rendered court decisions.

Secondly, lack of sufficient financial resources is a general problem in many Member States, but the underfunding is so serious in certain countries that it threatens the independence of the judiciary and undermines the efficiency of the justice system. For instance, in **Hungary**, the low salaries of judges combined with the court leaders' wide discretion in giving bonuses threatens the independence of judges and potentially discourages young professionals from joining the bench.

Finally, a large number of Member States fail to guarantee simultaneously the efficiency and the

fairness of judicial proceedings, which causes significant problems for individuals seeking justice. Lack of funding for legal aid and excessive length of proceedings are typical in many countries, such as **Croatia** and **Estonia**. However, especially striking was the report on the widespread use of accelerated court procedures for the trial of individuals arrested during a protest against police violence in **France**, and in housing matters and labour law disputes in **Belgium**.

Half-hearted efforts to tackle corruption

Public authorities must effectively prevent and prosecute corruption to make sure that public funds and powers are used for the good of citizens, rather than for private gain by politicians and their allies. However, our report finds that national governments are rather reluctant to revise their anti-corruption legislation in order to bring about genuinely positive changes. For instance, in the **Czech Republic**, the enactment of the new law on lobbying has not progressed much, the country still lacks an ethical code for legislators, the decision-making of the Office for the Protection of Competition is characterised by opacity, unpredictability, and uncertainty, and the public procurement environment remains problematic. Although **Hungary** underwent significant changes in its anti-corruption institutional framework, the efficiency of the newly established institutions is highly questionable and serious concerns persist regarding the independence and autonomy of key state control institutions.

There are some improvements in a couple of Member States, but most of our member organisations report that domestic developments regarding the transparency of public decision-making, whistleblower protection, conflict of interest and incompatibility, and the criminalisation and prosecution of corruption-related criminal offences happen very slowly and often produce unsatisfactory results, especially with respect to high-ranking public officials. Take **Romania** as an example, where the new law on the protection of whistleblowers entered into force, but its implementation has been very slow due to the reluctance of national authorities, and the agency charged with the handling of whistleblower complaints remains insufficiently resourced. Or consider **Slovakia**, where the government introduced a draft law in the legislature that would reduce the level of protection of whistleblowers and may discourage people from reporting corrupt conduct.

Media freedom and pluralism in peril

Journalists perform a vital role in any democracy, reporting unbiased, fact-based information to the public so that people understand what their leaders are doing and how well their government's policies are working. In turn, this allows people to make informed choices when they step up to the ballot box.

Despite their central role in the democratic process – and, in fact, because of it – independent journalists in the EU are finding it increasingly difficult to do their job. In 2023, verbal and physical attacks on journalists were observed in **Croatia**, the **Czech Republic**,

France, Germany, Greece, Italy, Romania, Slovakia, Slovenia and Sweden. The use of strategic lawsuits against public participation (SLAPPs) continues to be a problem in numerous countries, including **Belgium, Croatia, France, Germany, Greece, Hungary, Italy, the Netherlands**, and **Slovenia**. While there is real hope that this situation will change in the future, following the EU's agreement on the Anti-SLAPP Directive, it is critical that Member State governments urgently transpose these safeguards into national law, and fully enforce them.

Mirroring the findings of last year's report, the media landscape in many countries continues to be defined by a small number of owners owning a large number of private media outlets, with little transparency over their beneficial ownership chain. This allows a few powerful individuals to influence the news stories that the public consumes and the editorial content around them, heavily shaping people's views and opinions. Moreover, there is often little transparency over state advertising in the media – this problem is especially pronounced in **Hungary**, where political actors spent some €26 million on social media advertising between 2019-2023, but there is no publicly available data on the financial source of this expenditure. Plans to address this in **Slovakia** remain stalled. On a positive note, **Slovenia's** new Mass Media Act proposal calls for greater transparency of state advertising by obliging state institutions to report regularly on all media expenditure, including advertising, campaigns and other media leases.

Insufficient legal and democratic control over the political branches

The various actors of the system of checks and balances are supposed to exercise legal and democratic control over each other to prevent the growth of any power centre at the expense of others.

One requirement serving this aim is the enactment of laws in a transparent, accountable, democratic and pluralistic lawmaking process. However, the low quality of parliamentary lawmaking and its lack of inclusiveness remains a particularly concerning trend. In **Hungary**, the absence of meaningful public consultation and impact assessments tainted the adoption of several important legislative acts, such as the act on the transposition of the EU's Whistleblower Directive, the act authorising the extension of the state of danger, the amendment to the electoral system, the Defence of National Sovereignty Act and even the Judicial Reform Act. In **Estonia**, the government frequently used the vote of confidence to push several bills through the Parliament in the face of opposition obstruction, while the Estonian Supreme Court warned against the misuse of both the vote of confidence and the filibuster.

Ombudspersons, national human rights institutions, equality bodies and other independent authorities that exercise non-judicial legal control over the political branches face significant challenges in carrying out their constitutional function to defend the rule of law because they are often severely underfunded and exposed to undue political influence. For instance, in

Bulgaria, many Parliament-appointed members of independent state authorities, such as the data protection and the anti-discrimination commissions, were not replaced after the expiry of their mandate due to the power struggles between the ruling parties. In **Germany**, the elections of data protection and freedom of information commissions at both the federal and state levels were deemed non-transparent and thus not in line with the EU General Data Protection Regulation. The Ombudsperson of **Croatia** faces difficulties with carrying out their functions adequately due to their restricted access to the necessary information and the lack of sufficient implementation of their recommendations.

Free and fair elections are the ultimate guarantees of democratic accountability. But several Member States, such as **Bulgaria, the Czech Republic, Estonia, and Greece**, continue to exclude parts of their society, like third-country nationals, people under guardianship, and prisoners, from the franchise, contrary to the European standards. In addition, many countries amended their electoral legislation contrary to the requirements of transparency and democracy, such as **Croatia, Hungary, Ireland, and Romania**.

Authorities stifling civil society and the voice of the people

Democratic governments should be an extension of the people they represent, enacting policies that are designed to improve citizens' lives and society as a whole. To do this, governments must listen to the voice of the people and act in response to it. And people provide this input

by joining associations that provide a conduit for input to authorities, or by coming together in peaceful assemblies¹ to support or oppose causes they care about.

Over the past year, however, many governments have hampered the ability of citizens and civil society to enjoy freedom of association and freedom of assembly. In particular, governments are increasingly going after civil society groups themselves as a means to stifle public participation. In **France, Ireland, Romania and Sweden**, government actions or legislative proposals make the threat of dissolution very real for CSOs. In Germany, the tax laws have already been used to revoke the charitable status of two CSOs, which significantly strains their finances. In many countries, including **Croatia, France, Hungary, the Netherlands, Slovakia and Sweden**, CSOs have been severely restricted in their ability to perform their core functions. For example, in Croatia the practice of appointing civil society organisations to working groups and advisory bodies is often non-transparent; in Sweden, the government impedes civil society's participation in the legislative process by imposing short deadlines for stakeholders to submit responses during the consultation process. In Slovakia, the government uses fast-track legislative procedures to shut out civil society input altogether.

While the right to peaceful assembly has been under threat in many countries in recent years, 2023 saw a marked increase in restrictions on this right. New bans on the right to peaceful protest, often limiting pro-Palestinian demonstrations, were observed in **Bulgaria, the Czech Republic, Estonia, Germany,**

Hungary and **Sweden**. In some cases, these bans were augmented by restrictions on freedom of expression, most notably in the form of bans on pro-Palestinian messages or symbols. As in past years, climate protesters continue to be singled out by authorities, especially in Western countries like **Belgium, Germany, Italy** and **Sweden**. Arrests and prosecution for non-violent protests are common and even increasing – in Sweden, for example, the government has stated its intention to debate an increase to the penalty for ‘sabotage’ from 14 days to a minimum of 12 months in prison.

Marginalised groups either neglected or actively attacked for political gain

In 2023, several governments continued to propose legislation that threatened the rights and freedoms of refugees and migrants. For instance, **Lithuania** went as far as legalising the practice of migrant pushbacks. Civil society organisations reported dire conditions in accommodation facilities meant for people on the move and lack of access to legal support in detention centres in **Slovenia** and **Greece**, as well as public authorities’ failure to investigate alleged violations of the rights of migrants and refugees in **Croatia**.

Last year was also marked by concerning trends regarding the rights of children, especially unaccompanied minors seeking international protection, ethnic minorities, and children of same-sex couples. In addition, our members from the **Netherlands** and **Ireland** reported insufficient and inadequate mental health services for children.

Our partners in many countries reported continued discrimination against marginalised groups, including racial and ethnic minorities, migrants, and LGBTQIA+ persons, and national authorities often fail to tackle the problem. For instance, in **France**, even though the Council of State found ‘ethnic profiling’ unlawful, it refrained from using its authority to compel the government to take concrete measures.

Lastly, it needs to be highlighted that many countries fail, or even refuse, to comply with decisions delivered by domestic and supranational courts. For example, it was reported that in **Belgium, Germany, Greece** and **Hungary**, public authorities are reluctant to respect court decisions in the field of asylum law and border protection.

Steps forward to improve the Commission's rule of law monitoring

Our report clearly indicates a myriad of rule of law violations in Member States, and the European Union has a responsibility to detect and remedy these infractions. The EU had a long time to process the shock caused by the rise of the illiberal regimes in Hungary and Poland, and EU institutions have spent many years developing their rule of law toolbox. As a result, the EU is better equipped than ever before to successfully tackle rule of law backsliding. The following recommendations listed below set out how the reporting process and the Annual Rule of Law Report could be further improved. Our recommendations concerning specific areas of the rule of law can be found in the part of the report titled 'Common challenges facing our democracies'.

Regarding the **structure and scope** of the Annual Rule of Law Report, we suggest that the Commission:

- dedicate a standalone chapter to civic space and challenges facing civil society actors;
- offer a clear understanding of each different component of the system of checks and balances, and an in-depth analysis of related shortcomings, instead of combining them under an overarching chapter;
- include in the scope of its reports further considerations as regards systemic human rights violations impacting on the rule of law environment.

Regarding the **methodology** of the evaluation of the developments in the Annual Rule of Law Report, we suggest that the Commission:

- carry out a comprehensive and contextual analysis of the human rights frameworks and of states' performance as regards compliance with international and regional human rights standards – in particular systemic human rights violations, and accountability thereof, impacting on the rule of law environment;
- carry out intersectional analyses to examine how rule of law violations in specific fields are linked to the other.

Regarding the **drafting process** of the Annual Rule of Law Report, we suggest that the Commission:

- identify non-state actors, and in particular civil society organisations, in a more open, accessible and inclusive reporting process – including as part of the follow-up;
- make the monitoring and reporting exercise more transparent and participatory vis-à-vis non-state actors, especially by (i) allowing for input/feedback on the consultation questionnaire, (ii) creating a space for targeted consultations for the purpose of the formulation of country-specific recommendations, and (iii) ensuring a structured engagement with national

civil society actors as regards the country reports' follow-up and the implementation of recommendations.

Regarding the **impact and the follow-up** of the Annual Rule of Law Report, we suggest that the Commission:

- give targeted and specific recommendations to the Member States and link these recommendations to the other elements of the rule of law toolbox;
- report on the implementation of the previous recommendations in subsequent reports;
- organise national rule of law dialogues based on a structured and planned-ahead process;
- better support and promote the ambitions and efforts of civil society in the context of national rule of law dialogues through a more systematic and regular outreach to national civil society actors, a transparent engagement approach, and targeted financial support.

About this report

This is the fifth edition of Liberties' coordinated report on the state of rule of law in the EU. The report lays out the most striking developments concerning the rule of law, democracy and related fundamental rights in 2023 in 19 countries across the EU, namely Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, and Sweden. Thirty-seven civil society organisations and one independent human rights expert from across the EU contributed to the research, which looked into a wide range of areas including the functioning of justice systems, the anti-corruption framework, media freedom, pluralism and safety of journalists, checks and balances, civic space and human rights defenders and systemic human rights violations affecting the rule of law.

Besides pulling together all the individual country reports drafted by member and partner organisations, the report includes an overview of general trends on the rule of law in the EU compiled by Liberties. It also formulates detailed recommendations addressed to both national governments and the EU institutions on how to address the shortcomings identified in each of the areas covered, and suggests how the European Commission could improve the impact of its monitoring exercise.

The country reports were compiled by national member and partner organisations on the basis of a common structure developed by Liberties. Insofar as the report is also meant as a contribution to the European Commission's public consultation to feed its 2024 Annual Rule of Law Report, the common structure was developed by taking account of the priority areas and indicators identified by the European Commission for the purpose of its annual rule of law monitoring cycle. Each country report reflects the information collected, and the findings compiled by contributing organisations. In developing their country report, contributing organisations were free to choose the areas and issues to report on, which they felt relevant to the national context and to their work.

Not all contributing organisations collected information on all the areas covered by the report. This means that our account of trends in the EU does not constitute an exhaustive overview. We believe, however, that the information is sufficiently representative to give an accurate indication of the direction of travel for the rule of law and democracy inside the EU.

The Civil Liberties Union for Europe (Liberties) is a Berlin-based non-governmental organisation (NGO) promoting human and digital rights across the EU. As an umbrella organisation, Liberties coordinates campaigns through its expanding network of national civil liberties NGOs. Currently, we have member organisations in 19 EU Member States including Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden. As an EU watchdog, Liberties has closely followed the development of the EU Rule of Law Report, the Media Freedom Act, the Digital Services Act, the Proposal on Political Advertising & Transparency, the CSAM, the Anti-SLAPP Directive, and the AI Act, and frequently publishes reports on issues about privacy or surveillance and more.

Liberties, together with its members and partner organisations, has been carrying out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

Rule of law monitoring: why it matters

A tool to make sure powers and resources are used for the public good

As an independent organisation committed to safeguarding the rights of everyone in the EU, regularly monitoring and reporting on the health of the rule of law in the EU is one of Liberties' priorities.

The 'rule of law' can be defined³ as a set of rules and principles that ensure the authorities use their powers and public resources for the good of citizens. This means that the public should be able to follow and participate in decisions taken by their elected representatives, by being able to receive accurate and balanced information from a free and plural media and be free to voice their opinions by, among other things, working through civil society organisations and using their right to protest. It also means that governments should facilitate input from citizens, for example, through transparent lawmaking procedures and meaningful public consultations. The rule of law also requires safeguards against corruption to ensure that the authorities use public resources legally, and to ensure that laws adopted by governments respect human rights. To ensure these standards are followed, the rule of law requires independent and impartial institutions which citizens can access easily and

which have sufficient powers and resources to enforce the rules. While this primarily relates to a country's judiciary, it also includes other bodies such as ombudspersons and national human rights institutions. When a government respects the rule of law, those who have power in society use it for the good of their citizens, and all individuals are able to enjoy equal rights, freedoms and opportunities, participate actively and freely in social, economic and democratic life.

When a government erodes the rule of law, it is free to abuse its powers and serve the private interests of the ruling party at the expense of the public good. At its most serious, governments attack the rule of law to facilitate corruption and enrich themselves and their business allies, to remove rights and freedoms so citizens cannot hold their representatives to account, and to attack equality for marginalised groups as a way of mobilising their base. For example, judges who are not independent of politicians or businesses may be unwilling to hold powerful corporations to account for breaking laws that protect people or the environment. If a government creates laws that allow for exceptions

3 What Is the Rule of Law: Definition, History, Examples, Importance, Reports: <https://www.liberties.eu/en/stories/rule-of-law/4427>

or preferential treatment for their allies, corruption may become rampant and politicians may freely pocket our resources for themselves instead of funding the things our communities rely on, like schools and hospitals. If laws are adopted without transparent discussions that do not allow the public or those with expertise to contribute, the government may use the legislative process to arbitrarily take away from some people the opportunity to find work, to get healthcare, to join associations, or to receive an education. Without a free and open public debate, and when the right to be informed and to engage in critical thinking and expression is

hampered by surveillance, censorship or retaliation in the form of, for example, administrative or legal harassment, citizens cannot speak up and shape the society we live in.

People are, therefore, the ultimate beneficiaries of governments' obligation to abide by the rule of law. It is important to monitor the state of the rule of law so that economic, political and legal tools to protect and restore the rule of law can be mobilised and directed appropriately by the EU and other entities that promote human rights and democracy.

Compliance with democratic standards should never be taken for granted

While Member States in the EU are generally recognised as having very high standards when it comes to rule of law, democracy and human rights, this should never be taken for granted. Developments we witnessed over the past years are a stark reminder.

Past editions of this report noted emerging concerns over the resilience of democracy and the rule of law in countries across the EU. In some countries, namely Hungary and Poland, threats to the rule of law have been systematic and deliberate. Steady efforts by the governments in power to progressively dismantle democracy to be able to hold on to power became even more

blatant during the COVID-19 emergency, where ruling parties abused the pandemic to further erode democratic standards. In general, however, traditionally strong democracies have continued to disappoint. In successive years, Liberties' reports⁴ have pointed to worrying and widespread concerns including in countries with strong democratic traditions, in all the areas covered by the rule of law monitoring exercise.

This year we report again that governments seek to weaken the legal and democratic control over political powerholders by violating the requirements of the rule of law. Even the most

4 See Liberties' previous Rule of Law Reports at: <https://www.liberties.eu/en/reports-and-papers?theme=democracy-and-justice>

resilient established democracies show some blatant violations of the rule of law, like France, Germany and Belgium. In our previous report, we saw early signs from the new governments formed in Italy and Sweden pointing to the risk that, if checks and balances do not stay strong, ruling coalitions may turn towards authoritarianism. Our partners from these Member States reported further regression. In those countries that are less resistant to rule of law backsliding, for example in Greece, we can see that infringements of European standards add up and constitute a negative trend in certain fields. Even more worrying is that in certain countries, most notable Slovakia governments seem to act with the intention of undermining the rule of law.

If infringements of EU values are tolerated for a long time, the erosion of the rule of law can reach

a point where a Member State may (almost) completely lose its resilience and it becomes extremely difficult, if not impossible, to reverse the negative trends. Poland may have avoided this catastrophic situation at the last minute, when the Polish people voted into office a new government that expressed its commitment to the values of the EU. However, it will be particularly challenging to bring the Polish legal order in line with EU law. By contrast, Hungary does not show any spectacular improvement. Although the freezing of EU funds has proven the most effective tool so far, as it successfully forced the Hungarian government to put in place some legislative changes, it needs to be closely monitored whether these legislative measures will bring about any long-standing positive changes because the independence of the actors in the system of checks and balances remains severely undermined.

Feeding efforts to protect our democracies

The founding Treaties of the European Union express the commitment of the Member States and the EU to protect certain values, including democracy, the rule of law, and human rights, which form the very basis of modern democracies. In recent years, this commitment has materialised in the activation of existing legal mechanisms and the creation of additional tools to detect potential threats to the rule of law and

hold governments to account in case of deliberate attacks and systemic failures. The ‘rule of law toolbox’⁵ includes a yearly audit on the state of the rule of law across the EU carried out by the Commission.⁶ The findings of this exercise are summarised in Annual Rule of Law Reports that have, since 2022, been accompanied by country-specific recommendations.

5 For more information about the rule of law toolbox, see <https://www.consilium.europa.eu/en/policies/rule-of-law/#toolbox>

6 For more information about the Commission’s rule of law mechanism, see https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

Each of the EU institutions should use these reports as the basis for a dialogue with governments on how to solve shortcomings in their country.⁷ And such dialogues should include national parliaments, civil society and other stakeholders capable of playing a role in exposing problems and developing and implementing solutions. When dialogue fails, the EU institutions should move on to enforcement – including infringement proceedings, suspension of EU funds and special political sanctions under Article 7 of the EU Treaty.

Civil society, including CSOs such as Liberties and its member and partner organisations, has actively engaged to feed efforts by the EU to monitor and protect the rule of law. This has included substantive contributions to inform the Commission’s annual rule of law audit as well as recommendations on how to make sure monitoring translates into enforcement and tangible improvements that benefit citizens. Our contributions can be found in past editions of Liberties’ rule of law report.⁸

Since the beginning of its annual rule of law audit, the European Commission has made good progress towards making its annual

reports more meaningful. For example, by, after many years of encouragement, including country-specific recommendations. But there is still room for improvement in the Commission’s annual report. In 2023, Liberties and its members published a new analysis on the gaps and shortcomings of the European Commission’s latest report on the rule of law in Europe, highlighting a number of areas that were under-scrutinised or overlooked by the Commission.⁹

Last year Liberties contributed to the development of the EU rule of law toolbox in another way as well: by developing a handbook on how the Charter of Fundamental Rights can be used for litigation to protect and advance a wide range of human rights across the EU.¹⁰

The European Union can also strengthen the rule of law in the Member States by adopting EU legislation and thus by setting binding standards. Liberties has always considered it important to contribute to the efforts of the EU by monitoring and evaluating both the drafting process of EU legislative proposals and their implementation by the Member States. In 2023, Liberties paid particular attention to

7 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

8 See Liberties’ previous Rule of Law Reports at: <https://www.liberties.eu/en/reports-and-papers?theme=democracy-and-justice>

9 See Liberties’ Gap Analysis at: <https://www.liberties.eu/en/stories/rule-of-law-2023-gap-analysis/44928>

10 Relying on the EU Charter of Fundamental Rights for Human Rights Litigation. A Handbook for Civil Society Organisations and Rights Defenders, available at: https://dq4n3btxm8c9.cloudfront.net/files/swj7jv/Charter_Handbook_may2023_v4.pdf

the Digital Services Act,¹¹ the Media Freedom Act,¹² the Anti-SLAPP Directive,¹³ and the Defence of Democracy package.¹⁴

Against this background, Liberties will continue to support its member and partner organisations as they work to monitor and advance rule of law, democracy and human rights in their countries; but also to act as an independent watchdog over the EU, so that its actions and initiatives are coherent with the integrity and moral high ground that it takes to effectively protect our democracies.

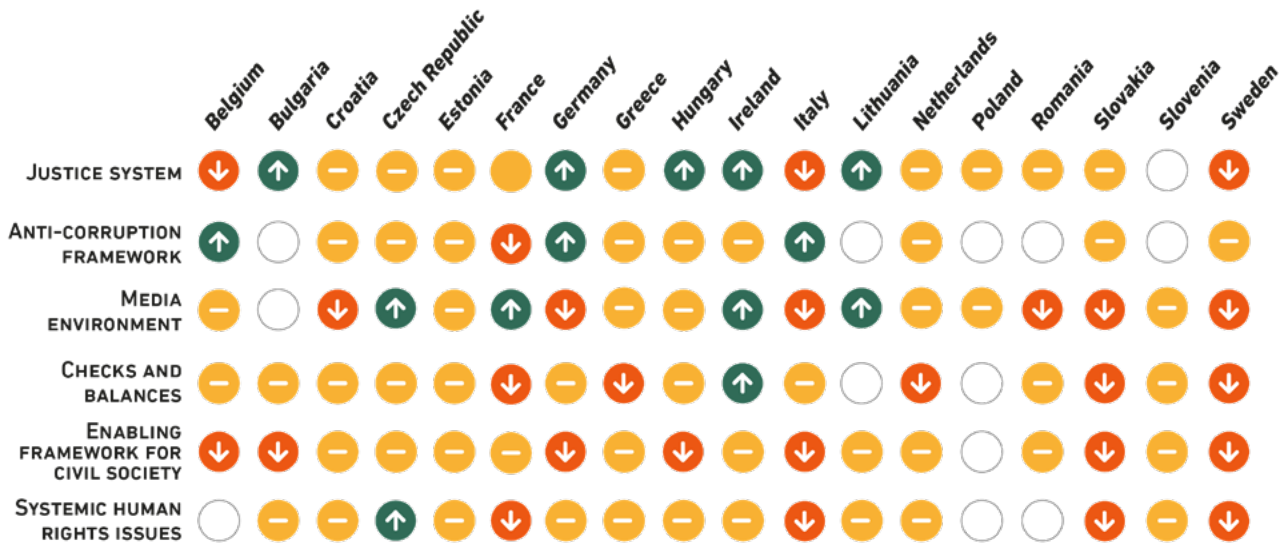
11 Liberties and European Partnership for Democracy: Identifying, analysing, assessing and mitigating potential negative effects on civic discourse and electoral processes, available at: https://dq4n3btxmr8c9.cloudfront.net/files/mpdgy5/DSA_Risk_Analysis_LibertiesxEPDfin.pdf

12 For Liberties' publications on the Media Freedom Act see: <https://www.liberties.eu/en/campaigns/european-media-freedom-act/156>

13 Statement on the EU anti-SLAPP directive ahead of the start of the trilogues at: <https://www.liberties.eu/en/stories/slapp-trilogue/44857>

14 Defending Democracy Requires a Free Civil Society at: <https://www.liberties.eu/en/stories/politico-oped-defending-democracy-require-free-civil-society/44777>, Policy Recommendations: Europe Needs Free NGOs at: <https://www.liberties.eu/en/stories/defence-of-democracy-consultation-submission/44736>

Common challenges facing our democracies



Legend

- ↓ Regression
- No progress
- ↑ Progress

Continued demand for a depoliticised, better funded, and fairer justice system

Key findings

- Some Member States, such as Croatia and Sweden, took steps to depoliticise the judicial selection process. However, the lack of sufficient safeguards against the politicisation of the selection of officials occupying high positions in the justice system remains a key problem in several other countries, like Bulgaria, France, Germany, Greece, Hungary, and Slovakia.
- Accountability mechanisms applicable in Germany, Belgium, the Czech Republic, and Slovakia may give room for the exercise of political pressure by the executive branch over judges, especially in the case of the entry into power of extreme political parties.
- Political actors threatened the independence of the judiciary when they openly criticised judicial decisions or gave instructions in pending cases in Greece, Italy and Slovakia.
- The political authorities' refusal to comply with court decisions rendered in asylum and border protection cases reached a record level last year in Belgium and Greece.
- By 2023 the politicisation of the judicial system in Hungary and Poland had grown to such an extent that the implementation of any reform aimed at the restoration of its autonomy and integrity became extremely difficult.
- The justice system is significantly underfunded in several Member States, such as Estonia, Hungary, and Poland. The government in some countries, like Croatia, Poland, and Lithuania, tried to address the problem, usually following a strike. In other Member States, e.g. Germany, Belgium and the Czech Republic, certain shortcomings of the justice system can be explained by the lack of sufficient financial resources.
- Member States fail to simultaneously guarantee the efficiency of judicial proceedings and protect their citizens' right to a fair trial. Individuals in need face significant difficulties accessing courts in a large number of Member States, including Croatia, Estonia, Greece, Hungary, Ireland, and Sweden. The excessive length of judicial proceedings is a widespread problem in the Member States. By contrast, the use of accelerated court procedures was deemed particularly worrisome in France and Belgium last year. And the accessibility of court decisions causes real problems for practitioners in Croatia and Germany.

Last year's report found that the implementation of wide-ranging reforms, in particular in the Czech Republic, Romania and Slovakia, had not lived up to expectations. While there had been efforts to increase the quality and efficiency of the justice system, for example in Estonia, Ireland and Italy, the common problems, in particular those affecting the independence of courts, had largely gone unaddressed in the majority of the countries. In Poland, the government had taken steps to remedy systemic deficiencies regarding the independence of the justice system, but many concerns persisted, especially regarding the disciplinary regime for judges, the independence of the National Council for the Judiciary and the independence of prosecutors. In Hungary, the situation worsened: the political pressure on judges, smears, obstacles to the work of the Judicial Council, and reports of corruption and abuse of power involving judicial leaders led to a deterioration of the justice system in 2022.

This year's report identifies three major concerning trends in the EU Member States. Firstly, in several areas of the justice system, including the selection of judges and prosecutors, their promotion, and the accountability mechanisms, the undue influence of the political branches, remain a non-negligible concern. What is more, certain national governments openly attack the judiciary and even refuse to comply with court decisions. Secondly, lack of sufficient financial resources is a general problem in many Member States, but the underfunding is so serious in certain countries that it threatens the independence of the judiciary and undermines the efficiency of the justice system. Finally, a large number of Member States fail to

guarantee simultaneously the efficiency and the fairness of judicial proceedings, which causes significant problems for individuals seeking justice and practising lawyers.

Independence of the justice system

In several Member States, challenges remain regarding the selection of officials occupying the highest position in the justice system. In **France**, the recent trial of the sitting Minister of Justice raised concerns again about the impartiality and independence of the Court of Justice of the Republic, tasked with adjudicating criminal cases brought against members of the government, on the ground that it is composed largely of members of Parliament. In **Greece**, the highest officials of the justice system, including the President and Vice-President of the Council of State, the Supreme Court and the Court of Audit, are still selected exclusively by the political branches which has a negative impact on the public trust in the judiciary. In **Bulgaria**, two seats at the Constitutional Court remained vacant due to power struggles between the governing parties.

Some Member States failed to guarantee the autonomy of judicial councils, which often play a key role in the administration of the justice system and the selection of judges. In **Bulgaria**, experts call for the selection of new members of the Supreme Judicial Council and the Supreme Prosecutorial Council in a transparent process free from procedural irregularities. In **Slovakia**, the non-judicial members of the Judicial Council were replaced by the new government immediately after the elections

with no justification, which again raised doubts about the political branches' influence on the membership.

Nevertheless, it is a positive development that some Member States have taken steps to depoliticise the judicial selection process, including the membership of their respective judicial council. In **Croatia**, the membership of the Constitutional Court underwent a significant change, but this transformation occurred in a relatively transparent process: the President of the Republic proposed seven candidates for the vacant positions based on the recommendation of his advisory panel composed of a diverse set of institutions, and five nominees were confirmed by the Senate. In **Sweden**, legislative measures were put in place to eliminate the government's influence on the composition of the Board of Justice, responsible for the nomination of judges, although the entry into force of the changes is delayed.

It is not enough to prevent the political manipulation of the selection of judges; it is equally important to make sure that their careers cannot be influenced by political actors. In **Germany**, decisions on the promotion of judges – in particular the selection of court presidents and judges in the federal courts – are still made by members of the state or federal government in cooperation with parliamentary bodies, not by the judiciary itself. This system is particularly dangerous in those states where the extreme right-wing party, Alternative für Deutschland (AfD), has an increasingly realistic chance to enter into power.

It is of course crucial to prevent and punish every wrongdoing committed by the officials of the justice system, but accountability mechanisms can also be used to harass them or to terminate their career for political reasons. In **Germany**, a new law aims to streamline disciplinary proceedings initiated against federal civil servants to remove those who disrespect the values of the constitution, but this may encourage illiberal political leaders to try to get rid of certain judges by labelling them 'enemies of the constitution'. A new legislative proposal was drafted in **Belgium** that envisages the introduction of the security check of judges and judicial staff carried out by the State Security Service, but experts called on the Minister of Justice to drop the bill. The ongoing judicial reform in the **Czech Republic** may potentially enhance the role of the Minister of Justice in the disciplinary procedures launched against judges that would put the self-government of the judiciary in danger. In **Slovakia**, the newly acquired power of the Supreme Administrative Court to adjudicate disciplinary proceedings initiated against the various officials of the justice system and the composition of the disciplinary chambers raised concerns. Even more problematic is the continued criminalization of "abuse of law", a criminal offence that can only be committed by judges and the wording of which is so vague that it violates the principle of legal certainty.

Political actors threaten the independence of the judiciary when they openly criticise judicial decisions or give instructions in pending cases. In **Greece**, the Prime Minister commented on an ongoing judicial investigation of the deadly railway accident in Tempa and asked the

authorities to proceed with the case as quickly as possible which sparked the opposition of the Bar Association. Several representatives of the government of **Italy** made derogatory statements in public addressed to a judge who considered a certain government decree regulating migration issues contrary to EU law. The Interior Minister of **Slovakia** verbally attacked a judge and threatened him with the initiation of a disciplinary procedure because the judge had issued an urgent measure in a case in which the Minister of the Interior had a certain legal or political interest.

The most blatant form of disrespect of judicial authority is the political authorities' refusal to comply with validly rendered court decisions, which reached a record level last year in **Belgium** and **Greece** in asylum and border control cases.

The politicisation of the judicial system is a very dangerous phenomenon because once it reaches a certain critical level it undermines public trust in the judiciary and prosecution service and renders the restoration of its autonomy and integrity extremely difficult. Although a major judicial reform package was adopted in **Hungary** to unfreeze EU funds, several serious shortcomings persist, such as the non-transparency of case allocation systems in lower-instance courts, the distorted points system for the assessment of applications for judicial posts, the possibility of court leaders to manipulate the outcome of judicial selection procedures, the absence of essential guarantees of the irremovability of judges, the wide powers of court presidents to decide on the promotion and the salary bonuses of judges, the lack of sufficient

strict conflict-of-interest rules applicable to the members of the National Judicial Council and so on. What is more, Hungarian NGOs have serious doubts about the actual positive impact of the adopted legislative changes given the questionable independence of judicial leaders, including the President of the Supreme Court.

In Poland, the newly elected government set out to bring the judicial system in line with EU law. However, this will be a very challenging task. Last year, both the CJEU and the ECtHR delivered further judgments which found that the Disciplinary Chamber of the Supreme Court and the Chamber of Extraordinary Review and Public Affairs did not count as independent tribunals established by law. The Polish Sejm adopted a resolution promising the restoration of the independence of the National Council of the Judiciary and called on the unlawfully appointed members of the NCJ to immediately cease their activities in the Council, but they refused to do so. As a result of the involvement of the NCJ in the judicial selection process, hundreds of judges were appointed unlawfully who delivered judgements in court cases. The new Minister of Justice submitted a legislative amendment to guarantee that unlawfully appointed judges will not consider requests for the disqualification of a judge based on the manner of their appointment.

Similarly to the judiciary, the autonomy of the prosecutorial services has also faced challenges in several Member States last year. It is still deemed problematic in **France** that the promotion of prosecutors depends on the Minister of Justice who exercises authority over the prosecutorial system. What is more, the current

reform of the judicial police, responsible for the whole criminal investigation system, will likely strengthen the control of the executive and simultaneously weaken the supervision exercised by the judiciary. In **Bulgaria**, the Chief Prosecutor was dismissed by the Supreme Judicial Council and replaced by his deputy in very dubious circumstances, therefore domestic organisations called for the election of a new Chief Prosecutor in a transparent procedure. In **Slovakia**, a new government proposal envisages the abolition of the Special Prosecution Office charged with dealing with the most serious crimes, and both domestic actors and the European Public Prosecutor's Office expressed concerns about the compliance of this reform with the rule of law, especially in light of the speed of the legislative process. Additionally, the Prosecutor General of Slovakia has faced criticism for controversially using their power to intervene in special prosecution cases and exonerate persons in cases involving high-ranking politicians and state officials.

Quality of justice

The justice system is significantly underfunded in several Member States. An obvious sign of the lack of sufficient resources is the low salaries of judges and the personnel of the justice system. The Chief Justice of **Estonia** repeatedly warned the government that the judicial career must be made a more attractive and financially secure professional path for young jurists because a large number of judges will retire in the next few years. Despite this warning, the Parliament of Estonia plans to reduce the growth of the salary of high-ranking public servants, including judges. In recent years, the indexation of

judicial and prosecutorial salaries was disproportionately small in **Poland**, which negatively impacted the financial situation of judges and prosecutors, especially given the high inflation rate in the country. In **Hungary**, the relatively low salaries of judges and court staff combined with the court leaders' wide discretion in giving bonuses threatens the independence of judges and potentially discourages young professionals from joining the bench.

In some Member States, judges and the personnel of the justice system took control of their salary negotiations. In **Croatia**, following the strike of judicial employees, the Ministry of Justice agreed to raise their salaries, but judges also announced their intention to strike if their salary demands are not met. In **Poland**, the employees of court and prosecution services organised a protest for higher wages and the government responded positively to their demands. It is also a positive development that the Parliament of **Lithuania** reinstated the seniority allowance of civil servants and enhanced their social benefits.

However, the problem goes beyond the salary of the judicial personnel and covers more broadly the insufficient financial resources allocated to the operation of the whole justice system that will cause serious efficiency problems sooner or later. Experts warn that in **Germany** there will not be enough personnel in the courts to handle all the cases. The excessive length of judicial proceedings in **Belgium** can be explained by the lack of resources allocated to the justice system. Similarly, in the **Czech Republic**, courts deciding on guardianship cases are heavily overloaded because of the shortage of qualified

experts. In light of these trends, it is a positive development that the recent justice reform adopted in France foresees an increase in the budget and additionally includes new hires.

Fairness and efficiency of the justice system

Significant challenges to the fairness of the justice system persist in a large number of Member States. The problems include the limited accessibility of courts for people who lack sufficient resources to cover the costs of legal proceedings, the excessive length of judicial proceedings, the sacrifice of fair trial rights at the altar of efficiency in certain types of cases, and the accessibility of court decisions.

In several Member States, individuals lacking sufficient resources to cover the costs of legal proceedings face significant difficulties with having access to courts. Due to legislative changes in **Croatia**, certain types of legal aid became less accessible to a high number of people due to the increased costs of legal representation in judicial proceedings. In **Estonia**, the fees of state aid lawyers were increased, but domestic actors warn that the state legal aid system is not sustainable because the lack of sufficient funding may pose a threat to the right to a fair trial. In **Greece**, the effectiveness of the legal aid scheme could be jeopardised by the long delays in settling the lawyers' fees. One of the biggest challenges facing the justice system in **Hungary** is the inefficiency of its support services which can be difficult to access and often fail to provide meaningful assistance to those in need. A recent report evaluating the equality legislation of **Ireland** found that the

adjudication of discrimination complaints has several problems, including lack of reasonable accommodation, unmet demands for civil legal aid, and the need for dedicated legal services for marginalised groups. In **Sweden**, the protection of human rights is deemed ineffective due to the high litigation costs which create unequal access to justice because individuals in need are unable to cover the expenses.

The excessive length of judicial proceedings is a widespread problem in Member States. Significant delays in the justice system, which often lead to the state's condemnation by the ECtHR, continue to be a structural defect in **Belgium, Greece, Ireland, and Poland**. **Estonia** determined to reduce judicial bureaucracy, and **Italy** managed to reduce the duration of trials and reduce the courts' backlog. However, in certain Member States, judicial proceedings remain particularly slow in certain areas: the adjudication of criminal complaints involving pushbacks of refugees in **Croatia**, guardianship cases in the **Czech Republic**, and access to information cases in **Germany**. Long after the pilot judgement of the ECtHR, Hungary put in place a monetary compensation system in 2022, but it has many flaws, including the low amount of compensation that is arguably insufficient in light of the Hungarian economic realities.

In **France**, a large number of individuals arrested during a protest organised against police violence were tried in an accelerated procedure after the Justice Minister's call for a quick and firm judicial response. The increased use of simplified and accelerated court proceedings is also a worrying trend in **Belgium**, being

particularly problematic in housing matters and labour law disputes.

In **Croatia**, the lack of a database containing decisions of lower instance courts causes a real problem for practising lawyers. In **Germany**, the practice of publishing court decisions remains

totally inadequate because there is no central and publicly accessible database containing all final court decisions. What is more, journalists face criminal prosecution if they publish judicial decisions which are not publicly accessible, even if they make sure that the privacy rights of the parties involved in the case are protected.

Recommendations

Governments should:

- Strike a balance between guaranteeing democratic control over the judiciary and the prosecutorial service and ensuring that even the highest organs of the justice system and their membership appear impartial and independent to the public.
- Take steps to depoliticise the selection and promotion of lower-instance judges and prosecutors.
- Put in place adequate safeguards against any kind of political influence that the executive may exercise in accountability mechanisms (such as disciplinary procedures) applicable to judges and prosecutors.
- Refrain from criticising court decisions on political grounds and putting pressure on the investigative authorities and courts in pending cases.
- Fully comply with validly rendered court decisions in a timely manner, including those from the ECtHR and CJEU.
- Allocate significantly more resources to the justice system, increase the salaries of judges, court officials and other legal professionals and invest in an efficient and fair legal aid system.
- Put in place legislative measures and allocate more resources to the justice system in order to shorten the length of court procedures, tackle excessive backlogs and guarantee fair trial standards.

The EU should:

- Maintain pressure on Hungary to implement the adopted judicial reform and freeze EU funds again if newly adopted legislative measures or the activities of court leaders continue to threaten judicial independence.
- Closely monitor if the new parliamentary majority in Poland reforms the judiciary, including the National Council of the Judiciary, and bring the regulation in line with the case law of the European Court of Human Rights, the European Court of Justice, and the Polish Supreme Court.
- Consider launching systemic infringement proceedings where there are multiple violations of the rule of law, utilise an expedited procedure and request for interim measures.
- Use EU funding, including the recovery and resilience fund, to push for tangible and specific investments in the area of justice to make it more accessible, fairer and efficient for the benefit of all people in society.
- Establish a system to effectively monitor the implementation of rights-based judgements from the CJEU, including through the creation of a dedicated unit focused on the implementation of judgements. Fast-track the process of referral back to the court in cases of non-implementation.

Lack of genuine progress in the field of anti-corruption

Key findings

- Notwithstanding certain positive measures adopted by some countries, like Estonia, Germany, Greece and Ireland, no widespread and significant progress can be seen in the enhancement of the transparency of public decision-making in Member States.
- Member States seem to transpose the EU's whistleblower protection directive half-heartedly as the national legislations progress slowly and the end products often have serious shortcomings, as seen in Belgium, Estonia, the Czech Republic, Greece, Romania, and Slovakia.
- The lack of data suggests that Member States are reluctant to improve their legislation on conflict of interest and incompatibility of positions.
- No significant progress was reported from the Member States regarding the criminalisation and prosecution of corruption-related criminal offences.

Last year's report found that levels of corruption remained too high in countries like Croatia or Hungary, and governments were failing to take genuine steps to effectively prevent and fight corruption, although our member in Hungary reported slight progress. Several countries struggled with weak conflict of interest laws, poor lobbying regulations and insufficient measures to ensure whistleblower protection. However, there were steps in the right direction, including in the field of transparency, and civil society organisations continued to help detect and investigate corruption cases.

This year's report shows that national governments are rather reluctant to revise their anti-corruption legislation in order to bring about genuinely positive changes. Notwithstanding some improvements in a few Member States, most of our partner organisations report that

domestic developments regarding the transparency of public decision-making, whistleblower protection, conflict of interest and incompatibility of positions, and the criminalisation and prosecution of corruption-related criminal offences happen very slowly and often produce unsatisfactory results, especially in respect of high-ranking public officials.

Transparency of public decision-making

Some Member States made progress in increasing the transparency of public decision-making. In **Estonia**, an open governance roadmap was created last year aiming to improve inclusive decision-making and strengthen cooperation in public affairs as a result of the work of an expert group convened by the Government Office. The reform of the lobby register law in **Germany**

addressed many of the shortcomings of the existing register, and amendments to the act on political parties included some measures to increase transparency in the financing of political parties and third-party election campaigns. In **Greece**, a new law on asset disclosures entered into force with the aim of systematising the current rules and streamlining the asset declaration process, but concerns persist about the effectiveness of the audit bodies charged with this scrutiny. The new regulation of lobbying in **Ireland** introduced positive changes, such as the broadening of its scope and the better enforcement of the restrictions on post-term employment as a lobbyist.

However, our partner organisations reported several shortcomings in public decision-making in other Member States. In **Belgium**, it is problematic that various administrative authorities are excluded from the scope of application of certain provisions of the act on the publicity of the administration and also that the decisions of the administrative authority charged with the protection of the right to access documents are not binding. In the **Czech Republic**, the enactment of the new law on lobbying has not progressed much, the country still lacks an ethical code for legislators, the decision-making of the Office for the Protection of Competition is characterised by opacity, unpredictability, and uncertainty, and the public procurement environment remains problematic. In **France**, domestic actors advocate legislative changes to broaden the definition of ‘interest representatives’ because a significant number of influencing activities go unrecognised by the High Authority for Transparency in Public Life. In **Slovakia**, there was no progress in the legal

regulation of lobbying, although the debate on the topic has been going on for a long time. The government of **Hungary** has not taken any genuine steps to adopt a comprehensive reform on lobbying and revolving doors, nor to enhance the system of asset declarations. Although Hungary underwent significant changes in its anti-corruption institutional framework, the efficiency of the newly established institutions is highly questionable and serious concerns persist regarding the independence and autonomy of key state control institutions.

Transposition of the EU whistleblower protection directive

Organisations from several Member States reported positive developments concerning the regulatory framework and practice of whistleblower protection, but they also highlighted the shortcomings of the system. The federal Parliament of **Belgium** passed two laws, one for the private sector and the other for the federal public sector, which provide better protection for whistleblowers, but the complexity of the institutional framework still raises concerns because a lot of different bodies are competent to deal with this issue. In **Estonia**, parliamentary deliberations started on the draft whistleblower protection law, but criticisms have been voiced regarding its relatively limited scope and the slow pace of the legislative process. In the **Czech Republic**, the newly adopted Whistleblower Protection Act, which entered into force after the expiry of the deadline for the implementation of the EU directive, marked a positive step in the fight against corruption, but it has several shortcomings, such as the lack of protection for

anonymous reports and the exclusion of disclosures involving offences below circa €4000. **Greece** saw only a partial transposition of the EU's whistleblower protection directive as the newly adopted law fails to define some key terms and it has an overly narrow scope according to experts. Although the new law on the protection of whistleblowers entered into force in **Romania**, its implementation is very slow due to the reluctance of national authorities, and the agency charged with the handling of whistleblower complaints remains insufficiently resourced.

In other Member States, it was deemed too early to provide an evaluation of the changes. In **France**, national authorities started to implement the law transposing the European directive on whistleblower protection, enacted already in 2022, which brought about significant changes to the existing regulatory framework. In **Italy**, the new regulation of whistleblower protection entered into force last year, and although it is too early to comment on its actual impact, it appears to be an improvement compared to the previous regulation which had been rather fragmented and limited in scope.

The exception to this modestly positive trend seems to be **Slovakia**, where the government introduced a draft law in the legislature that would reduce the level of protection of whistleblowers and may discourage people from reporting corrupt conduct.

Rules on conflicts of interest and incompatibility

Some improvements were made in a couple of Member States regarding the rules on conflict of interest and incompatibility, aimed at preventing people from holding multiple positions that have overlapping or conflicting duties. **Italy** saw the enactment of a legislative reform of the judicial system that is expected to have an impact on the prevention of revolving doors. The President of the **Czech Republic** signed into law a legislative amendment preventing politicians from operating radio and television broadcasting companies and periodicals. By contrast, the Minister of Justice continues to hold his position in the government despite persistent conflicts of interest.

In other Member States, the governments failed to put in place legislative measures bringing about positive changes in the regulation. In **Germany**, experts argue that the rules governing post-office employment of members of the federal government and other high-ranking officials are still in need of comprehensive reform, as evidenced by several cases revealed last year. In **Greece**, concerns persist regarding the possibility of occupying a public office immediately after having left the private sector. Concerning **Ireland**, no updates were provided by the government on the process of the revision of the existing statutory framework on ethics in public life.

Criminalisation and prosecution of corruption and related offences

Some of our partner organisations expressed dissatisfaction with the effectiveness of the investigation and prosecution of corruption-related criminal offences in **Croatia, France, Greece, Romania, and Slovakia**. **Hungary** is particularly noteworthy in this respect, where the legislator introduced the possibility of private prosecutions for high-level corruption and maladministration cases when the prosecution service fails to act, however, domestic organisations argue that a number of procedural obstacles render this new special remedy procedure inadequate.

In **Germany**, the law on corruption and bribery of members of parliament still needs to be

strengthened, as was clearly illustrated by several cases related to public procurement revealed last year. In Italy, a draft law was tabled that aims to abrogate the offence of abuse of public office and limit the scope of the offence of trading in influence. The draft amendment to the Criminal Code, submitted by the government of **Slovakia**, envisages a significant reduction of penalties for corruption-related criminal offences, which calls into question the deterrent and preventive effect of the criminal legislation.

As a positive development, it needs to be mentioned that the Council of Ministers of Poland expressed Poland's intention to join the European Public Prosecutor's Office.

Recommendations

Governments should:

- Rationalise their anti-corruption legislation and simplify the system of institutions charged with the enforcement of rules on combatting corruption.
- Provide anti-corruption bodies with sufficient financial and human resources and guarantee their freedom from undue political influence.
- Transpose and implement the European Whistleblower Protection Directive.
- Improve the effectiveness of the investigation and prosecution of corruption-related criminal offences, especially when committed by high-ranking public officials.

The EU should:

- Better enforce the European standards on legislative decision-making to guarantee that Member States show actual progress in the improvement of their anti-corruption legislation and that the rules are enacted in a transparent and inclusive process.
- Adopt the new directive on combating corruption as soon as possible.
- Closely monitor the transposition and implementation of the European Whistleblower Protection Directive, in close cooperation with non-state actors including civil society, and act decisively in case of non-compliance.
- Pay particular attention to high-level corruption, especially those committed by high-ranking public officials because it undermines the public trust in the institutions of the state.

Efforts to safeguard media freedom and pluralism still inadequate across the EU

Key findings

- Media ownership concentration remains high in many Member States, causing a significant negative impact on media freedom and pluralism, and there remains little transparency over media ownership including beneficial ownership across the EU.
- Threats to journalists remain a critical problem across Europe that demands urgent action by the EU and Member States. Even in states with traditionally strong and plural media markets, verbal and physical attacks are increasing.
- The use of SLAPPs to silence independent journalists and media outlets is a problem in almost all Member States surveyed for this report.
- Public service media is in a constant struggle for editorial and financial independence, with government influence a persistent problem in many countries.

Last year's report found continued deterioration in the plurality of the EU media landscape overall, and persisting restrictions on media freedom and the freedom of information. These findings highlighted a rise in SLAPPs and other forms of intimidation against journalists, national media markets defined by strong ownership concentration and a lack of media ownership transparency, and threats to freedom of expression and information in the form of restrictive laws and inadequate attempts to combat hate speech and disinformation.

This year's report finds little change to the EU media landscape overall. To be sure, there were some positive developments in 2023, most notably in **Lithuania, France, Slovenia** and the **Czech Republic**, the latter of which adopted a new law on media ownership and

reported no physical attacks on journalists, as well as a rise (to 14th, from 20th) in its global ranking by Reporters Without Borders. Yet despite these instances of progress, the overall situation across the continent remains worrisome. SLAPPs continue to be used to silence journalists and media outlets, media ownership concentration remains high while ownership transparency remains low, and journalists are victims of verbal and physical attacks with shocking regularity. In many countries, public service media is in a constant state of struggle for true editorial and financial independence from the government; in others, it is a fully captured arm of the government.

Independence of media authorities

Concerns over the independence of the national media regulatory body exist in **Croatia, Greece, Hungary, Lithuania, Poland, and Slovenia**. The independence of Croatia's Agency for Electronic Media, the national media regulator, is questioned because all the Council members are proposed by the government and appointed by the Parliament. In **Lithuania**, the election of the director of the Lithuanian Radio and Television, the national broadcaster, was twice unsuccessful due to a split vote of the LRT board, revealing infighting amongst political bodies of the national government over influence. There has been criticism of the process of selecting new members of the independent media authorities in **Greece**, provoking fears that it is open to political influence. As found in previous reports, the national media authority in **Hungary** does not meet European standards on the independence of such bodies.

A positive development in this field in 2023 occurred in the **Czech Republic**, where Parliament approved an amendment according to which the Senate will elect a third of the board members of Czech Television and Czech Radio. The television board will have 18 members instead of 15, and it will no longer be possible to dismiss the public media boards as a whole. These positive changes should make both media formats more resilient to political pressure.

Media pluralism

Although a free and plural media is fundamental to allowing citizens to get accurate information and make informed choices at the ballot box, little progress has been made to address the strong media ownership concentration that exists in many Member States. This problem is particularly acute in **Croatia, France, Greece, Hungary, Poland and Slovenia**. In **Croatia**, the Croatian Journalists' Association has pointed to a further decrease in media pluralism following Media Solutions' acquisition of *Novi List*, *Glas Istre* and *Zadarski List*. The company, which is suspected of being susceptible to influence by politicians of the ruling party, now controls four major regional daily newspapers. Efforts to address the issue of media concentration in **France** remain stalled, as none of the 32 recommendations – on journalistic freedom, journalists' pay and other issues – presented by a 2022 Senate investigative committee have been implemented. The level of media concentration in **Greece** remains high – and highly influenced by politicians; the interdependence between political and media elites is considered among the major factors leading to ineffective and contradictory media policies and poor implementation of anti-corruption rules.

Our member in **Hungary** reports no change over the past year: the media ecosystem is characterised by a large number of state-funded media that show unconditional loyalty to the government. In **Poland** the state-owned company PKN Orlen retains ownership of not only the publisher of the majority of regional press outlets but also of the second-largest press distribution company in the country (Ruch).

In **Slovenia**, the level of media concentration remains high: the media group Pro Plus dominates the television, video-on-demand, and online media market, while Media24 owns more than 60 media outlets across print, radio and television.

Threats to media pluralism also persist in **the Netherlands** and **Slovakia**. In the former, the 2023 edition of the Media Monitor, a yearly publication of the Dutch Media Authority, signalled an increasing market share held by fewer media companies, and an overall landscape characterised by a high concentration of media ownership. In **Slovakia**, the level of concentration in the media market increased in 2023, after the News and Media Holding company bought the most widely read tabloid magazine, *Nový čas*, and the related portal *cas.sk*. The publishing house, owned by the financial group Penta, is the largest publisher of print titles on the Slovak market. In **Italy**, our member calls for mandatory yearly reports on media ownership data by national regulatory authorities or bodies, which would include the obligation for data on media ownership to be made publicly available free of charge and in an electronic and user-friendly manner.

On a positive note, the **Czech Republic** has banned politicians from owning media outlets from 2024, following last year's adoption of new amendments to address this issue.

Transparency of media ownership and funding

Transparency in media ownership, which strengthens media accountability and facilitates

public scrutiny of the news, remains an issue in many EU states, although there is hope that the upcoming European Media Freedom Act (EMFA) will address this.

In **Greece**, state advertising funding is a significant source of revenue for Greek media, and in recent years critical media have been excluded or received disproportionately lower funding from government communication campaigns. While 2023 saw a new media registry come into effect that purports to increase media ethics and tie it to funding, there is concern that it could be misused to deliberately exclude media reporting critically on the government from receiving state advertising revenue. Similarly, in **Hungary**, there is a lack of transparency around state advertising spending, and the state does not publish a database on its advertising activity. In **Slovakia**, the Ministry of Culture is obliged to create a publicly accessible register of information and data on media providers, services and products, but it has not yet published such a list, and no progress was made in this area in 2023.

In contrast, in **the Netherlands** state advertisements are subject to specific regulations to ensure they are transparent, fair and not misleading, and guidelines have been drawn up to regulate government communications. That said, in the run-up to the November 2023 election, there was particular concern over the use of microtargeting in political advertisements on social media. In **Slovenia**, the new Mass Media Act proposal is in line with the principles of EMFA, calling for greater transparency of state advertising. Under it, state institutions would have to report regularly on all media

expenditure, including advertising, campaigns and other media leases.

Public service media

Public service media continues to face threats of government interference, manipulation or outright control in multiple Member States. In **Italy** and **Romania**, government influence on public service media, either directly or through financial levers, remains a significant source of concern. The problem is particularly severe in Italy, where the government made significant internal management changes at Radiotelevisione Italiana (RAI), the Italian national public broadcasting company, in 2023, leading to the resignation of its CEO. In **Croatia**, our member reports that the hiring process for a key editorial position at Croatian Radiotelevision was conducted in a non-transparent manner.

In **France**, **Italy**, and **Slovakia**, changes to how public service media are funded risk interfering with the quality of the content they provide. In **Slovenia**, although the governing structures of public service media have improved, the financing model continues to threaten the public broadcaster's independence and capacity to fulfil its role. A long-term plan for the financing of public service broadcasting in **Ireland** made no progress in 2023 and remains yet to be agreed. Conversely, the establishment of the Media Support Fund in **Lithuania** will provide state funding to media projects for the first time, giving it greater financial support.

In **Sweden**, the lack of constitutional protection for public service media, coupled with

increasing threats by certain political parties, could pose an existential threat. There was no change in 2023 to the situation in **Hungary**, where public service media is firmly under government control, or in **Poland**, where efforts to influence editorial independence by state actors were reported.

Given the widespread doubts over the independence of public service media and other media outlets in so many Member States, it is little wonder that public trust in the media remains low in many countries surveyed. In **Slovakia**, the public's already-low trust deteriorated further in 2023, with one report finding just 27% of the general public trust the media, down from 37% in 2022. Meanwhile, in **Estonia**, where generally high public trust in the media has been noted in past reports, regression occurred in 2023: trust in public TV and radio stations fell by 8% last year, to 59%. In the **Czech Republic**, public trust in the media hit an all-time low in 2023. Certain countries did see positive developments in this area last year. **Slovenia** and **Lithuania** saw upticks in public trust in the media last year; in the former, trust in the public service broadcaster shot up by 14 points in 2023 compared to 2022.

Safety and protection of journalists

Journalists in the EU continue to face threats and instances of violence simply for doing their job of bringing to light corruption, wrongdoing and other matters of public interest. This grave threat to media freedom is widespread across the bloc, particularly in **Croatia**, the **Czech Republic**, **France**, **Germany**, **Greece**,

Italy, the Netherlands, Romania, Slovakia, Slovenia and Sweden. In **Croatia** in 2023, multiple instances of various types of attacks on journalists took place. Verbal attacks against journalists were recorded in the **Czech Republic** and **France** last year, while physical attacks were especially problematic in **Germany, Greece, Italy, and Slovenia.** In Germany, these attacks were largely responsible for the country sliding five places in the press freedom ranking of Reporters Without Borders, to 21st. There were 103 physical attacks on media professionals in Germany last year, the most since counting began in 2015. In Italy in 2023, there were at least 15 cases of physical assaults against journalists and media workers, four of which resulted in injury, and 27 cases of verbal attacks.

Attacks against journalists in **Greece** were lower in 2023 than the peak year of 2022 but remain high. Several journalists reported being subject to assault and other mistreatment, mainly as a result of police violence, particularly in attempting to cover protests or to report on migration issues. A similar trend was reported by our member in **Slovenia**, where there were 15 attacks against journalists in 2023, down from 20 in 2022 and 33 in 2021.

Strategic lawsuits against public participation (SLAPPs), which aim to silence journalists and media outlets through abusive and costly litigation, were reported in almost every country surveyed, including **Belgium, Croatia, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland** and **Slovenia.** Although courts in **Belgium** have tended to protect journalists against SLAPPs, there is still no mechanism under Belgian law whereby

manifestly unfounded or SLAPP cases can be dismissed at an early procedural stage. In 2023, at least 945 lawsuits against media entities or journalists were active in **Croatia**, 910 of which were lawsuits seeking compensation for damage to one's honour or reputation. While not all of these lawsuits are considered SLAPPs, the sheer number underscores the need for the country to revisit its procedural rules and adopt an official definition of a SLAPP, and for courts to separate and classify such lawsuits. In **France**, journalists continue to face legal harassment by authorities. Legal safeguards against SLAPPs are still almost non-existent in **Germany**, and there are no government-funded support structures for affected journalists. SLAPPs have become widespread in **Greece** in the last couple of years, often with the aim of silencing journalists who reported around the biggest wire-tapping scandal in Greek history, the so-called Predator-gate scandal. SLAPPs are also on the rise in **Italy**, where at least two dozen lawsuits were initiated in 2023 by political figures targeting critics of the government. In March 2023, the Dutch National Association for Journalists and PersVeilig published research on the legal intimidation of journalists in **the Netherlands** which shows that almost 50% of journalists, and over 90% of editors, have been legally intimidated due to a publication.

Abusive lawsuits in **Hungary** take on a notably different form than those in other countries. There, the EU General Data Protection Regulation (GDPR) has been weaponised to suppress investigative journalism. As the GDPR does not provide EU-level protection for press freedom, it is left to Member States to introduce such protection. Therefore, the

GDPR can be used to stifle the press in countries that have not established specific rules to exempt the press from the provisions of the GDPR, as is the case in Hungary. Meanwhile, a positive development in the area of SLAPPs occurred in **Ireland**, where it is expected that the draft bill to amend the defamation law, presented in 2023, will deal with some elements of SLAPPs against journalists and others. The EU Anti-SLAPP Directive will change the climate regarding SLAPP cases, however, it will mostly depend on Member States to implement and apply the rules in their national legal system.

Members report that journalists have insufficient protection against, or face the threat of, acts of surveillance in **France, Greece, Hungary, and the Netherlands**. Although the issue has become a full-blown public scandal in **Greece**, named Predatorgate after the surveillance technology used, the perpetrators have generally thus far eluded justice, as is the case in other countries. In **Hungary**, the Pegasus case remains unresolved, while our **Italian** member highlights the need for domestic authorities to pass legislation explicitly forbidding the use of spyware against journalists. Making matters worse, throughout 2023, **France** exerted pressure on other Member States to legalise the surveillance of journalists in cases involving a threat to ‘national security’ or offences such as terrorism, sabotage or counterfeiting. One small promising step last year occurred in **Slovenia**, where the proposal of the new media regulation does specifically include a prohibition of installing intrusive surveillance software on any device used by journalists, although it contains no other specific measures for the protection of journalists’ safety. In October 2023, it was

revealed that journalists from **Dutch** outlet De Correspondent were wiretapped in 2022 by the Public Prosecution Office (OM) At the time, De Correspondent was conducting a major investigation into a controversial deal between businessmen and the government for COVID-19 face masks.

As reported in previous years, restrictions to the access of public interest information remain problematic in **Croatia, Estonia, Germany, Italy, and Lithuania**. Efforts by public authorities to restrict access of independent journalists, for example to press conferences or for interviews with public officials, have been reported in Croatia and Hungary.

Two noteworthy positive developments towards protecting journalists occurred in **the Netherlands** last year. In July 2023, the Dutch Senate passed a bill to criminalise doxing, widely used to intimidate journalists by distributing personal information (such as addresses, phone numbers, and information about family members) on social media. Additionally, last year also saw the Dutch government ensure structural funding for a joint initiative of the Dutch National Association for Journalists, the Dutch Society of Chief-Editors, the police and the public prosecutor to combat violence against journalists.

Recommendations

Governments should:

- Improve transparency on media ownership by going beyond the European Media Freedom Act requirement through the creation of national-level, publicly accessible, and regularly updated databases on the beneficial ownership chains of media companies and their links to politicians.
- Support small and independent media outlets by ensuring a fair and transparent distribution of public funds.
- Take concrete actions by properly enforcing existing laws or introducing new ones to protect journalists from attacks and harassment, including in the online space.
- Ensure accurate and timely transposition of the EU Anti-SLAPP Directive into national law, ensure its full enforcement, and make sure judges and prosecutors are adequately trained to deal with the threat of SLAPPs.
- Quickly and ambitiously transpose the EMFA into national law where needed and support it with robust enforcement efforts.
- Take steps to safeguard the editorial independence of public service media, including by depoliticizing the hiring process.
- Create proper safeguards for journalists and use GDPR Article 85 to provide exemption or derogation of the GDPR for journalistic purposes.
- Tackle disinformation and hate speech on social networks while respecting human rights standards on the right to freedom of expression.
- Revise unduly broad or vague laws that criminalise legitimate free speech.
- Strengthen the framework for access to public interest information and public documents.

The EU should:

- Ensure accurate and timely transposition of the EU Anti-SLAPP Directive into national law, ensure its full enforcement, and make sure judges and prosecutors are adequately trained to deal with the threat of SLAPPs.

- Issue guidelines for Member States based on the recommendations of the Council of Europe.
- Closely monitor the transposition of the EMFA and ensure it is properly enforced in the Member States.
- Within the competence of the European Commission, coordinate with the Regulatory Scrutiny Board to foster media freedom and pluralism across the EU, including monitoring media ownership.
- The Commission should continue its media monitoring project in relation to beneficial ownership of media companies across the EU.
- Monitor and report on the implementation of the EU Recommendation on the Safety of Journalists and related EU legislation, such as the Whistleblowing Directive, in consultation with civil society and media representatives.
- Align the efforts of Digital Services Act¹⁵ enforcement to ensure that access to information and freedom of the media prevail on Very Large Online Platforms and Very Large Online Search Engines.¹⁶

15 [Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC \(Digital Services Act\).](#)

16 For a more detailed list of recommendations formulated by Liberties and European Partnership for Democracy, see [Identifying, analysing, assessing and mitigating potential negative effects on civic discourse and electoral processes: a minimum menu of risks very large online platforms should take heed of](#), p. 9.

Defective system of checks and balances

Key findings

Regarding the process for preparing and enacting laws

- While the use of extraordinary legislative measures related to COVID-19 and the war in Ukraine largely dissipated, Hungary continues to use such measures to suppress political dissent.
- There is a concerning tendency of misuse of extraordinary constitutional measures by executives to diminish the role of parliaments.
- Fast-paced legislation remains prevalent, resulting in low-quality legislative instruments and increasing the possibility of fundamental rights violations.
- Public consultation in many countries remains symbolic and ineffective, hampering the ability of CSOs and the public to submit comments and express concerns regarding the proposed bills.

Regarding independent authorities

- The autonomy of Ombudspersons, national human rights institutions, equality bodies and other independent authorities is compromised by the highly politicised and non-transparent selection of their heads or their structural subordination to the political branches in several Member States, such as Bulgaria, France, Germany, Greece, Hungary, Ireland, Slovakia.
- National Human Rights Institutions face challenges in carrying out their tasks adequately due to the lack of sufficient financial and human resources, limits of their competence and non-enforceability of their decisions.

Regarding the electoral framework

- The severe restriction of the voting rights of third-country nationals, people having reduced mental capacity, and prisoners is still a matter of concern in Member States, such as Bulgaria, the Czech Republic, Estonia, and Greece.
- The poor quality of the wording and the enactment process of new electoral legislation was subject to strong criticism in Croatia, Greece, Hungary, Ireland, and Romania.

Last year's report highlighted issues with fast-track lawmaking, accompanied by lacking human rights impact assessments, and limited opportunities for public participation. Many country reports expressed concern regarding the independence and effectiveness of watchdog bodies.

This year the picture remains similar, with focus shifting from COVID-19-related emergency measures to the misuse of extraordinary constitutional measures by executives. The low quality of parliamentary lawmaking and its lack of inclusiveness remains a particularly concerning trend. Independent authorities face significant challenges in carrying out their constitutional function to defend the rule of law because they are often severely underfunded and exposed to undue political influence. Several Member States continue to exclude parts of their society from the franchise contrary to European standards and show reluctance to reform their electoral legislation.

Process for preparing and enacting laws

Fast-paced legislation and extraordinary measures

Fast-paced legislative work was an observable trend in 2023. In **Bulgaria, Greece** and **Sweden** this simply meant enacting legislation in an accelerated fashion, but within the framework of the ordinary legislative procedure, while in other instances, such as in **Slovakia**, fast-track procedures were utilised. In the case of **Greece**, acceleration of the legislative procedure resulted in a four-day decrease in the average length of

deliberation, while **Slovakia** saw 91.67% of the bills proposed by its new government fast-tracked. Extensive last-minute changes to bills through amendments were prevalent in **Greece** and **Hungary**, with in the case of the latter continuing the practice of submitting ministry prepared bills as private members' bills. Meanwhile the **Czech** government pushed through an amendment on the adjustment of pensions during a legislative emergency, drawing criticism from opposition members and the vice-president of the Constitutional Court.

The hasty enactment of laws resulted in a decrease in the quality of legislation as highlighted by reports from **Bulgaria** and **Sweden** and drew major questions of constitutionality in the case of the **Czech Republic**.

A further observable trend was the use of extraordinary constitutional measures by executives to further their legislative agenda. In **France** the government utilised Article 49.3 of the Constitution extensively to pass laws without a vote in the National Assembly. The report from **Croatia** is a further example of the phenomenon, describing a dominance of the executive branch and the weak role of the Parliament. **Italy** faces a constitutional amendment that increases the conversion period of decree laws initiated by the government to laws by the Parliament from 60 days to 90 days, raising concerns of the misuse of decree-laws by the government to diminish the role of the Parliament.

Lack of meaningful consultations

A common issue highlighted in the country reports is the lack of meaningful public consultation. Consultations are often pro-forma, such as in **Bulgaria, Hungary, Ireland** or **Croatia**, with comments and proposals not being meaningfully addressed. The short deadline for submitting comments and recommendations is a major problem hindering meaningful participation by the public or CSOs, with several countries, such as **Germany, Slovakia** and **Slovenia** violating their guidelines or laws on public consultation by setting shorter consultation periods than required by those instruments. **Hungary** saw multiple instances of important draft laws not being submitted to public consultation, while in **Slovakia** administrative measures were used to raise the threshold for participation in consultation, with the interim government reversing those measures. A further problem in the case of **Germany** is the poor readability of draft laws, which makes the drafts difficult to understand. Calls for the publication of synopses of draft laws to combat this problem have so far proven futile.

The acceleration of the legislative process described earlier further reduces the possibility for substantive public consultation, as the hasty adoption of laws leaves little room for consultation with stakeholders or the public, and major last-minute amendments render such consultations meaningless.

Independent authorities

Creation of (additional) independent authorities

Although the **Czech Republic** has a well-functioning Public Defender of Rights, domestic and international actors continue to call for the establishment of a separate National Human Rights Institution and an independent Ombudsman for children. In **Italy**, the parliamentary debate on the legislative proposal on the establishment of the Data Protection and Human Rights Authority has not made any significant progress last year, so the country still has no NHRI in line with the Paris Principles.

Selection of members and institutional autonomy

In some Member States, independent authorities face challenges due to the highly politicised selection of their heads. In **Bulgaria**, many Parliament-appointed members of independent state authorities were not replaced after the expiry of their mandate due to the power struggles between the ruling parties. This political deadlock affects the membership of the Data Protection Commission, Commission for Protection from Discrimination, National Bureau for Control over Special Surveillance Means, and others. In **Germany**, the election of data protection and freedom of information commissions at both federal and state level is deemed non-transparent and thus not in line with the EU General Data Protection Regulation. In **Greece**, serious defects that tainted the election of the new members of the Hellenic Authority for Communication

Security and Privacy and the Greek National Council for Radio and Television raise concerns about political interference with the functioning of these independent authorities. The rules on the selection and dismissal of the heads of the Statistical Office of the **Slovak Republic** and the Office for Supervision on Healthcare were changed in a way to grant full control to the government which creates an unconstitutional situation. The ruling parties in **Hungary** use their two-thirds parliamentary majority to elect the heads of all state authorities without any compromise with the opposition, so the selection process is always deemed to serve the interests of the government.

In other Member States, the lack of (sufficient) autonomy of such independent authorities are traced back to structural reasons. The General Inspectorate of the National Police of **France**, responsible for overseeing the actions of the National Police and the Paris Police Prefecture, continued to face criticism for its lack of structural independence from the Ministry of Internal Affairs, especially after the police violence committed during the social unrest against the pension reform. In **Ireland**, concerns have been raised regarding the yet-to-be-established Independent Examiner of Security Legislation, Policing and Community Safety Authority and Office of the Police Ombudsman because the proposed governance and structures of these bodies may limit their independence and impede their ability to operate effectively.

Guaranteeing the conditions of effective functioning

Many Member States fail to guarantee the conditions necessary for the effective functioning of National Human Rights Institutions. The creation of the Federal Institute for the Protection and Promotion of Human Rights in **Belgium** is a welcome development, but it still needs to be given a specific role in the legal system and it must be endowed with the financial, human and legal resources it needs to carry out its tasks. By contrast, the Central Prison Supervisory Board is seeing its prerogatives threatened as the Minister of Justice tabled a draft bill that would both restrict the supervisory role of this body and erode the right of complaint recently opened to prisoners. The Ombudsperson of **Croatia** faces difficulties with carrying out its functions adequately due its restricted access to the necessary information and the lack of sufficient implementation of their recommendations. In **France**, the opinions of independent authorities such as the Defender of Rights or the National Consultative Commission on Human Rights make no impact on political decision-making due to their lack of binding force. The French Defender of Rights enjoys a high degree of independence, but it has fewer financial and human resources than its counterparts in other European countries. The data protection and freedom of information commissioners introduced in **Germany** at both federal and state level lack any means to enforce their legal opinion against the authorities and have much less financial resources and personnel at their disposal than would be necessary. Although one of the ruling parties in **Sweden** proposed the discontinuation of the funding of

the Swedish Institute for Human Rights, the proposal was eventually dropped due to the collective appeal of 49 organisations.

Electoral framework

Restrictions on the right to vote

On the one hand, several Member States maintain very severe restrictions on the right to vote. In **Bulgaria**, prisoners and persons under guardianship are disenfranchised, dual citizens have the right to vote but can only exercise it after having resided in the country for at least 18 months, and some ethnic minorities are prevented from using their mother tongue during the electoral campaign. In the **Czech Republic**, people having reduced legal capacity have restricted voting rights. The government of **Estonia** prepared legislation aimed at depriving Russian citizens of the right to vote, and prisoners are still autonomically disenfranchised. **Greece** continues to deprive people having limited mental capacity of their suffrage rights, but the disenfranchisement of prisoners was narrowed down to certain types of serious crimes.

On the other hand, some Member States, such as the **Czech Republic**, **Greece** and **Slovakia**, experimented with the introduction of postal voting to make the exercise of the right to vote easier.

Poor quality of electoral legislation

In several Member States, amendments to the electoral regulation raised concerns due to the poor quality of the new provisions' wording and

the lack of transparency and inclusiveness of the legislative process. In **Croatia**, the drafting of the new act re-regulating the electoral units was criticised for its lack of transparency and the opposition parties announced their intention to challenge the constitutionality of the law on procedural grounds. In **Greece**, the wording and the enactment process of recent legislative amendments on the disqualification of political parties from the elections raised concerns. The ruling parties in **Hungary** amended the rules on local elections less than a year before the elections in a non-transparent and non-inclusive legislative process. In **Ireland**, the Electoral Reform Bill went through an extensive pre-legislative scrutiny, but the rushed and unsatisfactory manner in which the legislation was passed in Parliament was subject to much criticism. Recent amendments to **Romania's** National Security Law are deemed problematic because any political opinion may be qualified as a national security threat due to the ambiguous wording of the new provisions.

Lawfulness and fairness of elections

Domestic and international electoral monitoring bodies found irregularities committed during the electoral campaign and the elections in the **Czech Republic**, **Germany**, and **Greece**.

Recommendations

Regarding the process for preparing and enacting laws

Governments should:

- Rein in the use of fast-track procedures and extraordinary constitutional measures.
- End the practice of rushing legislation.
- Respect rules on public participation in legislative processes and increase the frequency, length, and transparency of government consultations with the public and civil society organisations.

The EU should:

- Closely monitor whether national legislation implementing EU law, especially legislative acts adopted to comply with decisions of EU rule of law mechanisms, is adopted in a transparent, accountable, democratic and pluralistic lawmaking process, and activate the rule of law mechanisms in case of non-compliance.
- Conduct an in-depth assessment on the use of emergency and accelerated procedures and extraordinary constitutional measures in lawmaking.

Regarding independent authorities

Governments should:

- Guarantee that the heads of independent authorities are selected in a transparent process and are protected by institutional guarantees from undue political influence.
- Endow National Human Rights Institutions and other independent authorities with all financial and human resources, and legal competences that are necessary for the successful completion of their mandate, and make sure that their decisions are implemented.

The EU should:

- Put stronger pressure on governments to set up or strengthen independent authorities, by enforcing relevant existing EU standards and adopting new ones, for example on the selection of their heads, their structural independence, their financial and human resources, their legal competences, and the implementation of their decisions.
- Monitor the Member States' compliance with the Commission's Recommendation on standards for equality bodies¹⁷ and make progress with the adoption of the Directive on standards for equality bodies.¹⁸
- Make funding or capacity-building or other measures of support directly available to national institutions set up under EU law to help mitigate the impact of funding shortfalls.

Regarding the electoral framework

Governments should:

- Revise their rules limiting the voting rights of third-country nationals, people having reduced mental capacity and prisoners and bring their legislation in line with the European standards.
- Guarantee that amendments to the electoral legislation are adopted at least one year before the election in a transparent, inclusive, and democratic legislative process.

The EU should:

- Monitor more closely the compliance of the Member States' electoral legislation with the international standards of national elections, especially those set by the Venice Commission, the ECtHR and the OSCE.
- Monitor the Member States' compliance with the Regulation on transparency and targeting of political advertising once it is enacted and make sure, in particular, that Member States prepare and adopt all the necessary legislation in a timely manner.

17 [COMMISSION RECOMMENDATION of 22.6.2018 on standards for equality bodies](#)

18 [Equality bodies – binding standards: European Commission](#)

Attacks on rights defenders and protest bans further restricted civic space last year

Key findings

- Member States are using restrictive rules on non-profit status and registration to hinder the work of civil society organisations or threaten their existence.
- In many Member States, governments have restricted the involvement of CSOs in the law-making process, with the appearance that it is often done as a box-ticking exercise rather than a meaningful consultation and forum for information sharing.
- Governments severely curtailed the right to protest in 2023. Even in countries where this right has been traditionally protected, events – in particular the Israel-Hamas conflict – have been used to justify new restrictions.
- Smear campaigns against CSOs and rights defenders, often at the hands of politicians, intimidation, verbal abuse and physical violence were reported by CSOs in multiple Member States last year.
- SLAPPs remain a powerful weapon to silence rights defenders, climate activists, journalists and others, necessitating urgent action from Member States in line with the new EU directive, as mentioned in the section on media freedom.
- Data retention, regulatory uncertainty, and hate speech and abuse remain serious issues facing the online civic space.

Last year's report reaffirmed the findings of previous years, namely that civil society organisations (CSOs) and rights defenders remain under threat of harassment, intimidation and physical and verbal attacks simply for carrying out their work. Strategic lawsuits against public participation (SLAPPs) were frequently used as a tool to silence CSOs and rights defenders. Restrictive laws further hampered their work, and in extreme cases the legal environment forced the dissolution of CSOs. Restrictions on

the right to protest undermined public participation. Last year's report also saw a continued worrying trend in the high levels of digital violence and hate speech in the online civic space.

This year's report confirms that these issues continue largely unchanged. Shrinking civic space, intimidation and smear campaigns, often at the hands of the government or other politicians, are persistent threats to rights defenders and CSOs. Instances of physical violence also

continue, as do existential threats to organisations themselves, often through financial or registration levers. Climate activists have faced harassment, arrest and, as is true of other activists, the threat of abusive lawsuits. The online civic space is still marked by abuse and harassment, and there are questions in some member states over the independence of national regulators of the online space.

Freedom of association and public participation

Threats to freedom of association in 2023 were reported in **Bulgaria, Croatia, the Czech Republic, France, Germany, Ireland, Italy, the Netherlands, Slovakia** and **Sweden**. In Germany, the revocation of non-profit status and the use of tax law continue to negatively affect freedom of association. Planned reforms to clarify the application of tax-exempt status stalled in mid-2023. While freedom of association is generally upheld in **the Netherlands**, several bills remained a source of concern for civil society in 2023, as these bills brought into question the independent role CSOs play within a democratic society. In **Slovakia**, the government spent much of 2023 working to reform the tax assignment system, throwing into doubt a significant source of funding for CSOs. The issue was still unresolved by year's end, with no change to the system yet implemented.

Threats of involuntary dissolution of CSOs were reported in **France, Ireland, Romania** and **Sweden**. In **Sweden**, our member reported significant interference by authorities against Islamic organisations, up to and including dissolution, while in **Bulgaria**, authorities have

refused to register Macedonian organisations. In **Ireland**, there is concern that proposed powers to be granted to the Charities Regulator would allow for deregistration for minor breaches of the 2009 Charities Act.

Civil society organisations performing life-saving work around migration continued to face restrictions and threats in **Italy** and **Greece**. In Italy, the Minister of the Interior is now able to force rescue ships to dock at ports that are located far away from where migrants are in danger, and CSO ships are forced to conclude rescue operations quickly, with the risk of leaving some migrants to drown at sea. In Greece, the government has abused its power to mischaracterise CSOs working in the field of migration as criminals, and to bring criminal charges for facilitation of entry, migrant smuggling, conspiracy, abuse of office, fraud, abetting irregular immigration, illegally obtaining state secrets, complicity in trafficking in human beings.

On the other hand, a positive development was reported in **Estonia**, where the conditions for the liquidation of CSOs were clarified and, as a result, an organisation that was deleted from the register will be allowed to continue its activities. Another welcomed event occurred last year in **Slovenia**, where the National Assembly passed a law aimed at revoking fines against alleged organisers of public gatherings protesting against the democratic backsliding resulting from unlawful regulations during the COVID-19 pandemic.

Human rights defenders in **Croatia, France, Hungary, the Netherlands, Slovakia** and

Sweden report shortcoming in the public participation process. In **Croatia**, human rights defenders report that the practice of appointing civil society organisations to working groups and advisory bodies is often non-transparent. In **France**, the strong opposition by the general public to retirement reform was ignored and the bill was forced into law by circumventing the National Assembly through a legislative loophole. As in other areas, the government carefully controls public participation in **Hungary**, using it not to solicit input but to bolster support for their agenda. Public engagement is predominantly solicited through ‘national consultations’ — questionnaires, distributed to every household, laden with questions that are both leading and absurdly biased. In **Slovakia**, the government’s use of fast-track legislative procedures prevents the public and civil society from having the opportunity to be involved in the legislative and decision-making processes. In **Sweden**, the practice of imposing short deadlines for stakeholders to submit responses during the consultation process, the government is creating a serious impediment to civil society stakeholders’ participation in the legislative process.

Right to protest

New restrictions on public protests were reported in **Bulgaria, the Czech Republic, Estonia, Germany, Hungary and Sweden**. Protests bans explicitly targeting pro-Palestinian assemblies were reported in **the Czech Republic, Germany, Hungary and Sweden**. In Germany, several courts declared blanket bans on pro-Palestine assemblies unlawful, while other courts upheld them. Since October 2023,

police in **Hungary** have banned all demonstrations to commemorate civilian victims who died in Gaza. Furthermore, restrictions on the right to protest in the form of limitations of pro-Palestine flags, symbols and slogans were reported in **Belgium, Estonia and Germany**. Efforts by **France’s** Interior Minister to ban pro-Palestinian assemblies nationwide were blocked by the Council of State, and none of the subsequent events led to public disorder.

In **Croatia**, the continued closure of St. Mark’s Square, outside Parliament, was unsuccessfully challenged before the Constitutional Court. Similarly, current restrictions in **Hungary** make it impossible in practice to freely demonstrate near the homes of public figures and politicians.

The use of surveillance technologies during public protests remains an important issue in **Belgium, France, and the Netherlands**. In Belgium, a coalition of Brussels-based human rights associations appeared before the Brussels Parliament in June to call on MPs to prevent the use of facial recognition in Brussels. In the Netherlands, an investigation by several journalists revealed that Dutch police systematically collect the personal data of protesters and activists, including their address, social security number (BSN) and date of birth. Another report concluded that the police conducted unlawful surveillance of peaceful protesters. Meanwhile, in **Ireland** calls have been made to expedite the roll-out of facial recognition technology for policing in order to assist in the identification of protesters, especially in the wake of the November riots in Dublin.

Threats to CSOs and rights defenders

Those who work to defend fundamental rights and democratic principles continue to do so within a threatening environment in many countries. Attacks, harassment and smear campaigns remain a persistent problem in many EU Member States. In 2023, these threats were particularly evident in **Bulgaria, the Czech Republic, Estonia, France, Greece, Hungary, Italy, Slovakia, Slovenia** in 2023. Human rights defenders working in the field of migration continue to face such threats in **Italy** and **Greece**. Smear and defamation campaigns continued in **Hungary** last year, as government-controlled media smeared human rights defenders and CSOs critical of the government. In **Slovakia**, CSOs are a constant target and object of smear campaigns and negative narratives by the current ruling parties, among others, and our member, Via Iuris, reported a direct attack by the current Prime Minister, who accused the organisation of being financed by George Soros. In **Slovenia**, in a continuation of previous years, the Democratic Party, which fell from power in the 2022 parliamentary elections, and its leader were involved in spreading negative stereotypes and in smearing civil society organisations. Civil society organisations were portrayed as being without value for society or were blamed for societal problems.

Climate activists in **Belgium, Germany, Italy** and **Sweden** continue to face the threat of arrest and prosecution. In **Belgium**, activists from the environmental organisation Greenpeace were found guilty of “intrusion in a port facility” by a criminal court in Bruges, but with the sentence

suspended. In May 2023, raids were carried out across **Germany** targeting the activist group Last Generation, with bank accounts and a website confiscated on the grounds that the group is a criminal organisation as defined by the German Criminal Code. In **France**, the continued threat by authorities to utilise the vague criminal offence of “participation in a group with a view to preparing violence” threatens a chilling effect on freedom of assembly and significantly lowers the legal threshold needed to arrest protesters. In **Sweden**, more than 200 climate activists have received criminal convictions for their activism and civil disobedience, with 25 of them being convicted for the crime of sabotage, which carries up to four years in prison. Furthermore, the government has stated its intent to consider an increase in the penalty for ‘sabotage’ from 14 days to a minimum of 12 months in prison.

In **Belgium, Croatia, France, and Germany** the threat or use of SLAPPs against rights defenders remains problematic. SLAPPs have been used in particular to stifle environmental groups in **Croatia**. In **Germany**, our member highlights the need to address the uneven playing field created by the financial implications of SLAPPs, finding that more than 75% of those targeted by SLAPPs from right-wing activists have not pursued their legal action due to financial reasons.

Physical and verbal attacks against the LGBTQI+ community and its supporters continue to blight the civic space in **Bulgaria, Estonia, Hungary** and **Slovenia**. In 2023, Hungarian organisations working on LGBTQI rights faced ongoing defamation, with

government-friendly media referring to them as “LGBTQP” groups, where “P” stands for paedophilia. Both Pride Parades organised in **Slovenia** in 2023 were marred by violence. In **Estonia**, a Finnish pastor attending the Baltic Pride event as a speaker was assaulted.

Online civic space

In 2023, there were several developments in Member States that drew further focus on the need to protect online civic space. In **Belgium**, there is ongoing concern over a third version of the Data Retention Act, passed in 2022, that results in a huge amount of citizens’ data being stored and accessible by no fewer than 10 authorities. In the **Czech Republic**, our member noted concern over the independence of the country’s online supervisor, the Czech Telecommunications Office, whose head is appointed and dismissed at the discretion of the

government. A concerning bill on the security and regulation of the digital space is working its way through **France’s** Parliament. Digital rights groups fiercely oppose one article of the bill, which would require Internet browser providers to actively engage in this censorship and empower the police to request the censorship of sites deemed ‘scams’ without the need for judicial oversight.

Almost two years since the Predatorgate scandal broke in **Greece**, people are still awaiting the outcome of ongoing judicial investigations into the allegations of surveillance, and for improvements to safeguards on the right to privacy. Our member in **Italy** reported an alarming increase in online attacks, threats and hate speech, including by public institutions and politicians, in 2023.

Recommendations

Governments should:

- Clarify funding regulations and close opportunities for manipulation aimed at threatening the funding or functioning of civil society organisations, and provide sources of stable and transparent public funding for CSOs.
- Ensure public participation and meaningful opportunities for input by CSOs during the lawmaking process.
- Pass new legislation or enforce existing measures to truly guarantee a safe working environment for rights defenders and CSOs from physical or verbal attacks and harassment.
- Uphold the right to peaceful assembly and provide proper protection to protesters.

- Ensure accurate and timely transposition of the EU Anti-SLAPP Directive into national law and ensure full enforcement of it, and make sure judges and prosecutors are adequately trained to deal with the threat of SLAPPs.

The EU should:

- Review and ensure that all EU laws comply with the Charter and promote an enabling space for civil society. Ensure a fundamental rights impact assessment and input from the EU Agency for Fundamental Rights in all legislative proposals that have a significant impact on fundamental rights.
- Where national laws threaten civic space, immediately review and fast-track infringement proceedings.
- Create a clear set of standards to address ongoing threats to CSOs' enjoyment of freedom of association.
- Devise and implement mechanisms to protect rights defenders and CSOs that come under attack, including an avenue to directly report such attacks and legal assistance to CSOs so that they may fully defend themselves.
- Ensure that the enforcement of the Digital Services Act, including the delegated acts, and the guidance on systemic risks focuses on the capture of any use to limit civic space, and respond accordingly.
- Ensure that the AI Act fundamental rights impact assessment includes the rule of law impact assessment to limit the capture of civic space and civic discourse.
- Adopt a strong directive on cross-border activities of non-profit associations, protecting their legal status and rights and reducing the legal and administrative burdens on CSOs that engage in activities in multiple Member States.

People from marginalised groups continue to suffer human rights violations

Key findings

- In 2023, respect for the rights of refugees and migrants continued to be a dire issue among Member States where pushbacks were, in many instances, legalised.
- Among some members, there has been a regression in protections for the rights of children, especially unaccompanied minors seeking international protection and children belonging to minority groups.
- In many countries, concerning trends of discrimination were reported indicating that the rights of minority groups, including racial and ethnic minorities, migrants, and LGBTQIA+ persons, continue to be violated.
- Lack of compliance with the recommendations and decisions of human rights bodies and judgments by supranational courts in some member countries persisted in 2023, resulting in worrying gaps in human rights protection, especially for children and detained people.

Last year's report highlighted several concerning trends related to human rights in the EU. These concerns included violations of migrants' and asylum seekers' human rights, especially at border crossings, racism and discrimination against racial minorities and LGBTQIA+ persons, systemic rights violations for persons deprived of their liberty, such as those in mental health establishments, and failures to comply with the decisions of human rights monitoring bodies and international courts. Unfortunately, some of these grave concerns re-emerged in 2023.

This year's report shows four worrying trends. Firstly, several governments continued to propose legislation that threatened the rights and freedoms of refugees and migrants. Secondly,

last year was also marked by the underenforcement of the rights of children, especially unaccompanied minors seeking international protection, ethnic minorities, and children of same-sex couples. Thirdly, our partners in many countries reported continued discrimination against marginalised groups, including racial and ethnic minorities, migrants, and LGBTQIA+ persons, and national authorities often fail to tackle the problem. Lastly, many countries failed, or even refused, to comply with decisions delivered by domestic and supranational courts.

Rights of refugees and migrants

In 2023, several governments continued to propose legislation that threatened the rights

and freedoms of refugees and migrants. In some Member States, these proposals seriously undermined human rights and the rule of law, such as in **Sweden** and **Lithuania**. The latter, according to our member, went as far as legalising the practice of migrant pushbacks at the border this year. Despite human rights agencies, CSOs and national courts questioning the lawfulness of pushbacks, this practice was also reported in **Greece** and **Croatia**, where it was used as an alternative way of border control. An enhanced regime of border protection was also reported by our partner organisation in **Latvia**. Members in **Slovenia** and **Greece** raised concerns about the dire conditions of accommodation facilities meant for people on the move, as well as detention centres which keep detained people out of sight and without access to legal support. Although these activities are troubling and, in many cases, illegal, national authorities charged with protecting migrants' and refugees' rights consistently failed to act. In **Croatia**, the Croatian State Attorney's Office and the Ministry of Interior failed to investigate claims of rights violations or protect the rights of vulnerable migrants and refugees. Countries like **Hungary** demonstrated a poor record of implementation for rulings related to asylum and migration, including those of the CJEU. Other groups attempting to defend the rights of refugees and migrants, like CSOs, have been targeted in countries like **Hungary** by newly proposed legislation designed to limit their activities. The criminalisation of humanitarian work was also reported in **Latvia**.

Rights of children

The year 2023 was also marked by concerning trends regarding children's rights in several countries. **Ireland, Lithuania, Croatia** and **Slovenia** failed to ensure respect for the rights of unaccompanied minors during the migration process. This was due to significant gaps in existing legal safeguards for children seeking international protection. Worrying trends were also reported in **Italy, Croatia** and the **Czech Republic**, where legislation still undermines the rights of children belonging to minority groups, for example, Roma children and the children of same-sex couples. The activities of authorities in **the Netherlands** raise concerns about children's rights, especially regarding children institutionalised for youth or psychiatric care. Concerns about insufficient and inadequate mental health services for children were similarly reported in **Ireland**, where the issue of dysfunctional mental health services for children and young people persisted this year.

Racism and discrimination

In many countries, CSOs reported concerning trends which indicate that the rights of minority groups, including racial and ethnic minorities, migrants, and LGBTQIA+ persons, continue to be violated. In some countries, like **France**, this unequal treatment was exacerbated by the failure of authorities to sufficiently protect minority groups. Despite the Council of State issuing a landmark decision regarding racial profiling, the highest French administrative court decided to take no action and did not use its authority to compel the state to act either. In **Hungary**, the Commissioner for Fundamental

Rights regularly fails to perform their duty and defend fundamental rights against government attacks. In the case of some countries, like the **Czech Republic**, systemic discrimination and marginalisation were the result of state policies themselves. In other countries, like **Slovakia**, laws protecting minorities, like LGBTQIA+ persons, continue to fall short of needed protections, especially for some groups, like transgender people. Even when laws are passed, they often offer meagre support or a dissatisfactory extension of LGBTQIA+ rights, as was the case in **Bulgaria, Lithuania, and Slovakia**. These disheartening legal developments are often coupled with ideological attacks against the LGBTQIA+ community by the political majority in countries like **Italy and Slovakia**.

Compliance with the decisions of international bodies

The lack of implementation of judgments and recommendations by human rights bodies and decisions by supranational courts also remained

a common issue in 2023. In **Lithuania**, several cases pending before the CJEU and ECtHR continued to await resolution. In **Hungary**, likewise, non-compliance with ECtHR rulings is a serious issue, and the country's non-compliance rate is up to 76% (the highest in the EU). **Germany** and **Bulgaria** were cited for their failure to comply with CJEU rulings related to border controls and assigning identity documents to the child of a same-sex couple, respectively. **Ireland** and **Estonia** fell short of complying with human rights monitoring bodies' recommendations concerning the rights of children and detained people. Improvements in the numbers of implemented ECtHR judgments were recorded in **Greece**, however, without a significant substantive implementation of human rights in administrative practice and government policy.

Recommendations

Governments should:

- Immediately implement the rulings of domestic and supranational courts, including those of the Court of Justice of the European Union and the European Court of Human Rights, and comply with the decisions of international human rights bodies.
- Prevent the illegal and inhumane treatment of vulnerable groups such as migrants, refugees, and children.
- Repeal discriminatory laws and discourse regarding LGBTQIA+ persons and adopt laws that guarantee such persons can live their lives with sufficient dignity and protection.

The EU should:

- Convey a consistent message of respect for the rights of refugees and migrants across its Member States by calling on them to fulfil their legal obligations under international and EU law.
- Consider the withdrawal of EU funds dedicated to subsidise the reception of refugees from those Member States that systematically violate their migration and asylum policy related obligations under EU law.
- Consider launching systemic infringement procedures where there are multiple human rights violations having a significant impact on the rule of law and utilise an expedited procedure and request for interim measures.
- Establish a system to effectively monitor the implementation of rights-based judgments of the CJEU including through the creation of a dedicated unit focused on the implementation of judgments. Fast track the process of referral back to the Court in cases of non-implementation.

COUNTRY

REPORTS



LIBERTIES

RULE OF LAW REPORT

2024

BELGIUM

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About the authors

League of Human Rights



For over a hundred years, the Ligue des Droits Humains (LDH) (League of Human Rights) has fought injustices and infringements of fundamental rights in Belgium. LDH educates the public on the status of basic human rights (including institutional violence, access to justice, respect for minorities, women's rights), challenges the political powers on issues concerning human rights, trains adults in their awareness of human rights issues and the law, and brings issues regarding the development of educational tools and training to the attention of education stakeholders. Born in 1901, the League of Human Rights is a non-profit, independent, pluralistic and interdisciplinary organization. It is a movement in which everyone acts with concern and respect for the dignity of all. LDH works on subjects such as youth, prisoners' rights, migrant and refugees' situation and rights, access to justice, economic, social and cultural rights, psychiatric patients' rights, equal opportunities, privacy and diversity. LDH is also a member of the International Federation for Human of Human Rights (FIDH), a non-governmental organization with 192 leagues worldwide.

Key concerns

Generally in 2023, the persistent failure by the executive to respect validly rendered judicial decisions led to a stark situation in the field and was sanctioned by the ECtHR in its 18 July 2023 *Camara v. Belgium* decision. The refusal to comply with court decisions is a very worrisome issue of non-respect for a fundamental element of the rule of law. Regarding

the European Commission's recommendations from the past rule of law report, although (small) steps have been taken to implement the Commission's recommendation to "provide adequate human and financial resources for the justice system", the gap is too wide: the justice system is severely under financed and the effort to enhance society's trust in the good faith of the authorities should be much greater.






In reference to the anti-corruption framework, the adoption of new whistleblower protection legislation and the preparation of new legislation regarding transparency of public documents is a sign of progress. However, both cases are hindered by limitations. In reference to the Commission’s recommendations in this area, the “efforts to strengthen the framework for access to official documents” are not satisfactory, as competent bodies on administrative transparency don’t yet have the ability to issue binding decisions and there are initiatives to unduly extend the restrictions to administrative transparency.

When it comes to media environment and media freedom, the judicial decision in the Rousseau case is a serious backlash for protection of journalists. This is part of a relatively favourable climate in Belgium, because courts on the whole tend to guarantee protection for journalists against SLAPPs. However, there is no mechanism under Belgian law whereby unmeritorious or SLAPP cases can be dismissed at an early procedural stage. LDH is unsure of how developments in this area relate to the European Commission’s recommendations.




Regarding checks and balances, the Belgian State has yet to amend the law to guarantee access to police files in accordance with the ECJ decision. It should also secure that all National Human Rights Institutions comply with the Paris Principles. Finally, it should drop the draft bill limiting prerogatives of the Central Prison Supervisory Board. It is unclear how these developments reflect on the recommendations of the Commission.

Regarding civic space, the fact that a large number of human rights defenders are reporting that they are subject to some forms of attacks and intimidation is concerning. But above all, the fact that Belgian authorities plan to introduce in the Penal Code a new offence of “maliciously undermining the authority of the State” is a clear regression. It is unclear the extent to which these developments relate to the Commission’s recommendations.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
- N/A** Systemic human rights issues

Legend

Regression	No progress	Progress
		

Justice system –

Key recommendations

- *In 2023, the failure by the executive to respect validly rendered judicial decisions led to a stark situation on the field and was sanctioned by an ECtHR severe decision. The refusal to comply with court decisions is a very worrisome issue of non-respect of a fundamental element of the rule of law. The Belgian State should always respect court decisions, even (and above all) those that are unfavourable to it.*
- *The length of proceedings is particularly long in Belgium, which is a cause for concern and subject to multiple condemnations both by international (ECtHR) and national courts. The lack of resources allocated to the justice system being the main reason, it is necessary to provide for massive investment in the judicial sector and give the judiciary control over the management of its budget. The Belgian State should also massively invest in judicial staff to cut down the dramatic backlog of cases in all jurisdictions, with a special attention to the Brussels situation.*
- *The draft bill introducing a security check or screening for magistrates and judicial staff should be dropped. If a screening of magistrates is set up, it should be done by an independent body emanating from the Judiciary (such as the High Council of the Judiciary, for example) and not from the executive, to protect the separation of powers and the rule of law principles.*

Judicial independence

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

At an undetermined date, the Minister of Justice drafted a preliminary draft law (“*avant-projet de loi*”) with the aim of introducing a security check or screening of magistrates and judicial staff.¹ This screening would be done by secret security services. This project was heavily criticized by organisations representing the magistrates. The High Council of the Judiciary (“*Conseil Supérieur de la Justice*”)

1 M. Benayad, [Les magistrats bientôt soumis à un screening pour lutter contre les tentatives de corruption?](#), La Libre, 5 April 2023.

issued a very critical report about the draft bill,² stating that, “The preliminary draft runs counter to the principle of the separation of powers because of the risk of interference by the executive in the operation of the judiciary”, and that, “The preliminary draft raises serious questions about its compatibility with Article 6 §1 of the European Convention of Human Rights.” Faced with opposition, the Minister of Justice amended the draft bill, but unconvincingly, as the High Council of Justice reiterated its opposition despite the modifications that were made.³ The League of Human Rights is of the opinion that this draft bill should be dropped. If a screening of magistrates is set up, it should be done by an independent body emanating from the judiciary (such as the High Council of the Judiciary, for example) and not from the executive, to protect the separation of powers and the rule of law principles.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Access to justice is a fundamental principle of the rule of law. Yet, it remains complicated in Belgium, despite the fact that the Constitution expressly states that everyone has the right to legal aid, and that the legislature cannot infringe this right.⁴ A new worrying trend in this regard developed recently in Belgium: the increased use of unilateral applications (“*requêtes unilatérales*”). A unilateral application allows legal action to be brought in urgent matters or where there is no identified adversary.⁵ Unilateral applications are therefore possible for very specific and uncommon procedures, and are subject to strict conditions. It should consequently remain relatively rare. The League of Human Rights has observed a trend in recent months of the use of unilateral applications, particularly in housing matters which can lead to the eviction of inhabitants,⁶ and in labour law related disputes. The Delhaize case is the most recent and emblematic: last spring, the company’s management filed a unilateral application with the courts to obtain

2 [Conseil Supérieur de la Justice, Avis - Avant-projet de loi introduisant une vérification de sécurité au sein de l'ordre judiciaire et de l'administration pénitentiaire, Approuvé par l'Assemblée générale du Conseil supérieur de la Justice 18 October 2023.](#)

3 [Conseil Supérieur de la Justice, Avant-projet de loi introduisant une vérification de sécurité au sein de l'ordre judiciaire et de l'administration pénitentiaire, 20 October 2023.](#)

4 [Plateforme Justice pour tous, Mémoire à destination des Présidentes et Présidents de partis, 17 July 2023; Liberties Rule of Law Report 2022, p. 50.](#)

5 Art. 584 of the Judicial Code.

6 [Ligue des droits humains, La LDH dénonce le recours abusif aux requêtes unilatérales: on ne juge pas une affaire sans en entendre les deux parties, 15 November 2023.](#)

a ban on picketing during a strike in Delhaize shops and depots in the region.⁷ The ban was imposed by an order of the Brussels Court of First Instance and, even more worryingly, applied in the entire country. In this context, the Federal Institute for Human Rights, an independent public institution established and funded by Parliament, pointed out that “the unilateral application procedure undermines the protection of the right to strike and the right to take collective action.”⁸

For its part, the Council of Europe’s European Committee of Social Rights noted back in 2011 that unilateral applications were being misused to prohibit collective action in Belgium.⁹ The League of Human Rights points out that abusive recourse to the unilateral procedure undermines several fundamental principles, such as the right of access to court, the right of defence and the right to a fair trial. Unilateral applications must remain the exception rather than the rule, and this requires a serious examination of their admissibility by the courts, especially when

fundamental rights are at stake, such as the right to housing and the right to strike. Faced with these problematic interpretations by some courts, Belgian authorities should clarify the legislation and reaffirm the exceptional nature of this procedure.

There is also a blind spot in terms of access to justice in penal cases regarding procedural compensation (“*indemnités de procédure*”). This procedural indemnity is a lump-sum payment that must be paid to the successful party.¹⁰ It hinders access to justice in some cases, such as complaints for police violence that are dismissed by the courts due to a systemic problem in this area.¹¹ Judges should enjoy more freedom in determining the amount of the procedural fees imposed on defendants and should therefore be able to set procedural costs outside the confines of the amount in dispute, in order to limit one of the obstacles to access to justice.¹² In addition, there is no reason why public authorities should be immune from paying these indemnities when they are unsuccessful: they should also be able to be ordered

7 J.F. Noulet, Conflit social chez Delhaize, recours à la justice et aux huissiers : que dit le droit?, RTBF, 12 April 2023.

8 Institut fédéral des Droits humains, Les procédures sur requête unilatérale portent atteinte au droit de grève, 23 May 2023.

9 European Committee of Social Rights, Confédération Européenne des Syndicats (CES)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats chrétiens de Belgique (CSC)/Fédération Générale du Travail de Belgique (FGTB) c. Belgique, Réclamation n° 59/2009, Rapport au Comité des Ministres, Strasbourg, 16 September 2011.

10 Art. 1022 of the Judicial code.

11 On this issue, see Liberties Rule of Law Report 2022, pp. 75-77; S. Simon and M. Lambert, Violences policières: pour des mécanismes de plainte accessibles, efficaces et indépendants, Rapport Police Watch, April 2022.

12 Regarding the issue of the shortcomings of access to justice in Belgium, see the work of the ‘Plateforme Justice pour tous’.

to pay these indemnities where appropriate. It's a question of equality of the parties.¹³

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

At an undetermined date, the Minister of Justice drafted a preliminary draft law (“*avant-projet de loi*”) with the aim to introduce a general legal framework for the use of videoconference in civil and criminal matters. It is intended to be applied to all legal proceedings and to all courts of the judicial system. Both the High Council for the Judiciary and the Federal Institute for Human Rights issued reports stating that it is positive that the legislature wishes to provide a legal framework for the use of videoconferencing in order to respect the principle of legality.

However, the preliminary draft itself gave rise to serious objections, both in principle and in practice. For instance, the guarantees of a fair trial set out in the European Convention for Human Rights are insufficient, especially in penal cases.¹⁴ The guarantees of a fair trial

require the State to provide the necessary resources to ensure that hearings are open to the public and that litigants and the public have access to the courts, including persons who have to be transferred, the elderly or persons with disabilities. This applies to both external mobility (public transport) and internal mobility (ramps, equipment, etc.). Furthermore, as noted by the High Council for the Judiciary,

“According to the case law of the ECHR, the right to a fair trial (Art. 6 ECHR) includes in particular the right to access to the judge and to public hearings and, consequently, the right to participate effectively in the trial, which presupposes the existence, at a given stage of the proceedings, of a right to participate physically in the trial and thus, to be present in the courtroom. Hearings by videoconference are therefore possible, but not at every stage of the proceedings or throughout the proceedings.”¹⁵

Another critical point is the possibility to prevent an individual from physically appearing if there is a serious and concrete risk to public safety, without defining this concept of public safety in the draft bill, raising concerns it could lead to a ban on physical participation in the trial for certain kinds of defendants.¹⁶

13 S. Benkhelifa et D. Tatti, ‘Indemnité de procédure à charge de la partie civile : quand la procédure pénale compromet le respect des droits fondamentaux’, *Journal des Tribunaux*, 21 October 2023, n° 6955, p. 573.

14 Conseil Supérieur de la Justice, *Avis sur l’avant-projet de loi portant organisation des audiences par vidéoconférence dans le cadre des procédures judiciaires*, 16 March 2023.

15 *Ibid.*, p. 4.

16 Institut fédéral des Droits humains, *Avant-Projet de loi portant organisation des audiences par vidéoconférence dans le cadre des procédures judiciaires*, Avis n° 3/2023, 31 January 2023.

The right of access to a judge must be concrete and effective, not theoretical or illusory. It is therefore necessary to create conditions that enable all courts to dispense justice in a humane manner and within a reasonable time. In certain areas, particularly criminal law, the right to appear in person is a fundamental right recognised by the Constitutional Court.¹⁷ The accused should therefore always be able to appear in person, assisted by his or her lawyer, unless he or she expressly waives this right. The use of videoconferencing poses a number of difficulties¹⁸ and does not appear to be an acceptable alternative to holding hearings. Furthermore, the use of videoconferencing does not guarantee the public nature of hearings, which is an essential democratic guarantee protected by the Constitution and raises a number of data protection issues. In conclusion, because of the infringement of the right to a fair trial and the unresolved data protection issues, the use of videoconferencing should be prohibited in courtrooms, except in strictly defined exceptional cases and never in contradiction with the right to a fair trial.

Fairness and efficiency of the justice system

Length of proceedings

The available data show that the length of proceedings is particularly long, which is a cause for concern. This phenomenon is not recent, Belgium has already been condemned several times by the ECtHR for violation of the right to be tried within a reasonable time.¹⁹ In September 2023, the ECHR once again severely condemned the Belgian authorities in its *Van den Kerkhof v. Belgium* decision.²⁰ In this instance, the case was lodged in 2015 and is due to be decided on appeal in 2026. Domestic courts have also condemned the Belgian State for the same reasons: the Ligue des familles, an NGO defending rights of parents and families, has brought an action for liability against the Belgian State because of the extent of the judicial backlog affecting Belgian courts. It led to a decision by the Brussels Civil Court ordering the Belgian State to publish all vacant positions in order to comply with the legal framework for

17 C.C., Judgment n° 76/2018, 21 June 2018.

18 It also raises concerns about the loss of quality of the remote hearing. Replacing a plea hearing with a remote hearing means abandoning human justice and introducing biases into the orality of the debate that pervert its effectiveness. See Council of State, Judgments n° 254.655 and 254.656 of 3 October 2022.

19 In the case of *Bell vs. Belgium*, the European Court of Human Rights condemned Belgium for the excessive length of civil proceedings in Belgium (ECHR, *Bell v. Belgium*, 4 November 2008, 44826/05). As noted by the Federal Institute for Human Rights in July 2022, this condemnation was handed down in 2008 and has not yet been implemented (Institut fédéral pour les droits humains, Communication au Comité des ministres du Conseil de l'Europe concernant l'affaire *Bell c. Belgique*, 29 juillet 2022). See Comité des Ministres, Résolution intérieure CM/ResDH(2021)103 – Exécution de l'arrêt de la Cour européenne des Droits de l'Homme: *Bell contre la Belgique*, 9 June 2021, 1406e réunion des Délégués des Ministres.

20 ECHR, *Van den Kerkhof vs. Belgium*, 5 September 2023.

magistrates, court clerks and other administrative staff.²¹

The situation is so dramatic that the press reported that some cases have been postponed until 2040.²² The lack of resources allocated to the justice system is one of the main reasons for the length of proceedings: resources allocated to the judiciary do not guarantee its independence. The only constitutional and consistent power against the executive is the judiciary. However, successive federal governments have considerably weakened it, which constitutes a danger for democracy as a whole. As the European Commission states, “the lack of human and financial resources remains a challenge for the judicial system”.²³

Finally, it should be noted that the Flemish Minister of Justice, followed by her political party, have announced their intention to de-federalise the judiciary during the next parliamentary term after the following general elections if they enter the federal government.²⁴ In view of the catastrophic situation described above, this position seems to be the last of the

priorities and could even have a negative impact on the overall situation. Furthermore, if this were to be seriously considered, the legislature could not under any circumstances do without an impact analysis in terms of respect for human rights. In conclusion, the Belgian State should invest massively in judicial staff in order to reduce the dramatic backlog of cases in all jurisdictions, with particular attention to the situation in Brussels.

Execution of judgments

The past legislature has seen the accentuation of a particularly worrying trend in Belgium, that of the failure of the political authorities to respect court rulings, and even assume the fact that it does not respect them. Indeed, non-compliance with validly rendered judicial decisions has reached levels never before seen in the country. This is a very worrying failure to respect a fundamental element of the rule of law. One example is the catastrophic situation of the reception policy for asylum seekers, which led to a wave of hundreds of applications to the European Court of Human Rights,

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- 21 L. Wauters, ‘Arriéré au tribunal de la famille: l’Etat belge condamné’, *Le Soir*, 19 December 2023; Ligue des Familles, Arriéré judiciaire au Tribunal de la Famille et de la Cour d’appel : l’État belge condamné en justice, 19 December 2023.
- 22 J.F. Noulet, L. Van de Berg and T. Denis, “Ce dossier fiscal attendra 2040 pour être plaidé devant la cour d’appel de Bruxelles: ‘Je ne serai sans doute plus avocat’”, RTBF, 13 December 2023.
- 23 Commission européenne, Rapport 2022 sur l’Etat de droit – Chapitre consacré à la situation de l’état de droit en Belgique, Luxembourg, 13 July 2022, SWD (2022) 501 final, p. 4.
- 24 A. Roctus and S. Sottiaux, De defederalisering van justitie Een rechtsvergelijkende en rechtspolitieke studie, Larcier Intersentia, 2023 ; X. Van Gils, La délicate question de la régionalisation de la justice, *La Tribune*, n° 211; Belga, La Justice sera-t-elle bientôt défédéralisée? La N-VA veut entamer les discussions, *Le Vif*, 14 September 2023

ultimately resulting in a severe condemnation of the Belgian State in this area.²⁵ The Court criticised the fact that the Belgian authorities had not “simply” delayed but had manifestly refused to comply with the injunctions of the domestic courts.²⁶ Indeed, Belgium had also previously been condemned more than 7,000 times by its own courts. Despite this, the fines were not paid and the vast majority of those concerned remained on the streets.

An internal court ruling on 7 June 2022 called into question the government’s “deliberate, concerted and persistent practice” of not granting accommodation rights to asylum seekers.²⁷ This behaviour, repeated hundreds of times, compromised the administration of justice to the extent that the court accused the executive of organising “the destabilisation of a jurisdiction of the judiciary”.²⁸ In a joint note with Myria, the Federal Migration Centre, the Federal Ombudsman, the Delegates general for children’s rights and the Federal Institute for the Protection and Promotion of Human

Rights sounded the alarm on the crisis of the reception of asylum seekers.

They declared that “the situation regarding the reception of asylum seekers is extremely worrying (...). The law and the rule of law are being flouted”.²⁹ In this case, the Belgian State is clearly violating its obligation and its attitude is in flagrant contradiction with one of the basic concepts of the rule of law. It is all the more worrying because this attitude is repeated, assumed and risks spreading among the organs of the state: indeed, despite the suspension by the Council of State of her decision to no longer provide reception places for single men,³⁰ the Secretary of State for migration has publicly and forthrightly declared that she will not abide by the decision of the highest administrative court.³¹ Consequently, it is absolutely fundamental and extremely urgent that the Belgian State complies with all valid decisions handed down by the judiciary, even (especially) when they are unfavourable.

25 ECHR, *Camara v. Belgique*, 18 July 2023. See Institut fédéral des Droits humains, Crise de l’accueil : la Belgique viole le droit à un procès équitable, 18th June 2023.

26 Institut fédéral des Droits humains, Les condamnations en suspens pour l’État belge affaiblissent l’État de droit, 13 June 2023

27 A. François, Un tribunal bruxellois soupçonne Sammy Mahdi de violer sciemment le droit à l’accueil, VRT, 14 June 2022.

28 G. Derclaye and M. Biermé, Chaos migratoire: Fedasil condamnée pour procédures “abusives”, Le Soir, 28 October 2022; J.F. Noulet and M. Joris, Explosion des requêtes unilatérales à l’encontre de Fedasil : le Tribunal du travail est débordé et critique Fedasil, RTBF, 25 May 2022.

29 Institut fédéral des Droits humains, Recommandations pour résoudre la crise de l’accueil, 21 December 2022.

30 C.E., Judgment n° 257.300 of 13 September 2023.

31 U. Santkin, Crise de l’accueil : malgré le camouflet du Conseil d’Etat, de Moor maintient le cap, Le Soir, 13 September 2023.

Anti-corruption framework

Key recommendations

- *Belgian authorities should grant to all state bodies responsible for the transparency of public administration the competence to issue binding decisions (at federal, regional and community levels). It should also not extend unduly the restrictions already in place to administrative transparency.*
- *Belgian authorities should rationalize the particularly complex system that has been set up in the field of whistleblowers protection, for example, by delegating this competence to a single authority.*

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

At present, various administrative authorities are excluded from the scope of application of certain provisions of the Act of 11 April 1994 on the publicity of the administration,³² thereby exempting them from the obligations of transparency as well as from appropriate

means of appeal. This law must be amended so that all administrative entities are subject to it, including multi-municipal police forces, ministerial offices and certain institutions and agencies created by the public authorities.³³ A Commission for access to administrative documents (Commission d'accès aux documents administratifs – CADA), an administrative authority charged with examining the authorities' refusals to grant access to documents, merely issues opinions which does not make it possible to ensure the effectiveness of the right of access to administrative documents conferred by article 32 of the Constitution.³⁴ At the federal level, as at other levels, the CADA must be able

32 M.B. 30 June 1994.

33 [Avis de la Ligue des Droits Humains et de la Liga voor mensenrechten sur la proposition de loi du 6 avril 2021 modifiant la loi relative à la publicité de l'administration du 11 avril 1994 afin d'introduire une plus grande transparence dans l'usage des algorithmes par les administrations.](#)

34 There is a possibility to contest an administrative decision not to grant access to public information in front of the Council of State. But it means that the applicant must file another legal action, with additional costs and delays, providing that he or she is still within the legal time limit for bringing such an action.

to issue binding decisions.³⁵ Therefore, Belgian authorities should grant to all competent bodies on administrative transparency the ability to issue binding decisions (at federal and non-federal levels). It should also not extend unduly the restrictions to administrative transparency.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

Appropriate whistleblowers protection and support regime is very important for a society where transparency and democratic accountability are essential and everyone's human rights are protected. The federal Parliament passed two laws, one for the private sector³⁶ and the other for the federal public sector,³⁷ which will now provide better protection for whistleblowers. It is undeniably a positive evolution for whistleblower protection.

However, it is regrettable that the system set up by the Belgian authorities is particularly complex, as a lot of different bodies are competent to deal with this issue. Indeed, under this legislation, the Federal Institute for the Protection and Promotion of Human Rights is responsible, among other responsibilities, for providing independent information and advice, as well as support measures for whistleblowers in legal proceedings.³⁸

The Belgian Data Protection Authority (Autorité de protection des données) has been designated as the competent authority to receive alerts under the Act of 28 November 2022 on the protection of individuals who report violations of Union or national law observed within a legal entity in the private sector.³⁹ The Act of 8 December 2022 designated the Standing Police Monitoring Committee (Comité permanent de contrôle des services de police) as an external reporting channel, responsible for receiving

35 In September 2022, the Federal Institute for the Protection and Promotion of Human Rights also called for the federal CADA to be given effective decision-making powers. [IFDH opinion n° 10/2022](#) of 16 September 2022. Various civil society associations, including the LDH, were heard by the Chamber on 23 May 2023 concerning the draft law amending the law of 11 April 1994 on the publicity of the administration and repealing the law of 12 November 1997 on the publicity of the administration in the provinces and communes (DOC 55 3217/001).

See <https://www.liguedh.be/six-propositions-pour-une-veritable-transparence-administrative-au/>

36 Loi du 28 novembre 2022 sur la protection des personnes qui signalent des violations au droit de l'Union ou au droit national constatées au sein d'une entité juridique du secteur privé, M.B. 15 December 2022.

37 Loi du 8 décembre 2022 relative aux canaux de signalement et à la protection des auteurs de signalement d'atteintes à l'intégrité dans les organismes du secteur public fédéral et au sein de la police intégrée, M.B. 23 December 2022.

38 See <https://institutfederaldroitshumains.be/fr/la-legislation-en-matiere-dalerte-et-le-soutien-aux-lanceurs-dalerte>

39 Royal Decree of 22 January 2023 designating the competent authorities for the implementation of the Act of 28 November 2022, M.B. 31 January 2023.

and following up reports of breaches of integrity within the police, the Coordinating Body for Threat Analysis (OCAM) or the General Inspectorate of the Federal and Local Police (AIG).⁴⁰

Finally, ombudsmen at different level of power (Federal, Regional and Community levels) deal

with whistleblowers' reports of breaches of integrity and violations of the law in a professional context.⁴¹ While we can only welcome the positive legislative developments in this area, we can also regret the particularly complex system that has been set up, which risks undermining the effectiveness of the mechanism.

Media environment and media freedom

Key recommendations

- *The decision in the Rousseau case is highly problematic and should lead the legislative power to pass a law reaffirming the prohibition of censorship and that a news article cannot be censored a priori, but only be subject to a posteriori liability claims.*
- *Belgian law should provide for a mechanism allowing the dismissal of unmeritorious or SLAPP cases at an early procedural stage.*

Pluralism and concentration

Levels of market concentration

The media landscape of Belgium is overall positively assessed, and the EU Commission Rule of Law Report did not make specific recommendations to Belgium in this regard. However, the issue of pluralism and

concentration is worth mentioning, as according to the Media Pluralism Monitor (MPM), it is an ongoing issue which slightly worsened since 2023. The issue identified by the MPM is the small and concentrated media markets in BE.⁴² As stated by the Resolution 1003 of the Council of Europe, “News organisations must consider themselves as special socio-economic agencies whose entrepreneurial objectives have

40 See <https://comitep.be/breaches-of-integrity.html>

41 See <https://www.federaalombudsman.be/fr/lanceurs-alerte>

42 See P. Valcke and E. Wauters, *Monitoring media pluralism in the digital era, Belgium*, June 2023. See also J.J. Jaspers, *Concentrations, pluralisme et liberté d'expression*, La Chronique de la Ligue des droits humains, n° 198, March 2022, pp. 12-14.

to be limited by the conditions for providing access to a fundamental right”,⁴³ namely the public’s right to information. It is up to both the media and the public authorities to ensure that limiting journalistic pluralism does not have a negative impact on journalistic ethics and the public’s right to information. The concentration of media markets in Belgium cannot, in any case, lead to a reduction of media pluralism and the freedom of the press.

Safety and protection of journalists and other media actors

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

After making racist remarks about Roma people at a party in Saint-Nicolas, Conner Rousseau, then chairman of the Vooruit party (central left), obtained a court order to prevent the police report of the incident from being published in the press.⁴⁴ The judge ruled in favour of Conner

Rousseau on grounds of privacy and rights of defence. Such a measure is incompatible with the ban on censorship in Belgium. Indeed, Article 25 of the Constitution states that “Censorship can never be established”. Despite this provision and a clear and long-standing position in case law and legal doctrine,⁴⁵ the President of the Court of First Instance in Dendermonde imposed a broadcasting ban on DPG Media, subject to a fine of €1,000 per hour of broadcasting and extending the ban to all media. This decision is outrageous⁴⁶ and should lead the legislative power to pass a law reaffirming the fact that censorship is forbidden and that a news article cannot be censored a priori, but only be subject to a posteriori liability claims. This is part of a relatively favourable climate in Belgium, because courts tend on the whole to guarantee protection for journalists against SLAPPs. However, as noted by Article 19, “Civil as well as criminal law provisions are used to bring SLAPP cases against journalists. In some cases, claimants can request a summary proceeding (injunction) to have a court order to prevent the broadcasting of a report, stop the distribution of a book or magazine, or have

43 Parliamentary Assembly of the Council of Europe, Resolution 1003, *Ethics of journalism*, 1993 - 44th Session - Sixth part, pt. 11.

44 B. Henne, *Belgique : la censure de la presse est établie*, RTBF, 27 October 2023.

45 ECHR, *RTBF v. Belgium*, 29 March 2011 ; B. Frydman et C. Bricteux, ‘L’arrêt RTBF c. Belgique : un coup d’arrêt au contrôle judiciaire préventif de la presse et des médias’, *Revue trimestrielle des droits de l’homme*, 2013, n° 94, pp. 331-350 ; Q. Van Enis, “Observations. Ingérences préventives et presse audiovisuelle : la Belgique condamnée, au nom de la ‘loi’”, *Revue de jurisprudence de Liège, Mons et Bruxelles*, 2011/26, p. 1270.

46 See A. Adam, *L’affaire Conner Rousseau et l’interdiction de la censure, ou la fronde d’un juge*, Justice-en-ligne, 6 December 2023; A. Noppe, *La liberté de la presse en danger en Belgique? “Le jugement dans l’affaire Conner Rousseau est choquant”*, La Libre, 27 October 2023; B. Debusschere, *Conner Rousseau heeft een onrustwekkend gebrek aan respect voor de grondwet en voor de persvrijheid*, De Morgen, 2 October 2023.

online content removed from the Internet”.⁴⁷ As there is no mechanism under Belgian law whereby unmeritorious or SLAPP cases can

be dismissed at an early procedural stage, the Belgian legislature should provide for such a mechanism.

Checks and balances

Key recommendations

- *The draft bill limiting the prerogatives of the Central Prison Supervisory Board (CCSP) should be withdrawn and authorities should not erode the right of complaint of prisoners.*
- *Belgian authorities should follow the Court of Justice of the European Union’s decision by amending the law of 30 July 2018, so that the right of access to police files is fully respected and the limitations finally comply with the European directive.*
- *Belgian authorities should make sure that all human rights monitoring bodies comply with the Paris Principles, especially the more dysfunctional ones (Data Protection Authority, Standing Police Monitoring Committee, Police Information Monitoring Body).*

Independent authorities

The last parliamentary term saw the emergence of a new central player in the fight for respect for human rights through the creation of a Federal Institute for the Protection and Promotion of Human Rights (“*Institut Fédéral pour les Droits Humains*”), following the adoption of the law of 12 May 2019.⁴⁸ This is an undeniably welcome development, given that the international bodies monitoring respect for fundamental rights

have long been urging the Belgian State to respect its commitments in accordance with the Principles relating to the status and functioning of national institutions for the protection and promotion of human rights (known as the Paris Principles). Although the Institute exists today, it still needs to be given the financial, human and legal resources it needs to carry out its tasks, as highlighted by the EU Commission.⁴⁹ For example, it could be given the role of coordinating or monitoring other institutions

47 Article 19, [SLAPPs against journalists across Europe - Media Freedom Rapid Response](#), March 2022, p. 35.

48 Loi du 12 mai 2019 portant création d’un Institut fédéral pour la protection et la promotion des droits humains, M.B. 21 June 2019.

49 See Commission Européenne, [Rapport 2023 sur l’état de droit - Chapitre consacré à la situation de l’état de droit en Belgique](#), Bruxelles, 5 juillet 2023, SWD(2023) 801 final, p. 27. See also Ligue des Droits Humains, [Chiens de garde de la démocratie: mordants ou non?](#), Chronique n° 196, September 2021.

that protect and promote human rights. Such coordination work would make it possible to guarantee a consistent quality of work at the highest levels from these various bodies, in particular the most dysfunctional and/or criticised amongst them (Data Protection Authority, Standing Police Monitoring Committee, Police Information Monitoring Body etc.).⁵⁰ The aim is to ensure that these bodies are able to function properly, particularly in terms of their independence, working methods, human rights expertise etc.

Similarly, in order to avoid a proliferation of competing regional or local bodies, the Institute's remit should be extended to include the monitoring of federated entities.⁵¹ There is currently a centrifugal tendency in terms of human rights protection, which aims in particular to create a series of human rights monitoring bodies at community level, to the detriment of the federal level. For example, UNIA is a well-established monitoring institution that fights discrimination and promotes equality.⁵² In 2022, the Flemish government took the

decision to withdraw from this inter-federal body and to create its own regional monitoring institution, the VRMI.⁵³ Such a trend is open to criticism⁵⁴ and cannot be justified in view of the indivisible and non-geographically variable nature of human rights. In conclusion, the federal government should provide the IFDH with the financial, human and legal resources it needs to carry out its work. It should also make sure that all human rights monitoring bodies comply with the Paris Principles, especially the more dysfunctional ones. Regarding deprivation of liberty, the supervisory body responsible for exercising the surveillance over the deprivation of liberty in prisons, the Central Prison Supervisory Board (*Conseil central de surveillance pénitentiaire – CCSP*), is seeing its prerogatives threatened.

Following a number of critical reports issued by the CCSP on the catastrophic state of Belgium's prisons and prison policies, the government seems to have chosen the path of retaliation by seeking to limit the CCSP's means of action.⁵⁵ The Minister of Justice has

50 Regarding the lack of independence and malfunctioning of these bodies, see Liberties Rule of Law Report 2023, pp. 18-22

51 Or, failing that, a cooperation agreement with the various federated entities should be adopted. See Commission Européenne, Rapport 2023 sur l'état de droit - Chapitre consacré à la situation de l'état de droit en Belgique, Bruxelles, 5 juillet 2023, SWD(2023) 801 final, pp. 26-27.

52 See <https://www.unia.be/en>

53 Vlaamse decreet van 28 oktober 2022 tot oprichting van een Vlaams Mensenrechteninstituut, M.B. 9 November 2022

54 UNIA, Départ de la Flandre : le personnel d'Unia prend la parole, 14 March 2022.

55 Conseil central de surveillance pénitentiaire, Communication du CCSP sur le projet de loi portant modification de la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique du détenu, 31 August 2023.

tabled a draft bill that would both restrict the supervisory role of this body and erode the right of complaint recently opened to prisoners.⁵⁶ In addition to the fact that this step backwards is unacceptable, it is also contrary to Belgium's international commitments.⁵⁷

Therefore, it is imperative that the draft bill limiting the prerogatives of the CCSP be withdrawn.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

On 16 November 2023, the Court of Justice of the European Union handed down a major ruling on access to police data in Belgium.⁵⁸ It was responding to a preliminary question from the Brussels Court of Appeal, which was seeking to ascertain whether citizens can access police databases where they are registered in accordance with European law. The answer is very

clear: Belgium is making an exception to the rule, contrary to the European directive. In the Court's view, the general rule is that citizens should have the right of direct access to these police databases, and the right to appeal to the supervisory authority if this right is restricted. Therefore, Belgian law does not comply with EU law because it does not grant individuals the right to access police databases in which they are registered and does not provide an appeal process when this access is denied. This decision follows a case in 2016, when a person was refused security clearance that he was required to obtain for a job. He was on file for his participation in ten demonstrations, during which he was never prosecuted or arrested. His details appeared in the National Police Data Bank (Banque Nationale Générale – BNG), in which more than three million Belgian residents are registered.⁵⁹ This person wanted to assert his right to access the police databases to find out exactly which demonstrations justified his registration and to check that he had actually taken part in them.

This right to access the information that the police hold in their files is fundamental, as the

56 On the issue of prisoners' right to complain, see, among others L. Teper, [Le droit de plainte des détenus : retour sur un an de pratique](#), Ligue des Droits Humains, État des droits humains en Belgique – Rapport 2021, 26 January 2022, p. 33.

57 Secrétariat du Comité des Ministres, [Communication de la Belgique concernant l'affaire BAMOUHAMMAD c. Belgique](#) (requête n° 47687/13), 23 November 2022, DH-DD(2022)1289.

58 EUCJ, Ligue des droits humains ASBL and [B.A. vs. Organe de contrôle de l'information policière](#), 16 November 2023, Case C-333/22.

59 Indeed, Belgian law provides that police forces can register individuals in its database when there is a "concrete interest" for their missions. Which leads to a massive treatment of personal data by police forces. It can therefore include people who commit an illegal act or even peaceful protesters, if the police considers that there is a legitimate interest. See O. Bailly, [BNG, la Base Non Gérée](#), Médor, 14 April 2021.

processing/use of this data by the police can have far-reaching consequences for the people on file. The League of Human Rights therefore intervened in this case in 2016.⁶⁰ Belgian authorities now have the obligation to follow the Court's decision by amending the law of 30 July 2018⁶¹ so that the right of access is fully respected and the limitations finally comply with the European directive.⁶² As stated by the Court, "where the rights of a data subject have been exercised...through the competent supervisory authority and that authority informs that data subject of the result of the verifications carried out, that data subject must have an effective judicial remedy against the decision of that authority to close the verification process".⁶³

Implementation by the public administration and State institutions of final court decisions

The Secretary of State for Asylum and Migration announced at the end of August 2023 that single male asylum seekers would no longer be temporarily accommodated in the network of the Federal agency for the reception of asylum seekers (Fedasil). NGOs decided to file an administrative complaint against this decision, and the Council of State took the decision to suspend the implementation of the Secretary's decision to no longer offer reception to single male asylum seekers.⁶⁴ The Council of State considered that this decision did not respect the right to reception conferred on all asylum seekers by the law of 12 January 2007.⁶⁵ Despite this decision, the Secretary of State declared that she has no intention of changing course and that she would not respect the Council of State's decision: "The suspension by the Council of State does not mean that we

60 See LDH, [Accès aux bases de données policières : la Cour de justice de l'Union européenne pousse la Belgique à réformer sa loi](#), 20 November 2023.

61 Loi du 30 juillet 2018 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel, M.B. 5 September 2018.

62 Article 17 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

63 EUCJ, Ligue des droits humains ASBL and B.A. vs. Organe de contrôle de l'information policière, 16 November 2023, Case C-333/22, pt. 73.

64 C.E., Judgment n° 257.300, 13 September 2023.

65 Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, M.B. 7 May 2007.

suddenly have places for everyone. So my policy will not change[...].⁶⁶ This decision, from a central figure of the federal government and with the full support of the Prime Minister, is outrageous and in flagrant contradiction with the core principles of the rule of law.⁶⁷

Consequently, it is absolutely fundamental and extremely urgent that the Belgian State complies with all valid decisions handed down by the judiciary, even (and especially) when they are unfavourable.

Civic space

Key recommendations

- *Belgian authorities should imperatively withdraw the draft bill introducing in the Penal Code a new offence of “maliciously undermining the authority of the State”.*
- *Strictly respect the ECJ jurisprudence in the “data retention” case by forbidding blanket surveillance of citizens and by limiting exceptions to the strictly necessary cases, providing sufficient safeguards are put in place.*
- *Belgian authorities should guarantee that human rights defenders are not subject to any forms of attacks and intimidation and, when it is the case, make sure that such cases are investigated efficiently and the perpetrators are held to account.*

Freedom of peaceful assembly

Bans on the use of symbols/slogans in protests

The League of Human Rights has received several converging accounts about the Brussels

police ordering people carrying a Palestinian flag in the street to conceal it. The argument put forward by the police was “the neutrality of public space” - a police innovation that is particularly concerning for civil liberties.⁶⁸ The simple fact of carrying a national flag is covered by freedom of expression and does not in itself

66 Belga, [Asile: le Conseil d’État suspend le refus d’accueillir des hommes seuls](#), L’Echo, 13 September 2023; U. Santkin, [Crise de l’accueil : malgré le camouflet du Conseil d’Etat, de Moor maintient le cap](#), Le Soir, 13 September 2023.

67 J.J. Schmidt, [Migrance et crise de l’accueil : Jean-Marc Picard, sans langue de bois](#), La Tribune, n° 239.

68 See also E. Boever, [Drapeaux palestiniens ou israéliens aux fenêtres, en rue ou au stade : est-ce permis?](#), RTBF, 17 November 2023.

constitute a threat to public order or an incitement to violence or hatred that could justify a ban. The League has therefore written to the Brussels mayor to find out whether there is any instruction from (or relayed by) the commune or police area to this effect and, if so, what the unlikely legal basis is. This letter remains unanswered to this day. Whatever one's position on the situation in Israel, Gaza and the West Bank, limiting the freedom of expression of protesters and passers-by is not acceptable.

Criminalisation of protesters

Activists from the environmental organisation Greenpeace, who broke into the gas terminal of Fluxys, a Belgium-based company, mainly acting as a natural gas transmission system operator, in Zeebrugge on 29 April 2023 to protest against its contribution to greenhouse gas emissions, were found guilty of “intrusion in a port facility” by a criminal court in Bruges, but with the sentence suspended.⁶⁹ No sentence was therefore handed down.⁷⁰ The NGO expressed its relief for the activists, but is also

“concerned about the increasing criminalisation of activism”.⁷¹ As Greenpeace itself puts it,

*“the fact that these people have been found guilty puts pressure on the right to freedom of expression and the right to demonstrate. This verdict could discourage activists, at a time when actions of civil disobedience are more than necessary, in the midst of the climate and biodiversity crisis”.*⁷²

The risk of producing a chilling effect is indeed manifest. Furthermore, the government issued a draft bill with the aim of introducing to the Penal Code a new offence of “maliciously undermining the authority of the State” (*atteinte méchante à l'autorité de l'État*), including incitement to disobey a law. This provision is very worrying and should not be included in the Penal Code. As stated by the IFDH,⁷³ civil disobedience is protected by freedom of expression and can only be restricted in very specific cases. Penalties already exist for these specific cases (for example, incitement to hatred or violence), so the offence of maliciously undermining the authority of the State would not add any value.

69 This conviction is based on art. 546/1 and 546/2 of the Penal Code, namely “intrusion in a port facility”. M. De Muelenaere, Quatorze activistes de Greenpeace condamnés après une action de désobéissance civile, *Le Soir*, 15 November 2023.

70 The “suspension du prononcé”, means that the judge considers that the charges have been established, but suspends sentencing for a specified period of time. See art. 3 to 7 of the Loi, 29 June 1964 concernant la suspension, le sursis et la probation, M.B. 17 July 1964.

71 A. Collard, Activistes jugées coupables mais aucune peine prononcée : “Un soulagement, sur fond de préoccupation pour l'avenir du droit de protester”, Greenpeace, 15 November 2023.

72 Ibid.

73 Institut fédéral pour les droits humains, Projet de loi introduisant le Livre II du Code pénal, Avis n° 12/2023, 5 October 2023, pp. 9-14

There is also a risk that this offence could be used to punish less serious acts such as calls for civil disobedience, which could lead to the criminalisation of certain forms of social protest. In conclusion, the LDH calls on Belgian authorities to withdraw this draft bill.

Surveillance of protests

On 13 June 2023, a coalition of Brussels-based human rights associations⁷⁴ appeared before the Brussels Parliament to call on MPs to take a stand against the use of facial recognition in Brussels.⁷⁵ This technology is not legal in Belgium, but tests have already been carried out by the federal police on several occasions. Moreover, there are no technical obstacles to its use in Brussels. This biometric surveillance technology threatens everyone's fundamental rights and freedoms. The risks associated with this technology are well known:⁷⁶ the use of facial recognition hinders the right to anonymity in the public space,⁷⁷ the right to demonstrate and the freedom of assembly, leading to a "chilling effect". This technology also reinforces existing discrimination, for example against

communities already more widely targeted by police controls. Finally, the risks of leaks and piracy of highly sensitive personal data such as that collected by facial recognition are far from non-existent, especially in Brussels, capital of the European Union, headquarters of NATO and many other institutions.

The coalition asks the Brussels Parliament to adopt a resolution banning the use of facial recognition in the streets of Brussels. It also calls on the Parliament, under the supervision of the competent bodies, to honour its commitments and ensure greater transparency on these surveillance practices.⁷⁸

Attacks and harassment

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

Alexis Deswaef, a lawyer and former President of the League of Human Rights, was summoned to appear before the Brussels Criminal

74 See <https://www.protectmyface.be/>.

75 See LDH, [Plusieurs associations s'invitent au Parlement bruxellois pour revendiquer l'interdiction de la reconnaissance faciale](#), 12 June 2023.

76 See European Digital Rights, [Ban Biometric Mass Surveillance - A set of fundamental rights demands for the European Commission and EU Member States](#), 13 May 2020.

77 The right to anonymity in the public space has no legal basis per se, but derives from the right to privacy.

78 See [Parlement de la Région de Bruxelles-Capitale, Examen de la pétition contre l'usage de la reconnaissance faciale en Région de Bruxelles-Capitale, Rapport fait au nom de la commission des Affaires intérieures par M. Hicham TALHI](#), 13 June 2023, A-719/1 – 2022/2023.

Court as part of an appeal procedure initiated after his initial acquittal in 2021.⁷⁹ The case was brought by a police commissioner for the Brussels Capital-Ixelles area, who accused Alexis Deswaef, now vice-president of the International Federation for Human Rights (FIDH), of harassment and insult between 2008 and 2016. The charges were based on comments made by Alexis Deswaef in the media and on social networks in his capacity as a lawyer and as President of the LDH. His critical views of the police and of the divisional commissioner in charge of managing the demonstrations in Brussels fell within the scope of freedom of expression, which guarantees an independence that is essential to the defence of human rights and the fight against police violence. Commissioner Vandersmissen first lodged a complaint against Alexis Deswaef in 2016. After a detailed examination and an in-depth investigation, the prosecutor dismissed the complaint in 2019. The commissioner then took the initiative of summoning Alexis Deswaef to appear before the Brussels criminal court using a special procedure known as ‘direct summons’. On 15 July 2021, the Brussels Criminal Court acquitted Alexis Deswaef. As for the charges of

contempt, the court ruled clearly that the comments made fell within the scope of freedom of expression. Commissioner Vandersmissen has decided to appeal against this ruling. Incomprehensibly, this time he was followed by the public prosecutor.

This procedure⁸⁰ is a perfect illustration of the democratic problem of SLAPPs, abusive procedures aimed at silencing or intimidating human rights defenders. The country’s police authorities and the public prosecutor’s office send out the wrong signal with this judicial relentlessness against a human rights defender. Belgian authorities should refrain from persecuting legitimate human rights defenders.

Other

The Federal Institute for Human Rights (IFDH) conducted a survey of over 150 human rights organisations in Belgium. The findings show that half of the human rights organisations surveyed have been subjected to attacks and intimidation. Nearly one in seven say they censor themselves in response to pressure.⁸¹ Among the most striking findings of the

79 See LDH, *Suite du procès pour harcèlement et outrages contre Alexis Deswaef : l’ancien président de la LDH jugé en appel à Bruxelles*, 28 November 2023; M. Benayad, *Procès du policier Pierre Vandersmissen contre l’avocat Alexis Deswaef : la cour d’appel tranchera le 12 janvier*, *La Libre*, 30 November 2023, Belga, *Le procès en appel du commissaire Pierre Vandersmissen contre l’avocat Alexis Deswaef plaidé ce jeudi*, RTBF, 28 November 2023.

80 The final judgment was delivered in 2024. <https://www.liguedh.be/alexis-deswaef-acquitte-dans-le-proces-que-lui-a-intente-le-commissaire-de-police-vandermissen/>

81 Institut fédéral des Droits humains, *Première enquête sur les pressions subies par les organisations de défense des droits humains en Belgique : plus de la moitié des organisations interrogées ont subi des intimidations et agressions*, 5 December 2023.

survey, there is the fact that more than half of the human rights organisations questioned said that they had been attacked and intimidated at least once between 2020 and 2022. In the majority of cases, this involved legal intimidation (bringing or threatening to bring legal action without justification). More than one in five say they have been subjected to defamation campaigns, and nearly one in five have been hit at least once by a targeted cyber-attack.

Online civic space

Digital surveillance

In February 2023, the League of Human Rights lodged an appeal with the Constitutional Court against the Data Retention Act of 20 July 2022.⁸² This is now the third time that the LDH has referred this “data retention” issue, which governs the retention of citizens’ metadata, to the Constitutional Court. While the analysis of metadata can be a tool in the fight against serious crime, this third law on data retention establishes an imbalance between this security objective and the violations of our individual freedoms. With regard to the two previous versions of the Data Retention Act, the Constitutional Court and the Court of Justice of the European Union ruled that the massive retention of the metadata of all Belgian

citizens constituted a violation of the right to privacy. The laws had therefore been annulled.⁸³ In June 2022, the Federal Parliament passed a third version of the Data Retention Act, introducing differentiated retention. From now on, data may only be retained in certain sensitive areas. The government has developed various geographical criteria, such as places with a high crime rate and crucial institutions (e.g. airports, railway stations, hospitals, schools, border municipalities, motorways, municipalities with military barracks, universities, etc.), resulting in virtually complete coverage of Belgian territory. In these regions where data is stored, every citizen is permanently considered a potential suspect. As a result, a huge amount of their data is stored and no fewer than 10 authorities have access to it.

The number of areas reported is so high that this leads to de facto general retention and once again ignores the observations of the Constitutional Court and the European Union Court of Justice. The League is therefore challenging this law before the Constitutional Court, because it does not respect the safeguards set out by the European Court of Justice in terms of privacy protection.⁸⁴ The fight against crime does not legitimise mass surveillance or the treatment of every individual as a potential suspect.

82 Loi du 20 juillet 2022 relative à la collecte et à la conservation des données d’identification et des métadonnées dans le secteur des communications électroniques et à la fourniture de ces données aux autorités, M.B. 8 August 2022.

83 See C.C., 11 June 2015, n° 84/2015; C.C., 22 April 2021, n° 57/2021. See also Liberties Rule of Law Report 2023, pp. 27-29.

84 See LDH, La Ligue des droits humains introduit un recours contre la loi “data retention” devant la Cour constitutionnelle, 9 February 2023.

LIBERTIES

RULE OF LAW REPORT

2024

BULGARIA

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**BULGARIAN
HELSINKI
COMMITTEE**



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About the authors

Bulgarian Helsinki Committee



The Bulgarian Helsinki Committee (BHC) is an independent, non-governmental, not-for-profit civil society organisation for defending fundamental human rights in Bulgaria: political, civil, cultural, and social. It was established in 1992. Among other things, the organisation has a legal programme responsible for strategic litigation cases and participation in consultation or as *amicus curiae* before national and international bodies and institutions.

Key concerns

In the area of justice, the Parliament adopted a law establishing a mechanism for independent investigation of the Chief Prosecutor and their deputies. The Constitution was amended, splitting the Supreme Judicial Council into two separate councils, and ensuring judicial independence via the majority of judges elected by the judges. Significant progress has thus been achieved, yet it falls short of being satisfactory in light of all the key concerns identified in the European Commission's 2023 Rule of Law Report. The functioning of the Inspectorate to the Supreme Judicial Council was left unaddressed. Furthermore, key high-level corruption cases, which imply

the complicity of magistrates, have not made substantial headway.





As regards checks and balances, progress in public consultations was evident, though primarily for pieces of legislation deemed less important. The understandable focus on judicial reform hindered progress with parliamentary appointments for numerous bodies, whose members are serving past their term of office. The reluctance of courts and the Prosecutor's Office to act upon authorities' failure to implement judicial decisions of administrative courts has become increasingly apparent. Furthermore, the voting rights of prisoners and persons under guardianship remain limited, as does the right to political agitation in a minority language.

In 2023, the authorities continuously refused to register non-governmental organisations (NGOs) due to nationalistic aspirations. Additionally, there was harassment of same-sex couples and Sofia Pride organisers by the Prosecutor’s Office, as well as attacks against peaceful assemblies of the LGBTI community. All these incidents went without a prompt and appropriate response from the authorities.




The year saw two key instances of challenging European oversight in the face of decisions from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). National authorities failed to implement key judgments and legal standards in relation to people with mental disabilities, the Roma community, trans people and same-sex families. The Criminal Code was amended to include sexual orientation as a ground for increasing

the penalty for hate crimes, but the inclusion of gender identity and its expression were rejected.

State of play (versus 2022)

-  Justice system
- N/A** Anti-corruption framework
- N/A** Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system

Key recommendations

- ***Urgently reform the inspectorate of the Supreme Judicial Council and hold a procedure for the election of new inspectors.***
- ***Urgently hold a transparent procedure for new members of the Supreme Judicial and the Supreme Prosecutorial Councils.***
- ***Ensure transparent election of a new Chief Prosecutor after the creation of separate councils.***

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

In May, Parliament adopted a law, as part of the rule of law commitments under the Recovery and Resilience Plan, establishing a mechanism for the effective accountability and criminal liability of the Chief Prosecutor (CP) and their deputies, as well as judicial review of prosecutorial decisions not to open an investigation.¹

The legislative package, among other things, introduces a new chapter (Chapter 31a) in the Criminal Procedure Code (CrPC) dedicated to a new procedural actor, an independent ad hoc prosecutor charged with investigating the CP and their deputies. The law also contains amendments to the Judicial System Act (JSA). The amendments provide, inter alia, that this ad hoc prosecutor, is to be appointed from a list of judges of the Supreme Court of Cassation (criminal chamber), appellate and regional courts (criminal divisions).

Amendments in the JSA introduce a separate system for the random selection of judges to be appointed as ad hoc prosecutors (Article 112 § 6 of the JSA). After its enactment, subsequent bills targeted various imperfections and omissions in

the initially adopted law. Key among these were missing references in the law to an ad hoc prosecutor for investigation of the deputy CPs,² as well as missing references to the separate system for random selection.³ Following these amendments, the first ad hoc prosecutor, Daniela Taleva, was appointed by the Supreme Judicial Council (SJC) in December to investigate allegations against former deputy CP and current interim CP, Mr. Borislav Sarafov.⁴ In a hearing before the SJC in November, Ms. Taleva stated that she would need a separate clerk and premises that ensure her independence and allow her to avoid direct contact with the person(s) investigated.⁵ She also noted the lack of clarity on who will approve her vacation days if needed and whether it will be necessary for the investigative police officers working on the case to be specially appointed — all these aforementioned issues lacking a legal framework.⁶

Irremovability of judges, including transfers, dismissal and retirement regimes of judges, court presidents and prosecutors

In 2023, Bulgaria took no steps to adapt the relevant legislative framework to avoid long-term secondment of judges to fill in vacant positions. Despite amendments in the JSA regarding secondments of prosecutors, the issue of the secondment of judges wasn't

1 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=195264>

2 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=200114>

3 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=198326>

4 <https://defakto.bg/?p=127285>

5 <https://defakto.bg/?p=126771>

6 <https://defakto.bg/?p=126771>

discussed further, pending the more pressing issue of amending the constitution. Certain proposals regarding the secondment of judges were published in October by the Institute for Market Economics.⁷ By the end of January 2024, a working group had been formed in the Ministry of Justice for amendments to the JSA following the constitutional amendments, but no public information is available on whether—in addition to the issue of separating the SJC into two councils—the secondment of judges is discussed as well. Several civil society organisations known for advocating for the judicial reforms, including the Bulgarian Helsinki Committee, were not invited to participate in the working group.

Independence (including composition and nomination of its members) and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

In 2023, significant changes were made to the legal framework governing the structure of the Supreme Judicial Council (SJC). A draft law proposing amendments to the constitution was introduced in July. In a rush to pass the bill before the end of the year, many Members of Parliament submitted proposals for amendments to the draft on the 14th and 15th of December. When the final vote took place on 20 December, there was scarcely any time left for substantial public consultation on the proposed

changes. The final text was promulgated in the State Gazette on 22 July.⁸

The key changes in relation to the judiciary include the separation of the SJC into two councils — the Supreme Judicial Council and the Supreme Prosecutorial Council, replacing the previous unified council with two chambers. The roles of both the Prosecutor's Office and the National Investigation Service within the judicial branch have been clearly defined. The competence of the Chief Prosecutor (CP) to execute methodological guidance and legality supervision of all prosecutors has been removed. The CP's term of office has been limited to a single five-year term. Additionally, an ad hoc prosecutor tasked with investigating the CP or their deputies has been granted the power to propose to the SJC to temporarily suspend the CP, among other changes.

To balance representation of judges elected by judges and safeguard the independence of the judiciary, the amendments envisage the following changes:

Firstly, the new Supreme Judicial Council will be composed of 15 members. This includes the presidents of the two supreme courts: the Supreme Court of Cassation and the Supreme Administrative Court. Eight members will be elected directly by judges, while the remaining five members will be elected by Parliament.

7 <https://defakto.bg/?p=125150>

8 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=202060>

The new Supreme Prosecutorial Council will consist of 10 members. The Chief Prosecutor (CP) will be a member by virtue of their position (*ex lege*). Two members will be elected directly by prosecutors, one member will be elected by investigators in the National Investigation Service, and the remaining six members will be elected by Parliament with a two-thirds majority.

In both councils, Parliament is prohibited from electing acting prosecutors or investigators as members (Article 130a § 3). Members of the councils are not eligible for immediate re-election after serving one term (Article 130a § 5).

Due to the amendments to the SJA in July, the members of the SJC selected from among the judges in 2022 never entered into office. Instead, the amendments established a timeframe for initiating the procedure for selecting and appointing new members to the newly created councils. This timeframe is set to six months from the date entry into force of the law (14 August 2023).

In November 2023, journalists uncovered information through a Freedom of Information (FOI) request that indicated an irregularity in the voting process for the selection of new judge representatives in the SJC in June 2022. The data revealed that 200 votes were cast through the system designated for judge voting, despite only 28 judges entering the Supreme Administrative

Court's building where the voting session was held. The Bulgarian Helsinki Committee's calls⁹ for the resignation of Georgi Cholakov, the President of the Supreme Administrative Court, and the members of the SJC, were met with no response.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Following a bizarre series of events, including an alleged assassination attempt using a bomb and publicly available tapped recordings of his conversations with a member of the SJC, the CP Ivan Geshev was dismissed by the SJC¹⁰ and his deputy Borislav Sarafov was appointed as interim CP. On 8 June, during the process of Mr. Geshev's removal, Ognian Damyanov, a member of the SJC, disclosed that he, along with five other council members who had submitted requests for Mr. Geshev's dismissal, had been summoned to the prosecutor's office. Damyanov interpreted this summons as a response to their dismissal motions and viewed it as an abuse of power.¹¹

In July, the interim CP, Sarafov, made significant remarks about a scandal known as 'The Eight Dwarfs'. This scandal is named after a restaurant owned by Petar Petrov, the former head of the investigative prosecutorial service of Sofia, who is now an attorney. The

9 <https://www.bghelsinki.org/en/news/2023-11-09-press-sac-sjc>

10 <https://defakto.bg/?p=119551>

11 <https://defakto.bg/?p=120714>

Anti-Corruption Fund, a non-profit organisation, brought this scandal to light in 2020.¹² It involves an alleged criminal network, led by Petrov (also known as ‘The Euro’), which is believed to wield undue influence over several public institutions. This group interfered in a legal dispute among the co-owners of a company that manufactures elevators. In March 2023, the Prosecutor’s Office decided not to initiate criminal proceedings, but this decision was overturned by the court. In his July statements to the SJC, Sarafov strongly criticised the former CP, Ivan Geshev, for his negligence in addressing severe legal infractions when overseeing the return of high-value items used as evidence in the case.¹³ The following August, the Prosecutor’s Office declared that a prosecutor, indeed Petrov himself, along with Petrov’s ex-wife, were formally charged with embezzlement of evidence under Article 215 § 1 of the Criminal Code. They also announced that Petrov is currently missing and has been declared wanted.¹⁴ However, the Anti-Corruption Fund voiced its dissatisfaction with the case’s progression, pointing out that Sarafov has served as Geshev’s deputy for years and is demonstrably connected to the case. A spokesperson for the organisation expressed concern that Sarafov’s appointment as interim CP could potentially obscure the involvement of a broader spectrum of dependent magistrates associated with the criminal group. This

could also lead to the silencing of critical witnesses or restrict their testimonies to selected topics. The spokesperson further observed that the case presents an opportunity to reform the prosecution, an opportunity that, regrettably, is not being seized.¹⁵ In August, Sarafov sent seven proposals to the SJC Prosecutorial College to impose disciplinary sanctions on four prosecutors and three investigators in the case.¹⁶

Other

In November, Advocate General (AG) Sánchez-Bordona delivered his opinion in CJEU Case C-634/22 regarding the abolition of the Specialised Criminal Court in 2022. The Bulgarian Specialised Criminal Court (and respective Specialised Prosecutor’s Office, Court of Appeals and Appellate Prosecutor’s Office) was established in 2010 by the Parliament with a majority of the GERB party, at odds with the parliamentary opposition. The official reasoning was that this court is to prosecute white collar and very serious crimes (like terrorism). Subsequently, the court was involved in several corruption scandals publicised by investigative journalists. The case before the CJEU is brought by judges of the Specialised Criminal Court questioning the compatibility of the abolishment of that court with the EU law. The AG’s opinion is

12 https://youtube.com/playlist?list=PLlytu5IULkSIZ8n_7fEY52fYqi5KHRIUS&si=9BBEnweXki_uyp_D

13 <https://defakto.bg/?p=120895>

14 <https://defakto.bg/?p=122912>

15 <https://defakto.bg/?p=123195>

16 <https://defakto.bg/?p=123313>

that Article 19(1) TEU does not preclude a reform of the judicial system of a Member State, according to which a specialised criminal court is abolished. Its jurisdiction transferred to an ordinary court, however criminal cases whose initial hearing was dealt with in the abolished court would continue to be heard by the same formation of judges.¹⁷ A judgement in the case has not been delivered in the reporting period.

Fairness and efficiency of the justice system

Respect for fair trial standards, including in the context of pre-trial detention

In September 2023, the CJEU delivered its decision in the *AB* case (C-209/22) concerning the omission in the Bulgarian legal framework of the concept of a suspect, and whether the protections provided for in the directives on the right to information in criminal proceedings (Directive 2012/13/EU) and the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU) would extend to a person that is not yet accused but was subjected to search and seizure for possession of illicit substances. The Court's decision found that those directives do indeed apply in such cases. Next, the Court found that the EU law does not preclude a member state from limiting the judicial review to determine the lawfulness of coercive

measures to obtain evidence of a criminal offence if, subsequently, as part of the criminal proceedings, the court hearing the substance of the case is able to verify that the rights of the accused person have been respected. And lastly, the Court ruled that Article 3 of Directive 2013/48 does not preclude national legislation which provides that a suspect or accused person may be subject to search and seizure without having the right of access to a lawyer, provided it follows the assessment, taking it account all the relevant circumstances, that such access is not necessary in order for that person to be able to exercise his or her rights of defence practically and effectively.¹⁸

In the meantime, the EU Commission sent a letter of formal notice to Bulgaria in view of its breaches of Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence, and of the right to be present at the trial in criminal proceedings.¹⁹ More specifically, the procedure addresses public references to guilt, for example, when public authorities refer to a person as being guilty in public statements, and the availability of appropriate measures if this happens. The decision comes after the Commission already issued a verdict in another case concerning the same subject, and concluded that the issue was resolved.²⁰

17 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0634>

18 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CJ0209>

19 https://ec.europa.eu/commission/presscorner/detail/en/inf_23_4367

20 <https://verfassungsblog.de/at-a-snails-pace/>

In October, the ECtHR delivered its judgement in the case *Pengezov v. Bulgaria* (Application No. 66292/14)²¹ brought by a judge in relation to his temporary suspension from his duties on account of his indictment for irregularities allegedly committed in the performance of his former duties. The Court found, inter alia, that the proceedings for suspension of the applicant were marked by the absence of procedural safeguards and proper reasoning for the SJC's decision, an inadequate review carried out by the Supreme Administrative Court, and the absence of a judicial review of his indictment. While none of this alone amounts to a violation of Article 6 of the ECtHR, the cumulative effect of these issues amounts to a violation of Article 6, in particular the insufficient scope of the Supreme Administrative Court's review of the SJC's decision regarding its purpose and the arguments raised by the applicant.

Other

In September 2023, the EU Commission formally closed the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania.²² According to the Commission's announcement, for both Member States the Commission concluded that they had satisfactorily met their obligations set out under the CVM at the time of accession to the Union. The still-needed progress will continue to be nurtured under the Commission's annual Rule of Law Report. Despite formal improvements

achieved in recent years, closing the CVM for Bulgaria amid reforms rather than after concrete results is unfortunate, and will loosen the pressure on the various national actors to advance the needed changes. A case could be made that the CVM has been mismanaged by the European Commission, which has ignored Bulgaria's persistent rule of law challenges and backsliding. The lack of effective sanctions and enforcement mechanisms for the CVM worsened this. A more robust and comprehensive approach is needed to safeguard the rule of law in Bulgaria and the EU.²³

21 <https://hudoc.echr.coe.int/?i=001-228013>

22 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4456

23 <https://verfassungsblog.de/bulgarias-mafia-state-and-the-failure-of-cvm/>

Checks and balances

Key recommendations

- *Maintain broad dialogue with civil society on all draft laws.*
- *Review and fortify the legal framework to ensure that authorities enforce judicial decisions of administrative courts.*
- *Amend the constitution and legislation to address the voting rights of prisoners and persons under guardianship, and to allow the use of minority languages for voter communication during elections.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The evaluation of the process of public consultations and the transparency and quality of the legislative system, as it operated in 2023, yields ambivalent results. Though there were some areas where there was improvement in transparency and the extent of public consultation, such as amendments to the Penal Code on hate crimes and amendments to the Law on Protection of Domestic Violence, the situation worsened in the realm of judicial reforms. A significant number of amendments made during the year, both to the Constitution and to the JSA, were enacted hastily and chaotically, with

a noticeable amount of non-public negotiation between political entities. The political parties announced the initial draft law on the constitutional amendments, which was a starting point set by them with no preliminary discussions with civil society.

During the public consultations, various civil society organisations presented their position statements on the proposed JSA bill. The Bulgarian Helsinki Committee noted that the amendments, which are not solely aimed at judicial reforms, offer a chance to tackle other problems within the constitution and bring to a close the implementation of certain judgments of the ECtHR. By the end of 2023 Bulgaria had 175 ECtHR judgments with pending implementation. Of those, 92 are leading and 83 repetitive.²⁴

More specifically, human rights defenders suggested the introduction of a general ban

24 <https://www.coe.int/en/web/execution/bulgaria>

on discrimination in the constitution and the expansion of protected grounds to encompass all those listed in the EU's Charter of Fundamental Rights. They also proposed the inclusion of a provision on fair trials, the introduction of limitations on state interference in private life and home, and the removal of articles that restrict the voting rights of individuals under guardianship and prisoners.²⁵ However, none of these proposals were discussed.

Independent authorities

The situation with state bodies, and their parliament-appointed members whose terms of office have expired but who remain in their position until they are replaced, remains. As of January 2024, the number of such positions in various bodies is 80.²⁶ Among them are two seats in the Constitutional Court, the new anti-corruption commission, eleven members in the SJC, five members of the Data Protection Commission, five members of the Commission for Protection from Discrimination (national equality body), five members of the National Bureau for Control over Special Surveillance Means, and others. This issue, which undermines the principle of terms of office and peaceful transition of power, was caused by power struggles between the three unofficially ruling parties, none of whom

has the necessary majority in Parliament. In December, they announced that they would develop a mechanism for decision-making on appointments.²⁷ In January 2024, the procedure for electing two members from the Parliament's quota in the Constitutional Court started. The rules for electing the members were published in a secluded section of the Parliament's website on 8 December, and a vote took place on 12 December 2023.²⁸ This was rapidly followed by the public announcement of three nominations for constitutional judges, two of which are active MPs, well-known to be staunch defenders of their party lines. The candidates' hearing was held on 18 January 2024,²⁹ and nominations were voted upon on the next day.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

Bulgarian law does not stipulate sanctions for breaches of the provisions on the availability and disclosure of data related to administrative decisions. This became evident during a campaign to evict Roma people from their only

25 https://www.parliament.bg/pub/cW/20231005134204_20230921135127_PG-49-316-00-3.20.9.23%20-%20Copy.pdf

26 <https://www.dnevnik.bg/4566571>

27 <https://www.dnevnik.bg/4560680>

28 https://www.parliament.bg/bg/ns_acts/ID/165262

29 <https://www.parliament.bg/bg/theme-site/ID/65>

homes in the Orlandovtsy precinct of Sofia in 2023.³⁰ Municipal authorities are obliged to publish their acts when evicting people from municipal land and removing illegal constructions, but there are no sanctions in the law if these administrative acts are not published. Failure to publish the acts prevents timely appeals before expiry of the deadline. The events in Orlandovtsy are a striking example of administrative harassment where due to individual delinquent behaviour—as admitted in an official document issued by the borough’s mayor—the entire Roma community is subjected to collective punishment in a manner like the one found contrary to the European Convention on Human Rights (ECHR) in the case of *Paketoova and Others v. Bulgaria* (Nos. 17808/19 and 36972/19, 4 January 2023).

Implementation by the public administration and State institutions of final court decisions

There is a tendency for a certain category of judicial decisions of administrative courts to be ignored and remain unimplemented. An example from last year is court decisions annulling unlawful refusals to issue identity cards, as well as court decisions annulling unlawful refusals of access to public information. Such acts can remain unfulfilled for months and years, and possibly forever. The administrative head of the

competent court refused to impose a fine, and the prosecutor’s office refused to investigate the case, arguing that this particular category of acts is not enforceable.

Electoral framework

Limitations on the right to vote

While the legal framework for elections in Bulgaria provides an overall adequate foundation for fairness, it contains important deficiencies in violation of international standards. Article 42 § 1 of the Constitution provides for a blanket disenfranchisement of prisoners and persons under guardianship. The ECtHR so far has condemned Bulgaria four times for violations of Article 3 of Protocol No. 1 of the ECHR - three times over the rights of the prisoners to vote and once over the right to vote of a person under guardianship.³¹ These cases have been under the enhanced supervision procedure by the Committee of Ministers of the Council of Europe since 2016.³² Unfortunately, Article 42 § 1 of the Constitution was not amended with the amendments of the Constitution adopted by the Parliament in December 2023. Thus, at present, the prisoners and the persons under guardianship continue to be subject to blanket disenfranchisement.

30 Events are now subject to the case *Aleksieva and Others v. Bulgaria* (No. 30915/23) before the ECtHR.

31 ECtHR, *Kulinski and Sabev v. Bulgaria*, No. 63849/09, 21 July 2016; ECtHR, *Dimov and Others v. Bulgaria*, Nos. 45660/17 and 13 others, 8 June 2021; ECtHR, *Anatoliy Marinov v. Bulgaria*, No. 26081/17, 15 February 2022; ECtHR, *Tingarov and Others v. Bulgaria*, No. 42286/21, 10 October 2023.

32 Latest decision delivered in March 2023: https://search.coe.int/cm/pages/result_details.aspx?objec-tid=0900001680aa6d0a

Article 65 § 1 of the Constitution imposed a restriction on the right to stand in parliamentary elections for those holding dual citizenship. This has, for many years, been a concern for the OSCE.³³ With the December 2023 constitutional reform, that provision was amended. Only those dual citizens who had lived in Bulgaria 18 months before the elections are eligible.

Article 181 § 2 of the Election Code prohibits campaigning in languages other than

Bulgarian. This limits the possibility of some ethnic minorities to effectively participate in the elections in their mother tongue. In May 2023, the ECtHR found a violation of Article 10 of the ECHR in the case of *Mestan v. Bulgaria*, in which the applicant, a leader of a minority political party, was fined for speaking Turkish during the 2013 election campaign.³⁴ The provision of Article 181 § 2 of the Election Code has not been amended since then.

Civic space

Key recommendations

- *The authorities should enhance the training provided to police officers to better handle protests involving vulnerable minorities.*
- *Training should be conducted for the employees of the Registration Agency to ensure they can effectively implement the decisions of the ECtHR, particularly in cases involving Macedonian organisations.*
- *The prosecutor's office should thoroughly analyse the data related to the obstruction of peaceful LGBTI community meetings. They must also ensure that the perpetrators have been identified and held accountable.*

Freedom of association

Formation, establishment and registration of associations, including rules on membership

The registration of Macedonian associations in Bulgaria remains the main issue concerning freedom of association in the country in 2023. Throughout the year, the Registry Agency (RA) has issued several discriminatory and

33 OSCE. *Bulgaria: Early Parliamentary Elections, 2 April 2023*, Warsaw, 27 July 2023, p. 5.

34 ECtHR, *Mestan v. Bulgaria*, No. 24108/15, 2 May 2023.

arbitrary refusals for registration, which were upheld by the courts. These refusals were primarily because the applicants claimed the existence of an ethnic group that the authorities do not recognize in Bulgaria. According to the authorities, the activities of these associations would contradict the constitution and the unity of the nation. In some cases, the courts rejected appeals against refusals for other formal reasons that are not required by law, such as the lack of mention in the registration documents of the exact time of the meeting of the founders.

No progress was made in implementing past ECtHR rulings in cases of refusal to register Macedonian associations.

In September, the Committee of Ministers of the Council of Europe examined the group of cases *OMO Ilinden and others against Bulgaria*, concerning refusals to register associations of Macedonians. The Committee expressed deep regret that more than 17 years after the first ECtHR decision of this group, associations aiming at “recognition of the Macedonian minority” in Bulgaria continue to be unregistered.³⁵

At the beginning of February, several persons attacked the Macedonian Cultural Club in Blagoevgrad with stones and broke its windows. The perpetrators were identified and arrested. They were two municipal employees who, together with their wives, explained to the police that they threw stones at the windows of

the club as a sign of indignation at the attitude of the border authorities of the Republic of North Macedonia towards the Bulgarian citizens who went to Skopje to pay respect at the grave of Gotse Delchev, a revolutionary active at the turn of 20th century cherished in both Bulgaria and North Macedonia. The Prosecutor’s Office announced that the perpetrators will not be charged, but will be required to compensate the owner of the premises.³⁶ In June 2023, the owner of the premises terminated the lease, and the club was forced to close after only a few months of existence.³⁷

Involuntary dissolution

In July, the Bulgarian Helsinki Committee initiated a petition endorsed by numerous esteemed representatives of civil society, media, and academia. The petition urged the Prosecutor’s Office to dissolve the ultra-nationalist/fascist populist party, Vazrajdane. This initiative was sparked by a series of events in the first half of 2023, where the party or its key members were implicated in at least two instances of obstructing peaceful assemblies. These included a protest against Russia’s aggression in Ukraine and the screening of an LGBTI-themed movie. The party was also involved in antisemitic speech online, such as failing to remove a Holocaust-related collage of a Jewish politician, and in Parliament, where a Jewish MP was labelled a ‘foreigner’, ‘traitor’, and ‘anti-human’. The party also failed to moderate antisemitic comments

35 <https://rm.coe.int/0900001680ac9a17>

36 <https://www.24chasa.bg/bulgaria/article/13733727>

37 <https://www.24chasa.bg/bulgaria/article/14371883>

on their Facebook posts. While the petitioners cited these recent events as grounds for action, they also provided the Prosecutor's Office with a comprehensive review of the party's publicly reported anti-democratic activities.³⁸ These included hate speech against minorities since 2015, attacks on the freedom of expression of journalists who challenge their positions since 2019, undermining anti-COVID-19 measures in 2020 and 2021, calls for their supporters to storm the Parliament in 2021, and systematic public endorsement of Russia's 2022 military aggression against Ukraine. The district's Prosecutor's Office can independently file for dissolution before the Civil Court, while the CP could file for dissolution before the Constitutional Court. In August, the Sofia District Prosecutor's Office rejected the request for action.³⁹ This decision is currently under appeal. The interim CP has yet to respond to the petition.

Criminalisation of activities, including humanitarian or human rights work

In 2023, the Prosecutor's Office initiated a preliminary inquiry against Sofia Pride, based on a request from a civil committee to hold a referendum to ban 'gender ideology' in schools. The inquiry was not a formal investigation, but the prosecutors gathered information from the pride organisers about the financing of an

outdoor advertising campaign. The campaign featured billboards showing photos of different families including same-sex couples, heterosexual couples, and single parents. The prosecutors were interested in knowing who funded the campaign and whether the 'fathers' of the children pictured on one of the billboards with their mothers had consented to the photos. The couple's children were conceived through in vitro procedures. The child protection authorities were tasked with inspecting the family's home to determine whether the children were being raised in a safe and healthy environment. The two mothers were also asked to provide documents on the legality of the in vitro procedures performed. However, the organisers of Sofia Pride did not receive any information about the completion of the inquiry until the end of the year. In August, one of them attempted to gain access to the file, but it was refused with the explanation that the inquiry had not been completed.⁴⁰

Freedom of peaceful assembly

Bans on protests

In February, the annual Lukov March was prevented by the police.⁴¹ This memorial march is in honour of Hristo Lukov, a general from the early 20th century. Lukov was known for his support of the Nazi regime and its model

38 <https://www.segabg.com/hot/category-bulgaria/prokuraturata-otkaza-da-iska-razpuskane-na-vuzrazhdane>

39 <https://www.segabg.com/hot/category-bulgaria/prokuraturata-otkaza-da-iska-razpuskane-na-vuzrazhdane>

40 <https://www.dnes.bg/obshtestvo/2023/08/10/prokuraturata-razsledva-signal-sreshtu-reklama-na-sofia-praid.579238>

41 <https://www.svobodnaevropa.bg/a/32288118.html>

of government during World War II. He led a scouting organisation modelled after the Hitler Youth and had personal contacts with Hermann Goering. Although every year requests are sent to the Sofia Municipality to ban the march, its organisers do not use any Nazi symbols and slogans and the court has repeatedly overturned the mayor's orders to ban the event. The event continues to be a draw for radicalised youth, organising torchlight processions and marching in antique military uniforms.

In October and November, the municipality banned several peaceful demonstrations. These were organised by citizens demanding an end to hostilities in Gaza and the admission of humanitarian aid.⁴² The bans were based on assumptions about potential illegal actions by the participants. However, these assumptions were made without analysing the participants' previous actions or any related violations of public order, incitements to violence, or manifestations of hate speech and antisemitism. Some of these bans were upheld by the court, while others were overturned.

Other

In June, the screening of the film 'Close' (2022, directed by Lukas Dhont) as part of the Sofia Pride Film Fest programme was disrupted by a crowd of protesters. The film narrates the story of two boys on the brink of puberty who face homophobic bullying at school. Despite the film not depicting any intimacy between

the protagonists or intergenerational sexual encounters, it was branded as 'paedophilic' and became the target of a smear campaign based on fake news, mobilising representatives of various ultranationalist groups. On the day of the screening, 10 June, these protesters entered the cinema lobby and surrounded the theatre with posters and chants against paedophilia. They expressed their intention to buy tickets and join the rest of the audience, a move to which the police did not object. Consequently, the organisers cancelled the screening. A similar protest occurred during a screening of the film in Plovdiv on 14 June. On 24 June, the ultranationalist/fascist Vazrajdane party organised a mass protest in the city of Varna.⁴³ Aggressive demonstrators chanted death threats against the spectators and the municipal councillors from the ruling progressive party who attended the screening. The police responded by confining the spectators inside the cinema building, barring them from exiting, while the aggressive mob blocked the exits. Despite the intensity of the situation, the police did not take action to disperse the crowd, and no arrests were reported.

Attacks and harassment

Physical attacks on people and property

In July 2023, the Sofia Appeals Court increased the severity of the sentence imposed on Boyan Stankov/Rasate, a presidential candidate and leader of an ultranationalist/fascist party. The

42 <https://www.mediapool.bg/stolichna-obshtina-zabrani-shestvie-v-podkrepa-na-palestina-news352260.html>

43 <https://www.svobodnaevropa.bg/a/varna-film-vazrazhdane-ataka/32473452.html>

first instance court's verdict in 2022 related to an incident on 30 October 2021, when Rasate and a group of nationalists invaded an LGBTI community centre in Sofia, ransacking the premises and assaulting an employee.

The first court recognised the act as motivated by homophobia and transphobia, which were not accounted for in the Criminal Code at the time. The court ruled that the assault on the employee was carried out with conditional

intent (*dolus eventualis*), leading to a conviction of 'hooliganism' under Article 325 § 1 of the Criminal Code.

However, the appeals court found that the attacker had also committed minor bodily harm with hooligan motives, a crime under Article 131 § 1.12. The decision was appealed to the Supreme Court of Cassation on points of law, but no judgement was delivered during the reporting period.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Take urgent measures to improve the situation of persons deprived of their liberty in psychiatric institutions and social care homes.*
- *Consider a mechanism for enhancing execution of international courts' judgments and introduce changes in legislation, if needed.*
- *Introduce legal framework on same-sex families and legal gender recognition.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

In January 2023, the ECtHR delivered its judgement in the case of *Paketoova and Others*

v. Bulgaria (Nos. 17808/19 and 36972/19, 4 January 2023).⁴⁴ The case concerns authorities' omissions, resulting in ethnic Roma being driven away from their homes and the village they lived in after anti-Roma protests, fuelled by public statements of a cabinet minister. According to the Court's judgement, officials repeated public displays of non-acceptance

⁴⁴ <https://hudoc.echr.coe.int/?i=001-219776>

of the Roma and opposition towards their return, reinforcing the applicants' legitimate fear for their safety and representing a real obstacle to their peaceful return. The case is a vivid illustration of how evictions formally aimed at addressing the illegal construction of buildings (in this case, the victims' homes) are being weaponized by the authorities against marginalised Roma communities. Following the case of *Yordanova and Others v. Bulgaria* (see below), this case confirms that authorities' stance on the matter has not changed in over ten years and is systematic in nature. This was further proved by the events in Orlandovtsy.

In February, the Supreme Court of Cassation handed down a disgraceful decision to unify case law, finding that the legal framework in Bulgaria does not allow the change of gender data in civil registers due to the transsexuality of the person for whom the change is requested.⁴⁵ This decision comes as a follow-up to an earlier Constitutional Court decision to the same effect, according to which the concept of 'sex' in the Constitution is to be understood only as biological and binary. The possibility of legal gender recognition was thus theoretically completely foreclosed. The merits of the ruling make a severe retreat from respect for international law and recognition of the legal effect of the ECHR and European Union law. In practice, however, individual judges continued to disregard this binding decision, and in January 2024, a judge referred a preliminary ruling to

the European Court of Justice on legal gender recognition and freedom of movement within the Union.⁴⁶

In July, the Parliament passed amendments to the Criminal Code.⁴⁷ Among other things, these amendments introduced sexual orientation as a basis for certain aggravated offences, but only when it served as the motivation for the perpetrator's actions. The list of aggravated offences based on race, ethnicity, or xenophobia was also expanded. This expansion was in response to an infringement procedure initiated by the European Commission regarding the transposition of the Council Framework Decision 2008/913/JHA. However, due to strong opposition from the fascist/populist party Vazrajdana, the Bulgarian Socialist Party (a PES member), and critical members of GERB (the largest party in the Parliament and an EPP member), the number of aggravated statutes (qualified version of criminal offences) based on race, ethnicity, or xenophobia exceeds those based on sexual orientation. For instance, statutes enhancing penalties for coercion (Article 143 § 3.2), threats of bodily injury or murder (Article 144 § 3.4), stalking (Article 144a § 3), and arson (Article 330 § 2.6), cover offences motivated by racism or xenophobia, but not those motivated by sexual orientation.

In early January 2024, the Supreme Administrative Court issued its final ruling, finding police officers guilty of using violence

45 <https://www.vks.bg/talkuvatelni-dela-osgk/vks-osgk-tdelo-2020-2-reshenie.pdf>

46 <https://app.lexebra.com/judgement-acts/6d186eb2-71a6-4b4e-8efd-43ac0572f2ac>

47 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=198063>

against anti-government protesters during the mass demonstrations in 2020. The incidents of police brutality were captured on camera at the Council of Ministers building. The footage revealed a group of uniformed officers assaulting a non-resisting man, knocking him to the ground. In a separate incident, a young female protester was undressed by police officers. The ministry's representative in the case informed the court that the victim was "inappropriately attired" and had exhibited "disgraceful" behaviour.⁴⁸

Follow-up to recommendations of international and regional human rights monitoring bodies

In 2023, the Council of Europe Anti-torture Committee (CPT) visited Bulgaria once again to review the implementation of the long-standing CPT recommendations regarding the situation of persons deprived of their liberty in psychiatric institutions and social care homes. The problem found by the CPT in such establishments in Bulgaria during the 2017, 2020 and 2021 visits was highly concerning.⁴⁹ In November, the Parliament established an ad hoc parliamentary committee on the rights of psychiatric patients.⁵⁰ The committee held its first meeting in January 2024 and reviewed the findings of the Ombudswoman's

visit to psychiatric hospitals in three Bulgarian cities.⁵¹ This parliamentary focus on the topic is undoubtedly welcome and a positive development. In the meantime, for the first time in nine years, the Bulgarian Helsinki Committee was again allowed to undertake monitoring visits in psychiatric hospitals as well, providing long overdue civil society oversight.⁵²

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In March, the Supreme Administrative Court openly opposed the implementation of a ruling by the CJEU on a preliminary inquiry. This opposition pertains to national proceedings in which the CJEU issued its decision in the *V.M.A./Pancharevo* case (C-490/20), also known as the Baby Sara's case. According to its judgement, the CJEU established that a member state is obligated to issue an identity card or a passport to a child of a same-sex couple recognized by another member state. This should be done without requiring a birth certificate to be drawn up beforehand by its national authorities. The plaintiffs of the underlying case are two women - a Bulgarian citizen and a British woman born in Gibraltar. Their child was born in Spain but cannot obtain the

48 <https://www.mediapool.bg/bit-ot-politsiyata-zad-kolonite-na-ms-osadi-mvr-za-12-hil-lv-news354986.html>

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

50 <https://bntnews.bg/news/s-ironiya-i-obidi-deputatite-sazdadoha-komisiya-za-pravata-na-psiichnobl-nite-hora-1257051news.html>

51 <https://www.parliament.bg/bg/parliamentarycommittees/3247>

52 <https://www.bghelsinki.org/en/news/2024-01-17-BHK-dostyp-psihiatrichni-bolnici>

citizenship of his British mother due to the specifics of citizenship in an overseas territory. To prevent the child from remaining stateless, his mothers requested the issuance of a birth certificate from the municipality based on the address registration of the Bulgarian mother. However, the municipality refused to recognize the Spanish birth certificate, which lists two mothers. In the national proceedings, the court of first instance fully complied with the interpretation of the CJEU and even overruled the refusal of the mayor of Pancharevo borough to draw up the child's birth certificate. However, the Supreme Administrative Court, with its final decision, annulled the decision of the first instance court. It found that there is evidence in the case file suggesting that the Bulgarian citizen is not the biological mother of the child, even though no such document exists. The family has since applied to the European Court of Human Rights (ECtHR).⁵³

In May, the ECtHR found with its decision in the case of *Koilova and Babulkova v. Bulgaria* (No. 40209/20), that Bulgaria has violated Article 8 of the ECHR as it has not provided a legal framework for the recognition of same-sex families. The decision entered into force, but before the end of the year the government did not take any action on the implementation.

Pursuant to the ECtHR's decision in the case of *Stoyanova v. Bulgaria* (No. 56070/18) in August, the Supreme Court of Cassation reopened the case for the homophobic murder of 25-year-old student Mihail Stoyanov in a

park in Sofia in 2008. In October, the court issued a new decision. On one of the main issues, key to the finding of a violation by the ECHR - that the last judicial instance did not take into account homophobic motivation as an aggravating circumstance, and the lower judicial instances took it into account, but did not discuss what weight they ascribed to that factor in their overall assessment of the mitigating and aggravating factors - the Supreme Court of Cassation did not succeed in correcting the shortcomings of the national proceedings so far. Indeed, the new decision draws attention to homophobic motives and states that they are aggravating, but nonetheless, it did not attach to that finding any tangible legal consequences.

⁵³ The case has not yet been communicated.

LIBERTIES

RULE OF LAW REPORT

2024

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About the authors



Centre for Peace Studies (CPS) is a civil society organisation that protects human rights and aspires for social change based on the values of democracy, anti-fascism, non-violence, peacebuilding, solidarity and equality, using activism, education, research, advocacy and direct support. We work with communities, initiatives, organisations, media, institutions and individuals in Croatia and internationally.



The Croatian Platform for International Citizen Solidarity (CROSOL) is a non-governmental organisation active in the area of international development cooperation and humanitarian aid. It was established in 2014 and has 31 member organisations. The main goals of the Platform are strengthening the capacities of civil society organisations to provide international development cooperation and humanitarian aid and advocating for the improvement of development policies of Croatia and the EU.

Key concerns

The overall picture regarding the justice system in comparison to last year shows no progress in the assessed areas. The state addressed the remuneration of judges, state attorneys and judicial staff, taking into account European standards on resources and remuneration for the justice system, but

made legal aid less accessible, thus making implementation of this recommendation included in the 2023 EU Commission's report non-satisfactory.

Regarding the anti-corruption framework, no progress was reported in the assessed areas during the previous year. In particular, no progress has been made in terms of

regulating state advertising and establishing clear criteria and good practices. There were no positive developments in revising either the Criminal Procedure Code or the Law on the Office for the Suppression of Corruption and Organised Crime. On a positive note, some progress has been made regarding the adoption of e-legislation in the area of lobbying.

In the area of media environment and freedom of expression, in comparison to last year, the overall picture shows regression in the assessed areas because of the proposed new amendments to the Criminal Code that will criminalise publishing information of public interest from criminal cases. It is particularly worrisome that there are still incidents of attacks against journalists and that the number of SLAPPs is not declining. It was not possible to report on any further substantial activities with regard to the framework for fair and transparent allocation of state advertising, nor address the issue of strategic lawsuits against public participation after the publication of the Commission's Rule of Law Report in July 2023.







In 2023, the stagnation in the area of checks and balances continued. The position of the independent institutions, such as the Ombudsperson, continues to be worrisome, as their recommendations are still insufficiently implemented by the government and other competent actors. There is still no new information on the systematic approach to the implementation of the recommendations

regarding the Ombudsperson since the publication of last year's Rule of Law Report.

In the area of civic space, there was no progress in 2023. The institutional framework has remained the same, and the National Plan for Creating an Enabling Environment for Civil Society has not yet been brought. The level of participation and access to decision-making for the interested public remains unsatisfactory. There were cases of criminalisation and SLAPPs against civil society organisations and activists.

The persisting lack of efficient investigation into human rights violations continues to undermine the rule of law. No progress has been made in revising the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organised Crime.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression **No progress** **Progress**



Justice system –

Key recommendations

- *Take all necessary steps to increase the efficiency of the justice system and shorten the length of procedures in Croatian courts, especially at the first instance level.*
- *Ensure independent and effective investigations into allegations of illegal and violent push-backs of refugees and migrants from Croatia.*

Judicial independence

Remuneration/bonuses for judges and prosecutors

In late April 2023, the Union of State and Local Officials and Employees in Croatia announced that employees in the judicial system were demanding a wage increase of €400, stating that the current salary of €600 is insufficient to cover basic living needs, especially with the added pressure of inflation, and threatened a possible strike if their demands were not met. Iva Šušković, the president of the union, emphasised the determination of their members and stated that the employees, including clerks, registrars, court referees, and land registrars and land referees, most of whom have a secondary education, were not willing to accept a negative response. The union had been highlighting the dissatisfaction of employees in the judiciary due to low salaries for three years, which led to staff departures and overburdened those who remained.¹ Due

to the lack of adequate state response, the strike commenced on 5 June and continued until a deal was reached in July.

The Supreme Court criticised the executive power for ignoring its opinions when making decisions that affect the judiciary, such as increasing work norms, appointing experts, conducting security checks, and frequently amending key laws. The Court highlighted the failure to implement the principle of separation of powers over 30 years since the Constitution's adoption, leading to a semi-dependent relationship between courts and the Ministry of Justice.²

On 27 July, an agreement was signed between the Ministry of Justice and Public Administration and the Union of State and Local Officials and Employees in Croatia, granting a 12% salary bonus to civil servants and employees in the judicial authorities and state attorney's offices, starting with the July salary. This agreement also allowed the union

1 See: <https://www.iusinfo.hr/aktualno/dnevne-novosti/54883>

2 See: <https://www.iusinfo.hr/aktualno/dnevne-novosti/54934>

to participate in drafting new salary regulations. As a result, the strike in the judicial system, which started on 5 June, ended. The strike led to increased recognition of the role of judicial system employees. The union highlighted the success of organising a lawful strike, marking a significant achievement in Croatian labour history.³

On 22 January 2024, however, Croatian judges started a new strike over unmet salary demands, despite ongoing government negotiations. The strike, initially planned for 15 January, was postponed to allow for talks. The Croatian Judges' Association's (CJA) demands include salary indexation, the introduction of salary grades, and material rights. The government's recent salary increase of €580 net, the largest in 10 years, was deemed insufficient by the judges. Prime Minister Andrej Plenković's discussions with CJA officials have not led to a resolution. The government is considering legal changes to limit judges' impact on electoral processes during the strike, and CJA highlights that participation in electoral

commissions is not a core judicial duty. Judges seek salaries indexed according to the national average, independent of government control.⁴

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Under the Law on Advocacy,⁵ lawyers have the right to have their pay regulated in accordance with the Tariff on rewards and reimbursement of expenses for the work of lawyers.⁶ This act changed significantly in the past two years, making secondary legal aid less accessible to a high number of people. An amendment to the Tariff, which entered into force on 5 November 2022,⁷ changed the point value (a measure used to calculate lawyers' fees) from €1.33 to €2, therefore increasing the legal expenses by almost 50%. Moreover, on 25 November 2023, a new Tariff⁸ entered into force that significantly raised (or even doubled) the amount of points provided for certain legal actions.⁹ The fact that hiring a lawyer could

3 See: <https://www.sdlsn.hr/strajkom-smo-smanjili-zaostatak-za-drugima-ocekujemo-dodatno-poboljsanje-materijalnog-statusa-u-drugoj-fazi-do-kraja-godine/>

4 See: <https://www.jutarnji.hr/vijesti/hrvatska/suci-su-odlucili-pravosude-ponovno-ide-u-blokadu-vlada-u-utrci-s-vremenom-scenarij-moze-biti-i-puno-gori-15414961>; <https://www.jutarnji.hr/vijesti/hrvatska/udruga-sudaca-tvrdi-da-ih-strajka-80-ministarstvo-strajk-je-propao-15418699>

5 Law on Advocacy (Official Gazette No. 9/94, 117/08, 50/09, 75/09, 18/11, 126/21).

6 Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No. 138/2023).

7 Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No. 142/2012, 103/2014, 118/2014, 107/2015, 37/2022, 126/2022).

8 Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No: 138/2023).

9 A lawyer now receives 1,000 points for initiating procedures before the Constitutional Court, European court for human rights and the Court of the European Union compared to the previous Tariff's 500 points for the same

be far more expensive than paying a misdemeanour fine greatly discourages people from taking legal action.

People with lower financial means are entitled to free legal aid under the Law on Free Legal Aid.¹⁰ Free legal aid exists in two degrees: primary and secondary legal aid. Primary legal aid is provided by authorised associations, legal clinics and administrative departments in counties, and includes legal advice, drafting submissions and representation before public law bodies, the ECtHR and international organisations, as well as legal aid in out-of-court dispute resolution. Secondary legal aid, in addition to legal representation by attorneys in legal areas defined by law, allows for exemptions from payment of the costs of court proceedings and expert testimony, as well as exemptions from payment of court fees.

The law¹¹ defines the beneficiaries of legal aid as: Croatian citizens; children without Croatian citizenship that were found in the Republic of Croatia unaccompanied by an adult responsible according to law; foreigners on temporary residence under the condition of reciprocity and foreigners on permanent residence; foreigners under temporary protection; foreigners residing illegally and foreigners on short-term stay relating the expulsion or

return decisions they received; asylum seekers, asylum seekers and foreigners under subsidiary protection and members of their families legally residing in the Republic of Croatia, in proceedings in which legal assistance is not provided for by a specialised law.

The main challenge in offering primary legal aid is project-based financing, which is insufficient and unsustainable. While the Ministry of Administration and Justice initiated a three-year project in 2023 for free primary legal aid, the geographical distribution of associations in Croatia often leaves citizens in rural areas without access to free legal aid from non-governmental organisations.

The financial requirements for being granted secondary legal aid are that the total monthly income of the applicant and their household members does not exceed the amount of one budget base (used to calculate the income and special benefits based on the Law on the Execution of the State Budget of the Republic of Croatia for 2023¹²) per household member, which currently amounts to €441.44, and that the total value of the applicant's property does not exceed the amount of 60 budget bases (which currently amounts to €26,486.40). Moreover, free legal aid can be granted only in specified legal cases, such as proceedings to

action. Additionally, preparing private lawsuits, criminal reports and indictment proposals is now valued at 100 points, up from the previous 50. In misdemeanour procedures, counsel representing the accused is entitled to 100 points for the initial hour of each hearing or submitting a written defence.

10 [Law on Free Legal Aid](#) (Official Gazette No. 143/13, 98/19).

11 [Law on Free Legal Aid](#) (Official Gazette No. 143/13, 98/19).

12 [The Law on the Execution of the State Budget of the Republic of Croatia for 2023](#) (Official Gazette No. 145/22, 63/23, 129/23)

exercise the right to compensation for victims of criminal acts of violence, the right to child support, and proceedings of beneficiaries of maintenance assistance or alimony related to the exercise of their right to social welfare.

This limit is rather low taking into consideration the fact the Decree on the minimum wage for 2023¹³ prescribed a net monthly minimum wage of €560. Therefore, even a single person working for a minimum wage won't be eligible to receive free secondary legal aid. Despite significant increases in lawyers' fees and the expected 20% rise in the minimum wage, the threshold for granting secondary free legal aid remains unchanged.

In April 2023, amendments to the Law on International and Temporary Protection¹⁴ entered into force, allowing applicants for international protection to work after the expiry of three months from the time of applying for international protection. However, due to the monthly legal aid cap of €441.44, this otherwise favourable amendment has a practical implication: individuals who find employment while waiting for their international protection request to be resolved will be precluded from retaining their right to secondary free legal aid.

Resources of the judiciary (human/financial/material)

The budget proposal of the Ministry of Justice and Public Administration for 2023¹⁵ amounted to €590,968,811, with a predicted €684,822,725 for 2024. The largest part of the funds – €185,756,129 – was planned for the needs of the Ministry in 2023, with a predicted amount of €219,878,739 for 2024.

The second largest share of the budget for the judiciary goes to the municipal courts, amounting to €147,721,518 for 2023 and €173,903,148 for 2024. As last year, this is followed by the share in the budget for prisons and penitentiaries, amounting to €104,833,037 in 2023 and €119,627,420 for 2024.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The budget proposal of the Ministry of Justice and Public Administration for 2023 predicts a decrease in funds used to train justice professionals. While in 2023 €545,979 was spent on professional training of judicial officers and advisors in the judicial bodies of the area of justice, in 2024 only €390,377 is predicted for these training sessions. The decrease is visible in the professional training of officials working in the Ministry of Justice and Public Administration, where €48,672 was spent

13 [Government of the Republic of Croatia, Decree on the Minimum Wage for 2023](#) (Official Gazette No. 118/18 and 120/21).

14 [Law on International and Temporary Protection](#), (Official Gazette No. 70/15, 127/17, 33/23).

15 [Budget proposal of the Ministry of Justice and Public Administration for 2023](#).

in 2023 and only €41,000 will be available in 2024.

According to its Program for 2024,¹⁶ The Judicial Academy for Lifelong Professional Development, which mostly organises different training sessions for judges and state attorneys, will cover 10 areas in 2024, including civil and civil procedural law, criminal and criminal procedural law, misdemeanour law, administrative law, commercial law, EU and international law, a special program for judicial officers, education focused on skills – e.g., communication skills – and an e-course on different topics. The thematic areas of the program don't differentiate a lot in comparison to the previous year, with the exception of the media monitoring and reporting on the work of the judiciary intended for media editors and journalists that was excluded from this year's program.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The Ordinance on remote hearings,¹⁷ prescribing the method of holding remote hearings and presenting individual evidence with the use of appropriate audio-visual devices and technological platforms for remote communication, was adopted in December 2022 and entered into force on 5 January 2023.

The Ordinance on the eSpis system¹⁸ further elaborates the procedure for automatically determining the competent entity in the file allocation algorithm entered into force on 1 February 2023.

The eSpis computer system was first introduced into the Croatian judiciary system in 2009 with the adoption of the Court Rules of Procedure. This system was initially used only by some courts and was primarily intended for the random assignment of cases to judges. With the development of the system, it went beyond the scope of random allocation of files and in 2015 it was separated into a special rulebook that regulates the way the system works. The need for the random assignment of cases arose as a result of the negotiations that were conducted regarding Croatia's accession to the European Union and the introduction of measures to increase transparency in the work of judges. As part of the project in 2014, in addition to the introduction of e-Courts in the 33 remaining courts, the web service e-Predmet (e-Case)¹⁹ was created and launched, which provides free and public access to basic data on court cases to all the parties in the proceedings, attorneys and other interested persons participating in court proceedings. Through this system, visitors can be informed about the progress and dynamics of the resolution of cases.

16 Available at <https://www.pak.hr/wp-content/uploads/2023/10/Program-2024.-cjelozivotno-v2-1.pdf>.

17 Ministry of Justice and Public Administration, [The Ordinance on remote hearings](#) (Official Gazette No. 154/2022).

18 Ministry of Justice and Public Administration, [The Ordinance on the eSpis system](#) (Official Gazette No. 12/23).

19 The web service e-Predmet is available at: <http://e-predmet.pravosudje.hr>.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

Access to court cases via e-Predmet (e-Case) is a free public service for the parties involved, attorneys and individuals interested in court proceedings. The system, sourced from the Integrated System for Court Case Management (e-Spis), facilitates searching by court and case numbers, providing daily updates on court programmes. This information excludes land registry items, juvenile cases, investigations, war crime cases and cases under the Bureau of Combating Corruption and Organised Crime (USKOK). Parties in the proceedings can obtain more detailed information and download electronic documents through the Ministry's dedicated page.²⁰

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialisation

In the Republic of Croatia, judicial power is exercised by regular and specialised courts, as well as by the Supreme Court of the Republic of Croatia.²¹ The courts are divided into courts of first degree (municipal, administrative and commercial courts and county courts when their jurisdiction in the first instance is prescribed by law) and courts judging in the second degree. Second instance courts rule on previous

decisions of first instance courts and perform other tasks prescribed by the law.

The Supreme Court of the Republic of Croatia, High Criminal Court of the Republic of Croatia, and High Misdemeanour Court of the Republic of Croatia are located in Zagreb. There are 15 county courts located in Bjelovar, Dubrovnik, Karlovac, Osijek, Pula, Rijeka, Sisak, Slavonski Brod, Split, Šibenik, and Varaždin, Velika Gorica, Vukovar, Zadar and Zagreb. Additionally, there are 34 municipal courts distributed throughout the country.

The High Commercial Court of the Republic of Croatia is located in Zagreb and the commercial courts are located in Bjelovar, Dubrovnik, Osijek, Pazin, Rijeka, Split, Varaždin, Zadar and Zagreb. The High Administrative Court of the Republic of Croatia is located in Zagreb, while four administrative courts are located in Zagreb, Split, Rijeka and Osijek.

Fairness and efficiency of the justice system

Length of proceedings

Changes to the length of proceedings in the Civil Procedure Act were introduced in 2022. As one of the biggest novelties, the law included a maximum limit to the duration of proceedings: three years for the first-instance proceedings, one year for second-instance proceedings and two years for revision proceedings. There

20 See: <https://usluge.pravosudje.hr/komunikacija-sa-sudom>.

21 See: <http://www.vsrh.hr/>.

is still a lot of scepticism among legal experts about whether those deadlines will be respected in practice, due to the fact that there are no prescribed sanctions for exceeding these deadlines.

Actions on criminal complaints involving pushbacks of refugees and other migrants involved in unreasonably prolonged proceedings often exceed the six-month legal deadline for the pre-investigation phase to be concluded. Due diligence is lacking, therefore resulting in the failure to meet the criteria of effective investigations under international and national law. It is important to emphasise that, for cases involving refugee and migrant victims and witnesses, expedited procedures are essential due to their frequent location changes. Over time, locating and identifying the victims becomes increasingly difficult.

Furthermore, lengthy procedures and arbitrary detentions are still evident, especially in cases involving pushbacks and torture of refugees and migrants in Croatia. Access to legal remedies in these cases remains extremely difficult, and criminal procedures that are initiated in cases involving violence, theft, destruction of property, etc. seldom lead to an effective investigation according to the criteria established by the ECtHR. Despite numerous accusations of violence against refugees and migrants in the past eight years, no indictments, identifications, prosecutions or sanctions against reported perpetrators have occurred.

Finally, though indirectly related to the duration of a judicial procedure, it is important to note that, while providing free legal aid, the Centre for Peace Studies has noted a prolonged response period for foreigners' long-term residency requests. Although the Law on General Administrative Procedure²² prescribes 60 days in which an official must decide cases where an examination procedure is being conducted, according to our knowledge, it is frequent practice that said decisions are made months or even a year after the prescribed period.

Respect for fair trial standards, including in the context of pre-trial detention

Under the Law on Administrative Disputes,²³ it is the court's duty to handle classified data according to special legislation, which is why it is not allowed to disclose such data to a party involved in the procedure. The same law stipulates that with documents and parts of documents to which access is limited or forbidden, the court shall respect the specified legislation and act under it. It was therefore held by administrative courts that the limitation of a party's procedural rights due to non-disclosure of evidence and denial of access to documents is permissible to ensure the secrecy of classified data under the Data Protection Law.

The Constitutional Court, in its judgement U-III-2039/2017, stated that it is "on the administrative courts to determine whether and to what extent the denial of confidential

22 [Law on General Administrative Procedure \(Official Gazette No. 47/09, 110/21\).](#)

23 [Law on Administrative Disputes, \(Official Gazette No. 20/10, 143/12, 152/14, 94/16, 29/17, 110/21\).](#)

information or evidence to the person concerned and the associated inability of that person to make statements about them is such that it can affect the probative value of confidential evidence. The effectiveness of judicial supervision implies that the administrative court is convinced that the decision, which affects that person personally, is based on a sufficiently solid factual basis.”²⁴

Different case law can be found on the matter of “equality of arms” in this matter. The decisions of the administrative courts tend to cite the judgement of the High Administrative Court Usz-3402/16-5 from 30 January 2017. There, the Court found that the party to the procedure was granted the protection of lawful procedure, and that this decision was reached because the judges’ rulings in the first and second instances were based on insights gathered from all the documentation the SIA had collected. This leads to the conclusion that the Court held that the “equality of arms” is granted because the judge is aware of the documentation upon which the assessment of the threat to national security was made.

However, the Constitutional Court, in its judgement No. U-I-1007/12 of 24 June 2020,²⁵ stated that courts are allowed to use other means, such as the communication of a summary of the classified documents or evidence in question, to provide balance between the requirements related to the right to effective

judicial protection, especially in respect of the principle of fair trial, and those arising from the security of the EU or its Member States. However, as far as CPS is aware, this possibility is not being used in practice, and even the Constitutional Court itself failed to follow this judgement in some later cases.

In the case F.S. against Croatia (Application no. 8857/16),²⁶ the ECtHR established a violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), due to the expulsion on national security grounds without reason and based on classified information not disclosed to the applicant, and due to a significant limitation of the applicant’s procedural rights without sufficient counterbalancing safeguards.

In 2023, SIA’s conduct raised concerns, particularly regarding Chechen asylum seekers and Palestinian foreign workers who lacked information about accusations or evidence brought against them. Despite the law limiting detention to 6 months, a group accused of being a security threat was held longer. In the case Usl-1526/2023-8, the administrative court later stated it found no indications, evidence or serious reasons for SIA’s accusations and therefore granted asylum to the applicant.

24 Decision of the Constitutional Court U-III-2039/2017, op. cit., para 10.1.

25 Decision of the Constitutional Court No. U-I-1007/12. 24 June 2020.

26 See: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%228857/16%22%5D%7D>

Quality and accessibility of court decisions

According to the Decision on the Publication and Anonymization of Court Decisions,²⁷ complete judicial decisions of the Supreme Court and related decisions of higher courts are published. Court decisions, including those from the High Administrative Court, High Misdemeanour Court, High Criminal Court, High Commercial Court, County Courts, Constitutional Court and the Supreme Court, are accessible on the Supreme Court of the Republic of Croatia's search engine.²⁸ Although decisions of the Supreme Court are generally published, exceptions exist, and their publication is sometimes subject to delays ranging from weeks to even years. However, publication of lower court decisions, including county and municipal courts, is often times lacking, making it difficult to understand the higher courts' decisions without contextual information. Decisions of municipal courts are generally not published on the internet, making public insight into these decisions difficult. Various services for reviewing court practices provide insight into the judicial practice, but only with subscription fees that are quite high and therefore unaffordable to scholars or independent researchers. A new Draft Law on

Amendments to the Law on Courts entered the legislative process in the Croatian Parliament in November 2023.²⁹ The drafting of this legal proposal was primarily undertaken in order to prescribe the obligation of public publication of all court decisions by which the proceedings are completed on a special website in order to strengthen the transparency and accessibility of court decisions to the public. According to this draft, all publicly available judgments would be subject to prior anonymization and would have to comply with the rules on the protection of personal data. Additionally, a new by-law that would prescribe in more detail the method of anonymization, publication and searches of anonymized court decisions has been publicly announced.

Corruption of the judiciary

As written in our Rule of Law Report last year,³⁰ Darko Krušlin, a judge of the Osijek County Court, was dismissed from duty³¹ in April 2022 by the State Judicial Council due to a corruption scandal he was involved in with his colleagues, judges Zvonko Vekić and Ante Kvesić. Vekić has resigned. The basis for Krušlin's dismissal was an investigation led by the USKOK (Office for the Prevention of

27 The Supreme Court of the Republic of Croatia, Decision on the Publication and Anonymization of Court Decisions, 12 March 2012.

28 The Supreme Court of the Republic of Croatia search engine.

29 See: <https://www.iusinfo.hr/aktualno/u-sredistu/kratki-prikaz-novog-zakona-o-izmjenama-i-dopunama-zakona-o-sudovima-57824>

30 See: https://dq4n3btxmr8c9.cloudfront.net/files/-3lkvi/Liberties_Rule_of_Law_Report_2023_EU.pdf

31 See: <https://www.jutarnji.hr/vijesti/crna-kronika/osjecki-sudac-kojeg-je-zdravko-mamic-optuzio-da-mu-je-dao-mito-razrijesen-je-duznosti-15219728>.

Corruption and Organized Crime – a section of the Croatian State Attorney’s Office) on suspicion of corruption.³² In 2023, the indictment against the Mamić brothers and three judges previously working at the Osijek County Court, Anto Kvesić, Zvonko Vekić and Darko Krušlin, was confirmed. In a nutshell, they were accused of favouring the Mamić brothers in their court proceedings over illegally extracting €19.2 million from the FC Dinamo Zagreb in exchange for at least €370,000 and expensive watches. The Mamić brothers left Croatia in 2018 and are currently in Bosnia and Herzegovina, evading their sentence.

At the end of December 2022, the European Public Prosecutor’s Office (EPPO) filed an indictment against former Minister of Regional Development and EU Funds Gabriela Žalac, former director of the Central Agency for Financing and Contracting (SAFU) Tomislav Petric, and entrepreneurs Marko Jukić and Mladen Šimunc, suspected of having damaged the EU and the Republic of Croatia by embezzling more than €1.3 million.³³ The EPPO accused Žalac of abuse of position and authority and trading in influence, while Jukić and Šimunc were accused of abuse of position and authority. According to the currently available information, the former minister unrealistically

set a procurement price for a software system at €1.73 million, although the real price of that system was approximately €360,000. According to EPPO, €1.73 million including VAT was paid to the account of the third defendant’s company, after which part of the money was transferred to the accounts of the second and third defendants, as well as to the accounts of their companies, and then part of the paid money was withdrawn in cash. Although this affair does not directly involve the judiciary, its relevance comes from the fact that, according to the media,³⁴ the Office for the Prevention of Corruption and Organized Crime (USKOK) had already dealt with the strange purchase of software, but they stopped the investigations because “the evidence they collected did not confirm the suspicions raised in the media that Gabrijela Žalac did something illegal”.³⁵

Furthermore, according to the information disclosed in the media, from messages found on the mobile phone of former HDZ State Secretary Josipa Rimac, it appears that she also discussed the huge projects that have now ended in indictments with a person she, in her messages, refers to as A.P. – initials corresponding to Croatian Prime Minister Andrej Plenković. Rimac herself confirmed this in her statement after her arrest. She also exchanged

32 See: <https://www.slobodnaevropa.org/a/mamici-sudije-korupcija-mito/31301044.html>.

33 See: <https://www.jutarnji.hr/vijesti/hrvatska/ured-europskog-tuzitelja-digao-optuznicu-protiv-zalac-bivseg-sefamojne-drzavne-agencije-i-jos-dvoje-ljudi-15290612>.

34 See: <https://www.telegram.hr/politika-kriminal/novi-detalji-afere-zalac-zvuce-sve-gore-softver-za-koji-je-dalac-13-milijuna-kuna-zapravo-je-kostao-29/> and <https://www.jutarnji.hr/vijesti/hrvatska/otkrivamo-pozadinu-slucaja-kako-se-gabrijela-zalac-nasla-na-meti-tuzitelja-europske-unije-15112104>.

35 See: <https://www.jutarnji.hr/vijesti/hrvatska/otkrivamo-pozadinu-slucaja-kako-se-gabrijela-zalac-nasla-na-meti-tuzitelja-europske-unije-15112104>

some of those messages with her former colleague, Minister Gabrijela Žalac.³⁶

Other

At the end of 2023, amendments to the Criminal Code³⁷ and the Law on Criminal Procedures,³⁸ colloquially known as the “Lex A.P.”, were placed in public consultation with the Ministry of Justice and Public Administration, and they will enter the procedure of the Croatian Parliament on 11 January 2024. The proposed amendments introduce a new criminal offence of “unauthorised disclosure of the content of an investigative or evidentiary action” which regulates the issue of disclosure of information from the file in the phase of the criminal procedure in which the public is excluded and access to the file is limited. The amendments stipulate that a judicial official or civil servant in a judicial body, police officer, defendant, lawyer or his trainee, witness, court expert, translator or an interpreter who, during the previous criminal proceedings (which is considered non-public under the law), discloses the contents of investigative or evidentiary proceedings without authorization, intending to make them publicly available, shall be punished by imprisonment for up to 3 years. It provides an exemption to the rule explicitly stating that committing, helping to commit or abetting cannot be committed by a person who performs journalistic work. However, this article does not propose

the same for people committing this offence in the public interest.

These proposed changes to the law are not supported by all of the judges of the criminal department of the Supreme Court, nor are they supported by a majority of Croatian legal experts or by the Croatian Ombudsperson.

The Ombudsperson raised concerns during public consultations about proposed amendments that could impact the right to a fair trial and the principle of “equality of arms”. While acknowledging the importance of protecting certain information in criminal proceedings, she argued that granting defendants the right to publicly disclose parts of their files might compromise the fairness of trials. Additionally, she expressed reservations about punishing individuals who share information related to criminal proceedings, emphasising the potential negative effects on the right to defence and public interest reporting. The Ombudsperson highlighted the impracticality and disproportionality of penalising individuals with knowledge of criminal actions, especially in cases where no official indictment has been issued for years. She underscored the importance of public admonition as a tool for addressing deficiencies in criminal proceedings, given existing limitations in the legal system, such as the absence of judicial control over rejected charges and

36 See: <https://www.telegram.hr/politika-kriminal/telegram-otkriva-sve-poruke-u-kojima-su-rimac-i-zalac-spominjale-dogovore-s-ap-i-zasto-je-nesporno-da-je-to-andrej-plenkovic/>.

37 [Proposal for Amendments to the Criminal Code.](#)

38 Ibid.

lengthy pre-investigation phases without legal sanctions for delays.

Furthermore, in a legal system in which: (i) there is no judicial control of rejected criminal charges; (ii) there exists only an instructional deadline of 6 months for conducting the pre-investigation phase by the state attorney's office, but no legal sanctions for exceeding the stated deadline (therefore these pre-investigation

phases sometimes last for several years before the official investigation has even started); and (iii) the only available legal remedy against the failure to conduct effective investigations is a constitutional lawsuit (where years may again pass before the decision of the Constitutional Court); public admonition of authorities for failure to conduct investigations is a necessary tool for correcting omissions in criminal proceedings.

Anti-corruption framework

Key recommendations

- *The government needs to ensure sufficient resources for the implementation of the Protection of Reporters of Irregularities Act, including full access to free legal aid and psychological assistance.*
- *The government has to implement recommendations given by GRECO in the fifth evaluation round, as eight recommendations were implemented partially and nine have not been implemented at all.*

Levels of corruption

Transparency International's Corruption Perception Index for 2022 found that Croatia is among the most corrupt Member States of the EU, ranking 24th out of 27 Member States.³⁹ In 2023, corruption cases in the energy sector were especially prominent.

In 2023, the largest corruption scandal in Croatian history was uncovered. It involves

the national oil and gas company Industrija Nafta (INA), which is owned partially by the Croatian state (44,84%) and by Hungarian gas company MOL (49,08%). INA is a strategically crucial part of the Croatian energy landscape and the largest company in the country. From 2020 until 2022, at least seven people, including one of INA's high-ranking directors, Damir Škugor, and Marija Ratkić, CEO of the Plinara istočne Slavonije gas company, were involved in selling INA's gas to a small company, OMS

³⁹ Transparency International, [Corruption Perceptions Index](#), 2022.

Upravljanje, owned by Goran Husić and Josip Šurjak, the president of the Croatian Bar Association, for prices significantly below market rate. The discounted gas was then resold to foreign customers by Šurjak's company for 10 times the price, while the suspects kept the difference for themselves. A similar deal allegedly happened between Škugor and Stjepan Leko, formerly Škugor's deputy in INA, and Vlado Mandić from the company EVN Croatia Plin. Total damages caused to INA amounted to over one billion kunas (approximately €140 million), which made it the largest corruption case in Croatia's history.⁴⁰

Another case in HEP Group (a national, state-owned electricity and gas company) was discovered in 2023. During 2022, HEP lost tens of millions of euros by selling its gas significantly below market prices after buying it from INA at a significantly higher price. The majority of this discounted gas supply ended up in the Prvo plinarsko pruštvo (PPD) gas company, owned by Pavao Vujnovac. It has been reported⁴¹ that HEP's director, Frane Barbarić, informed former Minister of Economy and Sustainable Development Davor Filipović of this issue, but he failed to act upon this information and the transfers went through. It is important to note that Vujnovac is one of the most powerful

businessmen in Croatia, with strong connections to publicly owned companies. He is positioned to become the majority owner of the food and retail conglomerate Fortenova Group, the successor to the Agrokor Group and one of the largest companies operating in Croatia, which has been heavily criticised by the opposition.⁴² Agrokor Group was previously subject to a state takeover in 2018.⁴³

Minister Filipović was dismissed by Prime Minister Andrej Plenković in December 2023 after it was discovered⁴⁴ that Filipović's special adviser, Jurica Lovrinčević, offered the local Zagreb television network Mreža TV to lease advertising space from several state-owned companies and institutions. In return, he demanded that he be paid half of the money made from that transaction.

40 See: <https://total-croatia-news.com/news/great-ina-scandal-explained/>.

41 See: <https://faktograf.hr/2023/07/14/kako-je-hep-izgubio-milijune-na-trgovini-plinom/>

42 See: <https://glashrvatske.hrt.hr/en/politics/opposition-slams-government-for-its-role-in-new-fortenova-group-ownership-structure-11173628>.

43 See: <https://balkaninsight.com/2018/10/30/former-croatian-economy-minister-declared-the-collapse-of-cro-ny-capitalism-10-30-2018>.

44 See: <https://www.nacional.hr/uskoro-uzivo-davor-filipovic-se-obraca-javnosti/>.

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Some progress has been made regarding the adoption of legislation in the area of lobbying, with the Law on Lobbying being included in the parliamentary procedure in late 2023. It is expected it will be adopted in early 2024. It includes an obligation to implement a public register of lobbyists, but it is not yet clear how much of the data from the register will be publicly available. Criticism⁴⁵ of the law points out that the rules and procedures will be administratively relatively demanding for lobbyists, but much more lenient towards politicians and government officials. Lobbyists will have to report their activities to the Commission for Conflict of Interest.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

During 2023, limited progress was made in combating SLAPPs, with the Croatian Journalists' Association criticising⁴⁶ the government's anti-SLAPP directive proposal as "watered-down".

Specifically, the proposal significantly narrowed the definition of cross-border cases, weakens the mechanism for early dismissal of cases, and does not include provisions for compensation for damages for SLAPP victims. In 2023, there were 945⁴⁷ active lawsuits against journalists.

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including with regard to the implementation of EU funds

According to the most recent publicly available annual report by the State Attorney's Office,⁴⁸ at the beginning of 2022, there were 685 open cases by the Bureau for Combating Corruption and Organized Crime. During that year they received an additional 3,493 cases, while they resolved 3,306, resulting in a backlog of 872 cases. The Bureau received a total of 1,924 criminal charges during the year, 1,286 (66.83%) of which were dismissed, while 621 (32.27%) were put under investigation. During the same year, the Bureau completed 497 investigations, of which 460 resulted in decisions to prosecute, while 29 were dismissed. The investigations often take a long time to complete, with 25% taking 6 months or less, 29% 12 months or less,

45 See: <https://faktograf.hr/2023/11/13/zakon-o-lobiranju-strog-prema-lobistima-blag-prema-politicarima/>.

46 See: <https://balkaninsight.com/2023/07/10/croatia-journalists-govt-is-watering-down-anti-slapp-directive/>.

47 See: <https://www.balcanicaucaso.org/eng/Areas/Croatia/Croatia-at-least-945-ongoing-lawsuits-against-journalists-and-media-outlets-225181>.

48 State Attorney's Office, [Annual Report for 2022](#).

and 46% taking longer than a year. Croatian courts have issued a total of 469 judgments on the Bureau's cases, 86.6% of which were convictions.

There were several prominent cases by the European Public Prosecutor's Office (EPPO) in Croatia in 2023. In April, a conviction for unlawful favouritism involved an official in the Croatian Agency for SMEs, Innovations and Investments (HAMAG BICRO).⁴⁹

In June, there were searches⁵⁰ at the University of Zagreb due to suspicions of subsidy fraud and acts of corruption targeting the (former) dean of the Faculty of Geodesy, Almin Đapo, who used EU funds to purchase a private yacht and several automobiles, among other things.⁵¹ His activities were connected to the current Minister of Culture, Nina Obuljen Koržinek, and included dozens of other suspects from the Faculty, culminating in 29 arrests at the University.⁵² An unrelated case at the University of Zagreb, Faculty of Food Technology and

Biotechnology, involved its dean Jadranka Frece and former dean Damir Ježek, who spent the Faculty's funds on private goods such as perfumes, clothes and travel.⁵³

In December, EPPO filed an indictment⁵⁴ against two suspects, including the former Minister of Agriculture Tomislav Tolušić, for subsidy fraud and abuse of office and authority, following an investigation into projects for building a winery and planting a vineyard, co-funded by the EU.

EPPO has also been investigating another former minister, Gabrijela Žalac from the Ministry of Regional Development and EU Funds, for abuse of office and authority.⁵⁵ Her private expenses were partly included in the procurement costs of the EU's 'Competitiveness and Cohesion' Operational Programme, managed by the Ministry.

Two officials from the city of Rijeka were arrested on suspicion of abuse of office and

49 The European Public Prosecutor's Office, [Conviction for unlawful favouritism in an EPPO case in Croatia](#), 21 April 2023.

50 The European Public Prosecutor's Office, [Croatia: EPPO carries out searches at the University of Zagreb in probe into subsidy fraud and corruption](#), 29 June 2023.

51 See: <https://www.telegram.hr/tema/geodetski-fakultet/>

52 The European Public Prosecutor's Office, [Croatia: 29 suspects arrested in investigation involving University of Zagreb](#), 8 November 2023.

53 See: <https://www.telegram.hr/velike-price/inspekcija-potvrdila-zagrebacka-dekanica-godinama-trosi-javni-novac-na-luksuz-odjecu-i-parfeme-nije-ni-smijenjena/>

54 The European Public Prosecutor's Office, [Croatia: Two indicted for subsidy fraud and abuse of office in case involving vineyard and winery](#), 21 December 2023.

55 The European Public Prosecutor's Office. [Croatia: EPPO investigates former minister and ministry employee for abuse of office and authority](#), 8 December 2023.

authority.⁵⁶ The two officials are suspected of executing several activities to ensure that the private company, owned by another suspect, was chosen to carry out works as part of a project to

construct a waste-sorting plant, at unreasonably inflated prices.

Media environment and media freedom

Key recommendations

- *Concrete legislative measures against SLAPPs targeting journalists and other actors have to be brought.*
- *The level of protection of journalists against threats and attacks, as well as smear campaigns, needs to be enhanced.*
- *The amendments to the Criminal Code must not be adopted.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The media regulator in Croatia is the Agency for Electronic Media⁵⁷ (AEM). It was established in accordance with the provisions of the Electronic Media Act⁵⁸ (EMA) and performs administrative, professional, and technical tasks for the Council for Electronic Media,⁵⁹

the governing body of the Agency and regulatory body in the field of electronic media. The President of the Electronic Media Council is also the Director of the agency, and he is appointed by the Croatian Parliament. The Director of the Agency represents and manages the agency, and is responsible for the work of the internal units of the agency. Internal units are established to perform tasks within the scope of the agency: the Office of the Director, the Department for Supervision and Analysis of Media Content, the Finance Department, and the Legal Department. The Agency for Electronic Media

56 The European Public Prosecutor's Office. [Croatia: Two officials from the City of Rijeka among five arrested on suspicion of abuse of office and authority](#), 5 April 2023.

57 [Agency for Electronic Media](#).

58 [Official Gazette 111/2021](#).

59 [Council for Electronic Media](#).

actively cooperates with other public and state bodies, but also with all relevant international regulatory networks (ERGA, EPRA, MNRA, CERF), as well as the European Commission's Directorate-General for Communication Networks, Content and Technology (DG Connect), in line with the Audio-visual Media Services Directive.

Funds for the agency's work are provided through the allocation of 0.5% of the total annual gross income that media service providers made in the previous year by providing commercial services.

The independence of the Council for Electronic Media is sometimes questioned since all of the Council members are appointed by the parliament based on the proposal of the government, for a term of five years.⁶⁰ The Council for Electronic Media should be an independent regulatory body in the field of electronic media, and its basic tasks are, among other things, making decisions on granting and withdrawing concessions and permits, issuing warnings in case of non-compliance with the provisions of the law, and ensuring the supervision of programs of media service providers. The Council also decides on the distribution of around

€4.5 million from the Fund for Encouraging Pluralism and Diversity of Electronic Media⁶¹ through a public call for project proposals (at the beginning of the year, the Council makes a decision on the distribution of funds from the Fund for the year and a decision on justifying the funds received in the previous year), the distribution of around €200,000 for encouraging journalistic excellence, and the distribution of more than €4 million for projects on establishing a fact-checking system, which are funded from European funds.

The Croatian Regulatory Authority for Network Industries, HAKOM, is an independent regulator of the electronic communications market, postal services market and railway services market in the Republic of Croatia.⁶² HAKOM is an independent, autonomous and non-profit legal entity with public authority. The work of HAKOM is public. The founder of HAKOM and founding rights are exercised by the Croatian Parliament and the government of the Republic of Croatia. HAKOM is governed by its council, which includes five members, who are all appointed for five-year terms by the Croatian Parliament. They can also be dismissed by a vote in the Parliament upon the proposal of the government. Decisions of the council are

60 “When writing our contribution to this year’s EC Report on the rule of law, we reported in detail about this problem, as well as the perennial problem of the independence of the only regulatory body in the Croatian media space. Namely, even without this political blockade of the work of the Agency for Electronic Media, this institution is dependent on the political majority in the Croatian Parliament, and as such does not guarantee the independent adoption of important decisions for the media in Croatia,” said EFJ president Maja Sever, available at: <https://www.hnd.hr/vlada-uputila-prijedlog-imenovanja-troje-clanova-vem-a>.

61 [Fund for Encouraging Pluralism and Diversity of Electronic Media](#)

62 [Croatian Regulatory Authority for Network Industries](#).

made by a majority vote of all its members, i.e., any decision requires three council members to agree. The agency's executive director is in charge of HAKOM's staff, which performs expert, technical, and administrative roles.

Conditions and procedures for the appointment and dismissal of the head/members of the collegiate body of media and telecommunication authorities and bodies

The Croatian Journalists' Association⁶³ (CJA) and the Trade Union of Croatian Journalists and Media professionals⁶⁴ (TUCJ) addressed the government, the Croatian Parliament and the Ministry of Culture and Media in January 2023, concerned about the fact that the Council for Electronic Media, the only regulatory body in the media sector in Croatia, currently has only four of the legally prescribed seven members and that its work is hindered or blocked. The terms of office for three members of the VEM expired on 14 January 2023 (including a legal extension of their mandate of six months), and the government has not submitted a proposal for a decision to the Croatian Parliament more than eight months after the tender for the election of three new members was announced and carried out. They reiterated that they requested the depoliticisation of the Council for Electronic Media in the proposal for amendments to the Electronic Media Act in 2020. It was proposed that the CJA, as a

professional association, has the right to select members of the Council from the rank of journalists, and that the members of the Council be elected in Parliament by a two-thirds majority. That proposal was rejected. They expressed their concern that the then-current situation with the truncated Council, whose members are still elected at the proposal of the government by a majority of the representatives at the session of the Parliament, is the best example of the lack of concern of the government and the Parliament for journalism as a public good.

The missing three Council members were finally appointed by the Croatian Parliament on 1 February 2023.

In July, the Director of the Council, as well as a new Council member, were appointed by the Parliament, since their term of office expired. Josip Popovac remained the Director of the Agency, which he has been since 2018. The opposition in the Parliament once again expressed their concern regarding the independence of the Council members because of the appointment procedures.⁶⁵

Existence and functions of media councils or other co- and self-regulatory bodies

The Croatian Journalists' Association Ethical Council is the only self-regulatory body operating within the CJA since its founding in 1910.

63 [Croatian Journalists' Association.](#)

64 [Trade Union of Croatian Journalists and Media Professionals.](#)

65 [HINA: Raukar Gamulin: The government arbitrarily decided on the president and members of VEM.](#)

The council has 11 members elected by the CJA assembly among its members.⁶⁶ The Rulebook regulates the work of the Ethical Council on the work of the Ethical Council of Journalists.⁶⁷

Other

On 5 July 2023, the Ministry of Culture and Media submitted to the representatives of the working group for the drafting of the Media Act a working version of the Act. The Croatian Journalists' Association assessed the law as very worrying and unacceptable for the media community in Croatia. The Ministry offered a document that was not previously discussed at the working group meeting, nor was there any consultation. Key parts of the working document that concern CJA and the SafeJournalists network include:⁶⁸

- the tendency to legalise censorship through a provision that gives the publisher the right not to publish a journalistic contribution voluntarily and without any explanation;
- the journalist's obligation to reveal their source of information to the editor;
- the proposed composition of the new Council of Media Experts, which has "enormous powers" (allocation of grants, tests of public value...) – private profit-making entities (the largest publishers of print and electronic media, private law and media faculties) would dominate (four out of five seats), while journalists and media experts would be marginalised;
- register of journalists and photojournalists whose professional status is decided by the Council of Media Experts;
- the state's attempt to get involved in media self-regulation through the imposition of the Council of Media Experts, which should adopt editorial statutes in the media where publishers fail to agree on the statute with journalists;
- avoiding defining and sanctioning covert advertising;
- abandoning the encouragement of media pluralism and media diversity by abolishing the provision on state financing of the start-up of new small, local and community media;
- the unclear provision that "it is not allowed in the media to undermine the public's trust in the role of the courts in a democratic society" is problematic and unclear;
- there is not enough information about grants from the Fund for the Promotion

66 Croatian Journalists' Association, [Ethical Council](#).

67 Croatian Journalists' Association, [Rulebook on the work of the Ethical Council of Journalists](#).

68 Croatian Journalists' Association and SafeJournalists network, [Safejournalists: unacceptable draft of the new Media Act in Croatia](#).

of Media Pluralism, and it is not clear what criteria will be used for the distribution of state money;

- the introduction of additional state control over professional associations, which is required to submit a membership list and a work plan for the next two years.

Pluralism and concentration

Levels of market concentration

The Croatian Journalists' Association (CJA) sent a query to the Agency for the Protection of Market Competition (AZTN) about the procedure it carries out for evaluating the permissibility of concentration of publishers regarding the acquisition of Novi list, Glas Istre and Zadarski list to Media Solutions, the publisher of Glas Slavonije.⁶⁹ Media Solutions would, if the acquisition happens, own four major regional daily newspapers. CJA warns that the ownership structure of Media Solutions (party members of the governing party and donors to the governing party), as well as the fact that the company is in financial difficulties, due to which the salaries of Glas Slavonije workers are delayed for months and the account is blocked, give this business transaction political connotations. An additional argument in favour of this is that the merger process is being carried out on the eve of the super-election year of 2024 when citizens will elect the government, the

President of the Republic and members of the European Parliament.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

There was no progress in this section in 2023. There is still a lack of transparency in media ownership, as well as in data collection and supervision procedures. Research conducted by Faktograf⁷⁰ showed that there are 11 different types of records about media ownership: five in the Agency for Electronic Media by media types; three types of publication in the Official Gazette, depending on whether it is an obligation based on the Electronic Media Act or the Media Act; database in the Register of Real Owners and, finally, two types of registration in the Croatian Chamber of Commerce, one of which is for the press and the other for all electronic media.

In addition to so many records, it is still difficult to get a complete picture of who the owners of some media are, because they are either hidden behind business entities or the publishers do not report the updated ownership structure. The mentioned research showed that there is an alarming number of publishers who have not declared their ownership structure under the regulations, but still get public funds.

69 Croatian Journalists Association: [CJA demands a statement from AZTN on the concentration of ownership of Glas Slavonije, Novi list, Glas Istre and Zadarski list.](#)

70 Veronika Rešković: [As many as 11 records, and media ownership is still non-transparent.](#)

Public service media

Independence of public service media from governmental interference

The public broadcaster is Croatian Radiotelevision⁷¹ (HRT) and the public news agency is Croatian Reporting News Agency⁷² (HINA).

Croatian Radiotelevision is managed by the Director of Croatian Radiotelevision under the Croatian Radiotelevision Act⁷³ and the Statute of Croatian Radiotelevision.⁷⁴ The Director is appointed by the Croatian Parliament for a term of five years. The Supervisory Board of Croatian Radiotelevision has five members. Four members of the Supervisory Board are appointed and dismissed by the Croatian Parliament in the manner and according to the procedure established by the Law on Croatian Radiotelevision. One member of the Supervisory Board is a representative of workers. The mandate of members of the Supervisory Board lasts four years. In February, the term in office ended for one of the Supervisory Board members. The election of the new member raised questions about the role of the Supervisory Board, given that the parliamentary opposition assessed that it did not influence the work of Croatian Radiotelevision and had no real power. They

also expressed their concern about the fact that only two candidates have applied to the tender for the election of the new Supervisory Board member and that the competent media committee has not had the opportunity to interview them. Furthermore, they explained that the poor response is a consequence of knowing who will be chosen in advance.⁷⁵

The mandates of four members of the Program Council of Croatian Radiotelevision⁷⁶ (HRT) expired in July. The Program Council of HRT represents and protects the interest of the public by monitoring programs and improving radio and audio-visual programs, as well as other audio and audio-visual and multimedia services. The Council has 11 members. The Croatian Parliament elects and dismisses nine members of the Council. The selection of members by the Croatian Parliament is carried out based on a public call published and carried out by the Committee for Information, Informatization and Media of the Croatian Parliament. Two members of the Council are elected and dismissed by journalists and other employees of HRT who creatively participate in the creation of programs. Only seven candidates applied for the positions. No candidate received enough votes in the parliament, so the vote was repeated in September and four new members were appointed.

71 [Croatian Radiotelevision](#).

72 [Croatian Reporting News Agency](#).

73 [Official Gazette 137/2010, 76/2012, 46/2017, 73/2017, 114/2022](#).

74 [The Supervisory Board](#).

75 [HINA: Parliamentary opposition: The Act on Croatian Radiotelevision should be changed](#).

76 [The Program Council](#).

In July, a tender for the editor of the informative media service (IMS) of Croatian Radiotelevision was opened. It is one of the key positions in the program of public radiotelevision. The editor is elected for a term of five years. Katarina Periša Čakarun, the former editor, was elected for another term in the office. Čakarun has been the editor of IMS since 2016, and her tenure has been marked by criticism for bringing HTV closer to the political interests of the ruling party, HDZ. The branch of the Croatian Journalists' Association at Croatian Radiotelevision and the branch of the Trade Union of Croatian Journalists at HRT warned⁷⁷ that the implementation of the procedure for selecting the editor of the Informative Media Service was non-transparent and unprofessional. They warned that it can be concluded from the tender process that it was made for one particular candidate. Neither the public and the employees know who is on the commission that conducted the competition, according to which methodology it was determined that the candidate meets certain conditions of the competition, nor it is not known why the conditions of the competition were changed compared to the previous one (from 2018). It is not known how many candidates registered for the competition, how many of them met the conditions of the competition, and finally, from the decision and explanation on the selection of Katarina Periša Čakarun, it is not clear why she was the only

candidate who meets the required conditions of the competition.

Editorial standards (including diversity and non-discrimination)

The Ombudsperson for gender equality,⁷⁸ Višnja Ljubičić, sent a warning to HRT after receiving a complaint from women's associations about discrimination because not a single woman was invited to the political show on the topic of the past year, which had six participants.⁷⁹ In her warning and recommendations, the Ombudsperson pointed out that she does not get involved in or dispute the expertise of the invited participants, but that she considers the fact that this is not an isolated case to be particularly worrisome. She said that it is a practice of public television not to have a single guest in news programs in which important social, political and other topics of public interest are discussed.

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

Article 94(3) of the Electronic Media Act (EMA)⁸⁰ regulates user-generated content, i.e., comments by the users on articles published

77 Trade Union of Croatian Journalists and Media Professionals, [Croatian Journalists' Association: The selection of Periša Čakarun is another nail in the coffin of professionalism and media freedoms at HRT](#).

78 [The Ombudsperson for gender equality](#).

79 HINA: [Ombudsman Ljubičić sent a warning to HRT due to discrimination against women](#).

80 [Electronic Media Act](#), Official Gazette 111/2021.

online. The users have to register to a page and publishers will warn them in a clear and easily visible and understandable way about commenting rules and violations. In this way, the responsibility for the comments lies not with the publishers, but with those who break the law.

Competence and powers of bodies or authorities supervising the online ecosystem

The Electronic Media Council receives complaints about violations of the Electronic Media Act and decides on complaints at its meetings. Analysing the Council's conclusions, we noticed that in most cases the Council does not consider possible hate speech when deciding, i.e. it does not go into the merits of the complaint itself when it refers to hate speech.

Financing framework (including allocation of advertising revenues, copyright rules)

Financing framework is one of the main sources of problems with media independence in Croatia.

The Fund for the Promotion of Pluralism and Diversity of Electronic Media⁸¹ is a fund of the Agency for Electronic Media (AEM). The Fund's financial resources are provided by the Croatian Radio and Television Act (3% of RTV fee revenues). The Fund's resources encourage the production and publication of audio-visual and radio programs and content

of television and/or radio broadcasters at the local and regional level, non-profit television and/or radio broadcasters, non-profit media service providers referred to in Articles 19 and 79 of the Electronic Media Act, providers of electronic publications, non-profit producers of audio-visual and/or radio programs.

The Fund's resources are distributed according to the Ordinance on the Fund for the Promotion of Pluralism and Diversity of Electronic Media,⁸² which was amended in 2022.

Ratios for the distribution of the Fund's funds among certain types of users are:

1. Television broadcasters and non-profit television broadcasters on the local and regional level - 35%;
2. Radio broadcasters and non-profit radio broadcasters on the local and regional level - 38%;
3. For-profit providers of electronic publications as referred to in Article 71 para 1 of the Electronic Media Act - 9%;
4. Non-profit providers of electronic publications as referred to in Article 55 para 5 of the Electronic Media Act - 5%;
5. Non-profit radio and television content providers as referred to in Articles 26 and 92 of the Electronic Media Act - 1.5%;

81 [The Fund for the Promotion of Pluralism and Diversity of Electronic Media.](#)

82 [Official Gazette 84/2022.](#)

6. Non-profit audio-visual and radio content providers - 1.5%.

The Council for Electronic Media distributes the remaining 10% of the Fund's funds between six categories of publishers, based on the assessment of the public's needs, the development of trends, and the development of the media industry before the announcement of the public call. The funds for 2023 were appointed in March (the call was open in late 2022); one more call (for for-profit providers of electronic publications) was opened in March and the funds were appointed in July.

The funding for non-profit media (community media) is problematic. Non-profit media contribute to the development of the internal pluralism of the media system, the encouragement of social inclusion, critical thinking and media literacy, and the education of media workers. Given that their work is not motivated by profit (their publishers are mostly civil society organisations), non-profit media are often the only source of information on areas of public interest such as independent culture, labour rights, environmental sustainability etc. The special role of non-profit media is recognized

in international documents of the Council of Europe,⁸³ the European Parliament,⁸⁴ and UNESCO.⁸⁵ Despite this, Croatia has not created a stable and predictable environment for the development of non-profit media. After the abolition of the support program for non-profit media at the Ministry of Culture in 2016, the Fund for the Promotion of Pluralism and Diversity of Electronic Media became one of the key and rare sources of support for the sustainability and development of the non-profit media sector.⁸⁶

But, as the analysis from the Informal Initiative for the Sustainable Development of the Non-profit Media Sector states in their analysis of the sector,

“From 2017 until today, under the Ordinance on the Fund for the Promotion of Pluralism and Diversity of Electronic Media (Official Gazette 84/2022), the share of funds for non-profit electronic publications remains at 5% of the Fund's funds, while for non-profit providers of radio and television services and non-profit producers of audio-visual and radio programs are allocated 1.5% each, which means that only 8% of funds

83 Council of Europe, Recommendation CM/Rec (2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 2007; Council of Europe, Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue, 2009.

84 European Parliament, European Parliament resolution of 25 September 2008 on Community Media in Europe, 2008.

85 UNESCO, Defining Community Broadcasting. Community Media Sustainability Policy Series, 2017.

86 See: <https://www.neprofitni-mediji.eu/to-su-zapravo-neprofitni-mediji>.

are allocated from the Fund for the entire non-profit media sector.”⁸⁷

The Initiative concludes:

“In Public Tender No. 1/22 for the allocation of funds from the Fund, all funds for non-profit organisations providers of electronic publications (5%) and non-profit producers of audio-visual and radio programs (1.5%) were distributed, while funds for for-profit providers of electronic publications were not spent in either that invitation nor in the next public tender provided exclusively for for-profit providers electronic publications. Thus, from 14% of the Fund’s resources (€586,634.81), as much as is intended for profit providers, not even 45% of these funds were distributed, i.e. the amount corresponding to 60% of total funds for non-profit providers of electronic publications. Therefore, it is clear that the shares of funds in the Ordinance on the Fund for the Promotion of Pluralism and Diversity of Electronic Media are inadequately distributed, i.e. that there are funds in the Fund itself which can already be used for activities of public interest, which is certainly the case with the non-profit media sector.”⁸⁸

We would like to underline that the Council also allocates funds to non-profit media for projects that spread hatred, which it interprets as pluralism of opinions and attitudes. Thus, in 2023, the Council allocated funds from the Fund to the project of the right-wing portal Narod.hr, ‘Epidemic of transsexualism in Croatia and the world’.⁸⁹

Even though the call for the distribution of the Fund is usually opened at the end of the year (October) so that the decision on the distribution of funds can be made in the first quarter of the year, the call for the distribution of the fund for 2024 was not opened in 2023. If we take into account that the funds for 2023 should have been spent by the end of 2023 and all the content financed from the Fund should have been published by the end of 2023, and the fact that the call for 2024 was only published in January 2024 instead of October 2023, we can assume that will the lack of funds in the first half of the year poses a problem for the sustainability of non-profit media in 2024.

Additionally, each year, the Electronic Media Council publishes a call for tenders for co-financing of projects on the topic of encouraging

87 Available at: <https://www.neprofitni-mediji.eu/u-fondu-za-pluralizam-ve-postoje-sredstva-za-dodatnu-podrku-neprofitnim-medijima>.

88 Ibid.

89 Agency for Electronic Media: Adopted decision on the allocation of funds from the Fund for Encouraging Pluralism and Diversity of Electronic Media No. 01/22; Interpretation of the decision: <https://www.telegram.hr/politika-kriminal/vem-u-ime-obitelji-smo-novac-za-istrazivanje-epidemije-transseksualizma-dali-da-smanjimo-podjele-u-drustvu/>.

media literacy.⁹⁰ The subject of this public call is the collection of offers for co-financing the preparation and creation of educational materials on various platforms, projects, events, seminars, conferences, workshops, lectures or research, on the topic of media literacy, development and awareness-raising of its importance, as well as related areas and other projects. The purpose of co-financing is to strengthen and develop citizens' media literacy skills, develop educational materials and programs on various platforms, and raise public awareness of the importance of media literacy. The budget for 2023 was €53,089. In November 2023 AEM opened the call for tenders for 2024 and the budget is €53,000.

Additionally, on 16 December 2022, AEM publicly presented the call for tenders from the fund for the 'fact-checking' projects under the measure 'Establishment of media fact-checking and public data publication system' of the National Recovery and Resilience Plan. The general goal of the measure to establish the accuracy of information, which is carried out by the Agency for Electronic Media and the Ministry of Culture and Media, is to strengthen society's resistance to misinformation by reducing the amount of misinformation and false information in the public space, strengthening information reliability and security when consuming media content and using social media

networks, as well as strengthening the quality of journalism and credible reporting, and strengthening media literacy.

For the implementation of the first part of the measure, the establishment of an information verification system, €5,968,170 in grants was provided. Higher education and scientific institutions and civil society associations were able to apply to the public call⁹¹ for the allocation of funds as lead applicants, while the media could be partners. The text of the first call (published in December 2022) was changed three times, which indicates that it was not thoroughly prepared. The funds (€2,292,217.39) were allocated in July. A new call was opened in September 2023⁹² and the results (allocated €1,719,223.36) were published in December.

The Agency for Electronic Media also encourages journalistic excellence by awarding grants to journalists for journalistic work and research on topics of public interest in the fields of culture, health, local topics, ecumenism and religion, human rights, the position of women in society, topics of interest to minorities in society, children and youth, education, sports, economy, international relations and the European Union. The special goals that this project seeks to achieve are related to additional engagement of journalists and in-depth research on topics of public interest, strengthening of critical capacity

90 Available at: <https://www.aem.hr/blog/2023/11/09/javni-poziv-za-sufinanciranje-projekata-na-temu-poticanja-medijske-pismenosti-4/>

91 Available at: <https://npoo.aem.hr/2022/12/30/objavljen-javni-poziv-za-uspostavu-sustava-provjere-tocnosti-informacija/>.

92 Available at: <https://npoo.aem.hr/2023/09/08/15646/>.

and social influence, the expansion of the number of topics and relevance of the content of electronic publications and the professionalisation of the journalistic and authored work they contain, along with rewarding and motivating journalists for truthful and judicious reporting and high-quality authored work, i.e. strengthening the autonomy of journalists. Funds for this project are provided under the Regulation on criteria for determining beneficiaries, and the distribution of part of the income from the lottery for the year 2023⁹³ (€200,000) was made to 118 journalists.⁹⁴

On the other hand, the for-profit sector, especially local media, faces problems with pressures connected with the lack of economic independence of the media. Gong, a watchdog organisation focused on enhancing democratic processes, together with the Croatian Journalists' Association and the Trade Union of Croatian Journalists and Media Professionals, organised a series of focused interviews with dozens of representatives of the journalistic profession.⁹⁵ Most interlocutors have singled out the growing problem of pressure from advertisers, large private companies, and governments via the ministries, as well as various forms of concealed advertising. Some advertising models that have become more dominant in the Croatian media space – such as conferences organised by

media owners and newsrooms, together with companies and state institutions and native advertisements – counter the basic task of journalism: timely and independent information. Media owners are not looking for editors who will insist on high professional standards, but instead they are increasingly looking for editors who are willing to meet the demands of advertisers and political figures.

The discussions are particularly prominent for local media in the function of promoting the work of local public companies. For many years of funding, most local media has been transformed into auxiliary PR tools, instead of fostering critical discourse toward local government and providing independent information. According to the Electronic Media Act, state administration bodies and public institutions founded by the Republic of Croatia, as well as legal entities owned or predominantly owned by the Republic of Croatia, are obliged to spend 15% of the annual amount intended for the promotion or advertising of their services or activities on TV, radio or online media. According to the research⁹⁶ conducted by Ivanka Toma for the Society for the Protection of Journalist Copyrights, in respect of the majority of electronic media, the most important source of income is local self-government units, ranging from 40-80% of the outlet's budget.

93 Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2023_03_31_533.html.

94 Available at: <https://www.aem.hr/blog/2023/10/18/kvalitetno-novinarstvo-2023/>.

95 Đurđica Klancir, [Guidelines for responsible and safe journalism in times of crisis](#).

96 Ivanka Toma: [Portals in Croatia, a means of information or manipulation?](#).

The problem with state promotion in media illustrates the recent political scandal when Nacional magazine⁹⁷ announced that it had recordings on which Jurica Lovrinčević, adviser to the Minister of Economy, Davor Filipović, can be heard talking to Mreža TV journalist Marino Vlahović. Allegedly, Lovrinčević is asking the journalist to pay him half of the advertising budget for the government and state-owned companies that he allocated to them. Lovrinčević allegedly extorted the media by promising them the allocation of public funds from several sources (state companies) in exchange for part of the money and a positive media image. Because of the affair, both Minister Filipović and his advisor Lovrinčević were dismissed, although the Prime Minister persistently denies responsibility.

Safety and protection of journalists and other media actors

The SafeJournalists network⁹⁸ published their annual Western Balkans Journalist Safety Index⁹⁹ for the previous year (2022). In the report for Croatia for the year 2022, the journalist safety index was rated slightly better than in 2021, but it's still interpreted more as stagnation than progress. "Prevention and process" were rated with the same average rating as in

2021, while "legal and organisational environment" and "safety of journalists" were rated slightly better. This report also showed that journalists still underreport threats and attacks, that the number of lawsuits against journalists and the media is still high (including SLAPPs), and that institutions still do not have mechanisms to combat violence against journalists.

Frequency of verbal and physical attacks

In 2023, multiple instances of various types of attacks on Croatian journalists took place. The SafeJournalists network, as well as Croatian Journalists' Association, keep track of some of the attacks.

In January, Ante Aračić sent the following message to journalist Andrej Dimitrijević via Facebook: "You trash of a journalist, when I see you around town I will first slap you and then spit on you. Throw yourself off the building, faggot monkey." Dimitrijević immediately reported the threat to the police.¹⁰⁰

The Croatian Journalists' Association reports about the pressure on the Srednja.hr portal coming from the Faculty of Croatian Studies, University of Zagreb. A letter was sent to the editorial office of the portal with the official memorandum of the Faculty, which was signed

97 Nacional, *We bring the tape! Lovrinčević told a journalist: "For him, that's half a serious hunt." I hope he will be normal...*

98 SafeJournalists, available at: <https://safejournalists.net/>.

99 Available at: <https://public.flourish.studio/visualisation/16020113/>

100 See: <https://safejournalists.net/reports/druge-prijetnje-novinarima-andrej-dimitrijevic-zagreb-18-1-2023/?lang=hr>.

by 39 people, among them students, administrative staff and teachers of the Faculty, in which they call out journalist Duje Kovačević for excessively focusing on the work of that faculty in his articles. The letter also contained links to 48 texts published on that portal in the last few years. In the letter, insults are made against Kovačević, a former student of the Faculty of Croatian Studies. He is called, among other things, a “young journalist” who has a “negative personal fixation” on the faculty and “frustrations” related to “failing college”. The highlight of the letter, however, is the appeal addressed to the Srednja.hr portal to stop reporting and deal critically with topics related to the work of the Faculty, i.e. to stop covering the institution, which is also being investigated by the state attorney.¹⁰¹

In February, the Croatian Journalists’ Association sent a complaint to the rector of the University of Zagreb, Dr. Stjepan Lakušić, on the inadmissible behaviour of Jadranka Frece, dean of the Faculty of Food and Biotechnology in Zagreb, who, through lawyer Zoran Vujasin, has been behaving towards Dora Kršul, journalist of the Telegram.hr portal, and Jelena Pavić Valentić, editor-in-chief of the Telegram.hr portal, in an offensive and threatening manner for several months. Lawyer Zoran Vujasin, on behalf of the dean, insulted and threatened Kršul, whose questions he labelled as “illegal” or “harassing”. A particularly shameful aspect

of the communication included threats of lawsuits for intrusive behaviour if Kršul does not stop sending inquiries about the Faculty’s business.¹⁰²

Threats were made in March to the editorial office of the Morski.hr portal in response to a series of articles discussing the legality of the construction of the port of Krilo Jesenice. The threats were made by a man who presents himself as the president of the Association of Tourist Shippers of the Croatian Chamber of Commerce, Ante Rakuljić, threatening the author of the article and the editor-in-chief, Jurica Gašpar.

In the series of articles, it is stated, among other things, that the port was created without a construction permit and completed by illegally dumping garbage into the sea, and that 130 ships were docked there without a safety plan. Rakuljić called the editorial office, insulted the editors and journalists, and claimed that the articles published on the portal were paid for or written by people outside the editorial office close to the Ministry of the Sea, Transport and Infrastructure. Despite being warned that the conversation was being recorded, he made serious threats that he would “destroy their business”, and repeatedly suggested to Gašpar that they should not write about the port and the workers there in a negative context.¹⁰³

101 Croatian Journalists’ Association, [We condemn the pressure of the Faculty of Croatian Studies on the Srednja.hr portal.](#)

102 Croatian Journalists’ Association, [CJA’s complaint on the behaviour of the dean Jadranka Frece.](#)

103 Croatian Journalists’ Association, [CJA strongly condemns the threats to the editor of the Morski.hr portal.](#)

In April, Hrvatski tjednik magazine published an issue with a cover that reads, “Plenković is paying 600,000 euros for this! 80 of Pupovac’s media Chetniks from the two nests of Novosti and Vida TV are paid by Plenković with our money for the special war against Croatia.” In the same issue, there is also a text signed by Ivica Marijačić, in which it is stated that “Croatia is paying almost 80 instigators in two of Pupovac’s media nests for a special war against Croatia.” The labelling of individual journalists and media outlets published by the Serbian National Council as “Chetnik nests”, “Ultra-Serbian chauvinists”, “haters of Croatia and the Croatian people” and “state enemies” is an example of inciting speech that incites hatred towards members of the Serbian national minority in Croatia and journalists who work in the mentioned media.¹⁰⁴

In May, the Croatian Journalists’ Association received a written threat to journalist Drago Hedl. Another written threat to journalist Chiara Bilić was also sent to CJA. CJA reported both threats to the police.¹⁰⁵

The Deputy Mayor of Split, Bojan Ivošević, called out Dalmatinski Portal and the journalist Živana Šušak Živković, claiming that they are “doing dirty work” for his political competition. The reason for Ivošević’s statement is a text in

which the amendment of the ordinance on the use of city “staff” apartments is mentioned, and the fact that this move will at least indirectly have an impact on the status of his father, also a user of a city apartment. With his statement, Deputy Mayor Bojan Ivošević calls out journalists and the media without reason, exposing them to additional public name-calling and contempt, which is unacceptable behaviour of a public official.¹⁰⁶

The Croatian Journalists’ Association expressed their concern with the systematic campaign that is happening in the Croatian Parliament against the Novosti newspaper and the journalists who work for it, with false and dangerous accusations being made. In two parliamentary sessions in April and May, there were shameful, dangerous and unacceptable statements by MPs such as Željko Sačić (Croatian Sovereignists), who accused Novosti of spreading anti-Croatian propaganda, and Croatian Serbs of inciting terrorism and the spread of Chetnikism. Nikola Grmoja, from Most, presented the dangerous thesis that Novosti should only deal with issues that concern the Serbian national minority. MP Ružica Vukovac (For a Just Croatia) joined the barrage of dangerous attacks by attacking Novosti because, as she says, they write untruths about the Homeland War and World War II, asserting, among other things, that they spread

104 Documented at: <https://safejournalists.net/reports/druge-prijetnje-novinari-i-urednici-novosti-i-vida-tv-zagreb-20-4-2023/?lang=hr>.

105 Documented at: <https://safejournalists.net/reports/druge-prijetnje-drageo-hedl-zagreb-5-5-2023/?lang=hr> and <https://safejournalists.net/reports/druge-prijetnje-chiara-bilic-zagreb-5-5-2023/?lang=hr>.

106 Croatian Journalists’ Association, CJA - Branch of Split-Dalmatian County: [We strongly condemn the statement of the Deputy Mayor of Split, Bojan Ivošević.](#)

intolerance towards the majority Croatian people. The same MP called for the initiation of proceedings against the editor of Novosti, Andrea Radak, for inciting intolerance. The President of the Croatian Parliament, Gordan Jandroković (HDZ), reacted to the accusation, asserting that it is unacceptable to call for prosecution because of what some newspapers write.¹⁰⁷

Nikolina Martinović, editor-in-chief of portal 035, received a death threat on 15 July 2023, when, after the publication of a police report on the portal, one of the actors from the police report called her asking for the article to be deleted. After she refused to delete it, the man told her, among other things: “I’ll kill you, I’ll wipe the floor with you, you idiot, be careful when it gets dark”. The man received a restraining order and was later sentenced to a suspended prison sentence of 10 months, with a probation period of two years.¹⁰⁸

The Minister of Culture and Media, Nina Obuljen Koržinek, in a statement to journalists in November, tried to deny Telegram’s revelations about possible corrupt work within her

Ministry. The minister attacked the journalist Dora Kršul, trying to discredit her integrity and professionalism, claiming that the journalist acted maliciously and deliberately published incorrect information. The Croatian Journalists’ Association considers it dangerous how top officials belittle journalists to avoid answering to the public, and express concern because the Minister of Culture calls out journalists from a position of power.¹⁰⁹

Law enforcement capacity to ensure journalists’ safety and to investigate attacks on journalists and media activists

In 2023, some improvements were made concerning mechanisms for combating violence against journalists. In September, the Deputy Prime Minister and Minister of the Interior, Davor Božinović, the President of the Croatian Journalists’ Association (CJA), Hrvoje Zovko, and the President of the Trade Union of Croatian Journalists and Media Professionals (TUCJ), Maja Sever, signed the Cooperation Agreement¹¹⁰ and two accompanying protocols: the Protocol on the behaviour of the police, journalists and other media workers at public

107 Croatian Journalists’ Association, [CJA condemns the hunt on newspaper Novosti](#).

108 Documented at: <https://safejournalists.net/reports/prijetnja-smrcu-nikolina-martinovic-slavonski-brod-15-7-2023/?lang=hr>.

109 Documented at: <https://safejournalists.net/reports/druge-prijetnje-upucene-novinarima-dora-krsul-za-greb-8-11-2023/?lang=hr> and <https://www.hnd.hr/hnd-o-verbalnom-napadu-na-kolegicu-krsul-sramotni-ispad-resorne-ministrice>.

110 Available at: https://mup.gov.hr/UserDocsImages/2023/9/Potpisivanje%20sporazuma%20HND%20MUP/Sporazum%20o%20suradnji%20MUP_HND_SNH.pdf.

gatherings of public interest,¹¹¹ and the Protocol on police behaviour when learning about a criminal offence committed to the detriment of journalists and other media workers in the performance of their work tasks.¹¹² This is part of the implementation of the Recommendation of the European Commission from 16 September 2021¹¹³ on guaranteeing the protection and safety of journalists, and strengthening their position, as well as other media workers, in the European Union.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

At least 945 lawsuits against the media and journalists were active in Croatia in 2023, according to the results of a yearly survey conducted by the Croatian Journalists' Association.¹¹⁴

Out of a total of 945 lawsuits, 910 refer to lawsuits for compensation for damage due to a violation of honour and reputation, which are conducted against publishers, their editors and journalists due to published articles. When it comes to criminal proceedings, nine media outlets reported a total of 35 such proceedings.

Prosecutors are most often persons from public and political life, including politicians holding power, then legal persons, and judges. Hanza Media (publisher of Jutarnji list, Globus, and Slobodna Dalmacija, among others) has the most lawsuits among publishers – 421 civil proceedings and 11 criminal ones. Styria faces the second highest number of lawsuits – for only Večernji list and 24sata, 190 civil cases and six criminal cases have been initiated. The longest court case thus far has lasted 33 years and is against Večernji list. This is connected to the problem of the efficiency of the justice system, as is mentioned in the European Commission 2023 Rule of Law Report.¹¹⁵

In total, more than €5.4 million is claimed in lawsuits covered by CJA's research of 22 media outlets. This figure is apparently smaller compared to last year's research, but Hanza Media did not submit data on compensation claims this year. Since almost half of the 945 lawsuits relate only to that publisher, and according to last year's survey Hanza Media had an average of €12,608 per lawsuit, it can be assumed that the total amount of all compensation claims in this number of lawsuits is twice as high. However, not all of these lawsuits are SLAPPs, and it is

111 Available at: https://mup.gov.hr/UserDocsImages/2023/9/Potpisivanje%20sporazuma%20HND%20MUP/PROTOKOL_2_Javna%20okupljanja%20od%20interesa%20za%20javnost.pdf.

112 Available at: https://mup.gov.hr/UserDocsImages/2023/9/Potpisivanje%20sporazuma%20HND%20MUP/PROTOKOL%20_1_%20prijava%20KD%20na%20C5%A1tetu%20novinara%20.pdf.

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

114 Croatian Journalists' Association, [CJA research: the number of lawsuits against journalists and the media is not lowering, at least 945 lawsuits are active](#).

115 European Commission, [2023 Rule of Law Report - Country Chapter Croatia](#), p. 10.

not known how many of these lawsuits could be considered SLAPPs. In 2022, the Ministry of Culture and Media established a working group dealing with the problem of SLAPPs. Despite this, there is still no official definition of a SLAPP in Croatia, nor do the courts separate and classify such lawsuits. The working group has not yet developed any mechanism to prevent such lawsuits.

After a lengthy court process, the Supreme Court ruled that the Network of Anti-Fascist Women in Zagreb (MAZ) must pay €2,110 to the University of Zagreb, in a case in which former rector Damir Boras sued MAZ. The Supreme Court completely changed two earlier identical judgments of the Municipal and County Courts. The University of Zagreb sent a denial and correction to an article in which the leadership of the University was criticised, and the MAZ editorial office immediately published the denial/correction in its entirety. However, in the same year, the university filed a lawsuit against MAZ because it did not publish the denial/correction following the Media Act. Namely, although the denial/correction was published in its entirety in the original form as it was received, a title differed from the original and a short editorial introduction was added. In the municipal and then in the county court, the university lost because the courts at both levels ruled that MAZ had published the denial/correction following the Media Act.¹¹⁶

Because of three caricatures, published in the sports section of the newspaper 24sata at the end of March 2020, Krešimir Antolić, the former head of GNK “Dinamo”, filed a private criminal complaint against artist Nikola Plečko (alias Nik Titanik).¹¹⁷

Confidentiality and protection of journalistic sources (including whistleblower protection)

The Prime Minister of the Republic of Croatia, Andrej Plenković, after the session of the wider presidency of the Croatian Democratic Union, announced that he would amend the Criminal Procedure Act and the Criminal Code to prevent the leaking of information from files and thereby criminalise the making of “political problems”. The statement of Prime Minister Plenković, which was reported by the media, reads as follows: “Things like this, that things from the printouts cause our political problems and leaks - that will not happen because it will be a criminal offence.” Following the announcement, the Croatian Journalists’ Association sent a complaint to Ombudsperson Tena Šimonović Einwalter in February.¹¹⁸

Amendments to the Criminal Code were submitted for public consultation in October. The Croatian Journalists’ Association considers the proposed new criminal offence “Unauthorised disclosure of the content of investigative or evidentiary action” (Article 307.a) to be a law

116 Croatian Journalists’ Association, [CJA calls for help and solidarity with MAZ portal colleagues](#).

117 Croatian Journalists’ Association, [CJA about the lawsuit against Nik Titanik: the society in which caricaturist is prosecuted criminally has a serious problem!](#)

118 Croatian Journalists’ Association, [CJA sends a complaint to the Ombudsperson about the announcement of Prime Minister Plenković](#).

with dangerous intentions, which is very much directed against the journalistic profession and the interests of the public, and opposes its introduction.¹¹⁹

They find the timing of the announcement of the amendment proposition to be indicative – it happened after the media published the transcripts from two corruption scandals connected to the governing party (the “Josipa Rimac” case at the beginning of 2023: first about the “AP scandal”, and then the transcripts about Government spokesman Marko Milić and employment in Croatian forests).

Although the Ministry of Justice and Administration, which is proposing the aforementioned changes, has repeatedly emphasised that it will not be possible to prosecute journalists for this criminal offence, “protective clauses” that prevent the prosecution of journalists do not exist in the legal proposal itself. Also, there are no exceptions in cases where the information is of public interest.

The application of this law will seriously limit media coverage of important affairs and ultimately deprive them of information of public interest. Such a legal solution would represent a new exhaustion and intimidation of journalists and the media, i.e. – like SLAPPs – another

form of judicial abuse aimed at limiting the freedom of reporting and the right of the public to be informed about the actions of the authorities.

In December, the Croatian Journalists’ Association sent a petition to the government with more than 2,000 signatures collected against the amendments to the Criminal Code.¹²⁰

Access to information and public documents

The office of the President of the Republic of Croatia prevented a journalist of Jutarnji list, Krešimir Žabec, from doing his job by denying him accreditation for the press conference called by the President of the Republic of Croatia, Zoran Milanović, on the occasion of the (non) appointment of the director of the Military Security Intelligence Agency (VSOA).¹²¹ “Because it’s not a media company, it’s a cartel. The government finances them, and have no shame, they organise a gipsy wedding in Split, not a Roma wedding. It’s not a media outlet, whoever writes there is not a journalist for me,” Milanović said in response to a journalist’s inquiry as to why his colleague from the Jutarnji list was not allowed to come. Then his spokesman, Nikola Jelić, intervened, explaining that

119 Croatian Journalists’ Association, [Public consultation: CJA strongly against article 307.a of the Criminal Code](#).

120 Croatian Journalists’ Association, [CJA sent Prime Minister Andrej Plenković a petition with two thousand signatures against the dangerous intentions law](#).

121 Jutarnji list, [The Office of the President of the Republic refused to issue accreditation to the journalist of Jutarnji list](#).

the journalist was not prohibited from coming, but that he was not invited.¹²²

Journalist Valentina Wiesner was excluded from the publicly funded conference “Consumer Protection in Insurance and Pension Savings

- EU Strategy and Croatian Practice”, organised by the Croatian Financial Services Supervisory Agency (HANFA). CJA qualified this act as an attempt at censorship.¹²³

Checks and balances

Key recommendations

- *The government needs to develop a systematic approach to the implementation of the recommendations of the Ombudsperson.*
- *The government needs to prescribe an automatic suspensive effect of the legal remedy against the expulsion and return orders.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of the judiciary on judicial reforms), and transparency and quality of the legislative process

In 2023, the legislative process continues to be defined by the weak role of the Parliament and the dominance of the executive branch. Impact

assessments and policy analyses are still seldom used, are non-transparent and unavailable to the public.¹²⁴

Public consultations continue to be held *pro forma*, with only acknowledgement of the comments made by the public. Consultations are in practice announced late in the legislative process or during holidays with short deadlines,¹²⁵ which weakens the opportunities for participation and harms the quality of public policies.

122 HINA, CJA: Inadmissible and unacceptable practice of President Milanović.

123 Croatian Journalists' Association, CJA's open letter to Ante Žigman, President of the Croatian Financial Services Supervision Agency.

124 Croatian Parliament, available at: <https://www.sabor.hr/hr/sjednice/pregled-dnevnih-redova>.

125 The Office of the Ombudsperson (Ured pučke pravobraniteljice), *Annual report for 2022 – Human Rights Defenders (Izvoješće pučke pravobraniteljice za 2022. godinu – branitelji ljudskih prava)*, April 2023.

Independent authorities

The Commission in its report for 2023 made six recommendations to Croatia, including to further improve the implementation of the recommendations and respond more systematically to the Ombudsperson Office's requests for information.

Namely, access to information is necessary for the Ombudsperson to conduct examination procedures in individual cases, as well as to analyse the situation in the annual report. The recommendations in the annual report are a key tool with which, after analysing the situation in certain areas, the Ombudsperson indicates the necessary changes. However, these changes can only occur if the recommendations are seriously considered and implemented, or if they are implemented to a greater extent than before.¹²⁶

This extends to other Ombudsperson institutions: for gender equality, for persons with disabilities and the Ombudsperson for children.

As indicated in the Ombudsperson's Annual Report for 2022, published in 2023, National Preventive Mechanism (NPM) representatives had satisfactory cooperation with police in 2022. There were no restrictions in the implementation of the mandate, and the representatives of the NPM were able to view the data and records that were kept in written or

electronic form. After the visits, 27 recommendations and one warning were sent, of which six new recommendations were sent during the control visit. However, in the same report, the Ombudsperson repeated a recommendation to the Ministry of the Interior to enable the institution of the Ombudsperson to see all the data on the treatment of irregular migrants, including the data found in the information system of the Ministry of Interior. In this regard, the Ombudsperson drew attention to the fact that in the 2022 EC Rule of Law Report, the impossibility of accessing data on the treatment of irregular migrants was pointed out, including direct access to the Information System of the Ministry. Namely, for effective assessment of the overall state of observed violations of rights and freedoms in the Republic of Croatia, the Ombudsperson institution has a special role to, among other things, examine allegations of illegalities and irregularities in the work of state bodies and conduct regular visits to places of deprivation of liberty, to prevent torture and other cruel forms inhuman or degrading treatment or punishment, which includes the treatment of irregular migrants and applicants for international protection.¹²⁷

126 See: <https://www.ombudsman.hr/hr/europska-komisija-pozvala-republiku-hrvatsku-da-poboljsa-provedbu-preporuka-pucke-pravobraniteljice/>.

127 Ombudsperson's Office, [Annual Report for 2022](#).

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

According to Article 98 (5) of the Law on Administrative Procedure,¹²⁸ every administrative decision needs to be reasoned, and the reasoning has to include,

“a brief presentation of the parties’ request, the established factual situation, the reasons that were decisive in the evaluation of individual evidence, the reasons for which one of the parties requests was not accepted, the reasons for reaching conclusions during the procedure, and the provisions based on which the administrative matter was resolved”.

However, according to the law, administrative decisions based on national security or public order grounds mostly do not contain legal and factual reasons. Article 50 (1.3) of the Law on International and Temporary Protection¹²⁹ prescribes that international protection can be annulled “if the person who is granted international protection poses a threat to national security or public order of the Republic of Croatia”. Further on, Article 5 (2) of the Law on

Foreigners,¹³⁰ which is *ius generalis* in comparison to the Law on International and Temporary Protection, prescribes that in the decision denying or terminating the residence of a citizen of a third country or expelling a citizen of a third country for reasons of national security, the legal provision will be stated without explaining the reasons behind the decision. Therefore, this relates to the situation where the assessment that one is a threat to national security is based on classified data collected by the Security and Intelligence Agency of the Republic of Croatia (SIA). Only the data collected by SIA which is not labelled with some level of secrecy can be disclosed in the administrative decision, while the classified data will not be revealed. The mere existence of the additional reasons that are connected to the classified data will be mentioned, for example briefly outlining that SIA stated that they have other data which lead to the same assessment, while their revelation could harm the interests of the national security of the Republic of Croatia. Moreover, the immigration authority in the vast majority of cases is not even aware of the grounds for such SIA’s assessment, since they do not have access to the file. SIA’s classified data are labelled with some level of secrecy and they are protected under the Data Protection Law¹³¹ and the Law on Information Security.¹³²

128 [Law on Administrative Procedure](#), Official Gazette No. 47/09, 110/21.

129 [Law on International and Temporary Protection](#) (Official Gazette No. 70/15, 127/17,33/23).

130 [Law on Foreigners](#), (Official Gazette No. 133/20, 114/22, 151/22).

131 [Data Protection Law](#), (Official Gazette No. 79/07, 86/12).

132 [Law on Information Security](#), (Official Gazette No. 79/07)

Powers accorded to the courts to carry out judicial review (including the scope and suspensive effect of review powers)

Judicial review of administrative actions typically occurs through an administrative dispute, wherein courts assess the conformity of state administration bodies with legal norms. Article 3 of the Act on Administrative Procedure outlines the scope of administrative disputes, specifying that they pertain to assessing the lawfulness of general acts of local and regional self-government and legal persons with public powers.

Despite this, administrative lawsuits often lack a suspensive effect, becoming effective only in specific cases prescribed by the law. Administrative courts can grant suspensive effect under certain conditions, but the delay in reaching decisions on requested suspensive effect often leaves parties in a legal void. This is particularly problematic in cases involving expulsion orders for third-country nationals, where the absence of an automatic suspensive effect raises concerns about breaching Convention rights, notably Articles 2 and 3. The current legal remedies in Croatia do not align with the standards established by the ECtHR, which emphasises the necessity of a suspensive effect in cases involving the breach of the *non-refoulement* principle. Furthermore, Article 13 of the EU Return Directive emphasises the right of third-country nationals to

appeal or review return-related decisions with the power to temporarily suspend removal during pending reviews.

Electoral framework

In 2020, the Constitutional Court independently initiated the procedure for the assessment of compliance of Articles 2-11 of the Election Constituencies Act with the Constitution, based on the authority from Article 38, Paragraph 2 of the Constitutional Act, and in 2022, in the course of the constitutional court proceedings, it received two proposals for the initiation of compliance.¹³³

At the session held on 7 February 2023, the Constitutional Court concluded that the current electoral system based on ten electoral units, determined by the provisions of Articles 2-11 of the Election Constituencies Act, significantly deviates from the principle of equal voting rights, primarily in its substantial aspect, which guarantees the equal voting power of each voter, i.e. the weight of each voice. The Constitutional Court repealed the Election Constituencies Act with the provision that the repealed Act ceases to be valid on 1 October 2023. After this decision, the process of drafting a new Election Constituencies Act was initiated. Even though the new Act was put in the public consultation process from 25 May until 24 June 2023, which fulfilled the obligation from Article 11 of the Act on the Right to

133 [Constitutional Court of the Republic of Croatia, Decision no. U-I-4089/2020 from 7 February 2023 and six separated opinions of the judges, Official Gazette Nos. 24/2023.](#)

Access to Information,¹³⁴ the process of drafting the new Act was not transparent. There was no working group established, so no consultations with the experts in the area nor wider public discussion during the drafting process, which is contrary to international electoral standards and good democratic practices.¹³⁵ The public was not informed of the persons involved in the process of drafting the new Act. Only after the Information Commissioner's decision, based on Gong's demands for access to information, did the Ministry of Justice and Public Administration provide the names of officials from the Directorate for the Political System and general administration sector within the Ministry, without explicitly stating anywhere that they were the creators of the new election law.¹³⁶ In October 2023, the law was put into the legislative process, and the opposition parties announced that they would challenge its constitutionality because of the circumstances of the drafting procedure not being transparent and in line with democratic standards.¹³⁷

134 Ministry of Justice and Public Administration, Constituencies Act is again under discussion before the Croatian Parliament.

135 Gong, Experts and the opposition agree - changes to the electoral legislation must be carried out inclusively and professionally, 12 May 2023.

136 Gong, Malenica avoided a high sentence, claims that the HDZ state secretary and two officials came up with the constituencies, 19 September 2023.

137 See: <https://www.novilist.hr/novosti/hrvatska/oporba-trazi-ocjenu-ustavnosti-tek-usvojenog-zakona-o-izbornim-jedinicama/>.

Civic space –

Key recommendations

- *Ensure quality access and participation in decision-making processes for the citizens and civil society in Croatia.*
- *The government needs to adopt the National Plan for Creating an Enabling Environment for Civil Society Development that will systematically tackle the issues faced by civil society, such as financing framework, access and participation in decision-making processes and institutional framework for civil society.*

Freedom of association

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

The Ombudsperson's Annual Report for 2022,¹³⁸ published in 2023, noted the critique towards some governmental tenders being allocated according to the 'fastest finger' method, meaning projects get funded according to the time they were received rather than their quality, putting organisations with infrastructural difficulties in a less favourable position. Cases of non-transparent awarding of office spaces owned by the state to CSOs are also mentioned in the report.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages

for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc.)

The most problematic part in this regard is still not having a key policy document for civil society and the continuous deterioration of the previously well-established framework. As reported in previous rule of law reports, the new National Plan for Creating an Enabling Environment for the Development of the Civil Society for 2023-2030 has still not been adopted and there is no progress in the matter, as the latest news from the Governmental Office for Cooperation with NGOs is that it is still being finalised. The work of the Council for Civil Society Development, the key advisory body to the government acting towards developing cooperation between the government and civil society organisations in Croatia, has also been institutionally blocked – new elections for the

138 Ombudsperson's Office, [Annual Report for 2022](#).

Council were finalised in July 2023, but the new Council composition has not yet been confirmed by the government and the constitutive session was not held. As evident from publicly available documents, the last meeting of the Council was held in March 2023.¹³⁹

Besides the debilitating framework, the Ombudsperson's Annual Report for 2022¹⁴⁰ states the following main issues regarding the right to association – the funds allocated towards CSOs from the state budget have still not recovered to the amounts allocated in 2015; project calls are delayed and the process of selection and payment slow; there is a lack of calls prioritising certain areas such as human rights protection and promotion, tackling discrimination, and watchdog activities; there is an overwhelming administrative burden within state-funded projects.

One example of visible progress in terms of financing the work of CSOs providing free legal aid in 2023 is a modification of the tender cycle model from a one-year to a three-year funding model provided by the Ministry of Justice and Public Administration.¹⁴¹

Other

The level of participation and access to decision-making for the interested public remains unsatisfactory, as stated in the previous rule of law report. The Ombudsperson's Report¹⁴² notes that, in practice, this consists of the following issues: CSO representatives being present in working groups more to satisfy the form rather than being actual partners in the process; often having extremely short periods for public consultations; lack of transparency in constituting expert working groups; and lack of possibilities to influence the work within such groups.

Some cases of illegal pressuring union members have been noted in Croatia in 2023. For example, there was a case of the City Connect company in Varaždin,¹⁴³ where employees who were union representatives were handed out decisions on the cancellation of their contracts after they were working on improving the working and material conditions of their colleagues. This type of pressuring the Right to Association has been noted also in the Ombudsperson's report for 2022 stating that some union commissioners were prevented from performing their tasks, and in certain cases, it appears that they were transferred to less favourable positions

139 See: <https://udruge.gov.hr/istaknute-teme/savjet-za-razvoj-civilnoga-drustva/zapisnici-sa-sjednica-savjeta/144>.

140 Ombudsperson's Office. Annual Report for 2022.

141 See: <https://mpu.gov.hr/vijesti/javni-natjecaj-za-financiranje-projekata-ovlastenih-udruga-i-pravnih-klinika-za-pruzanje-primarne-pravne-pomoci-za-2023-godinu-26927/26927>.

142 Ombudsperson's Office. Annual Report for 2022.

143 See: <https://radnickaprava.org/tekstovi/novosti/nesto-je-trulo-u-city-connectu> and <https://faktograf.hr/2023/06/14/city-connect-se-pokusava-rijesiti-sindikarno-organiziranih-radnika-koji-traze-bolje-uvjete-rada/>.

and received warnings and warnings before dismissal.

Criminalisation of activities, including humanitarian or human rights work

Human Rights House Zagreb's report on the state of human rights for 2022, published in 2023,¹⁴⁴ notes the continuous lack of political support towards human rights defenders and their organisations, and that they are often being pressured or intimidated through media coverage, social networks, comments on media portals – especially those working on protecting and promoting the human rights of migrants and refugees, LGBTIQ+, national minorities, victims of gender-based violence and organisations working on dealing with the past and transitional justice. Smear campaigns against such CSOs were intensifying in the second part of the year as they were being used in the pre-election campaigns. Most of the attacks towards the CSOs are, according to the Human Rights House's report, coming from the ultra-conservative and populist politicians, but more are also coming from the ruling party and the Prime Minister. One example is his referral to CSOs working on migration as the ones that were trying to sabotage Croatia's efforts to join the Schengen Area, alongside oppositional parties because they were pointing to police violence and human rights violations happening on state borders. This narrative is commonly used by the current Prime Minister.

The Ombudsperson's Annual Report for 2022¹⁴⁵ states that 61% of consulted CSOs encountered obstacles that limit their activities, namely 44% with verbal attacks, harassment, intimidation and smear campaigns, 18% with the criminalisation of their work, and 15% with physical attacks or property damage. Obstacles to work cited by CSOs include excessive administrative burden, SLAPPs and a lack of funding for their work.

Freedom of peaceful assembly

The right to public assembly is guaranteed by the Constitution and the Law on Public Assembly.

According to media reports in 2023, workers and platform workers, nurses and technicians protested for better work positions, and farmers against the measures for the prevention of swine flu.

At public gatherings in 2023, as in 2022, participants advocated for a green transition, the cessation of fossil fuel use, and against the new law on maritime property at the Climate March; pointed out the problem of rising violence against women and femicide, economic inequality and attacks on women's reproductive rights at the Night March annually held on 8 March; advocated for equality and safety of LGBTIQ+ population at the Pride Parade; and gathered for peace, ceasefire and freedom at demonstrations organised by the Initiative for Free Palestine. Walk for Life, targeting

144 See: https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP_GI2022-Online-1-1.pdf.

145 Ombudsperson's Office. Annual Report for 2022.

female reproductive rights, Walk for Freedom, promoting anti-vaccination, and gatherings of Catholic men praying in the city squares also took part.¹⁴⁶

Rules on organisation, authorisation of and participation in assemblies

Protests at St. Mark's Square, a public place where the government, the Parliament, and the Constitutional Court are located, were prohibited from 2005 until 2011; thereafter, they were limited to 400 m² (on some occasions only 200 m²), but restricted again since October 2020, after an armed attack in front of the Government building occurred.¹⁴⁷

In July 2023, civil society organisation Gong submitted a proposal to the Constitutional Court for the evaluation of the constitutionality of the decision closing St. Mark's Square for free assembly and movement for over a thousand days. Gong claims that “the right to freedom of assembly and the organisation of assemblies, which were usually held on St. Mark's Square due to the proximity of the institutions of the government and the Parliament” has been made difficult for citizens. The Constitutional Court declared itself not in charge of deciding in this case.

Previously, the Ministry of the Interior and the Security Intelligence Agency answered that St. Mark's Square is closed due to the risk of repeated attacks, and the level of danger is classified as confidential. The Parliamentary Council for Citizen Monitoring of Security-Intelligence Agencies responded that “it did not review the security assessments made for the area and facilities on St. Mark's Square”, which is why the area is kept fenced off.¹⁴⁸

In their separate opinions, constitutional judges pointed out that the freedom and interests of citizens are subordinated to the interests of the holders of state authorities, but the majority of judges still sided with the government, declaring themselves without jurisdiction and rejecting Gong's claim.

Gong considers this dangerous confirmation that the principle of separation of powers, which implies mutual verification of the branches of government, does not work in Croatia, as the executive authority abused its position of power and took public space on St. Mark's Square from citizens of the Republic of Croatia.¹⁴⁹

146 Ombudsperson's Office. Annual Report for 2022.

147 See: https://www.kucaljudskihprava.hr/wp-content/uploads/2023/12/KLJP_GI2022-Online-1-1.pdf.

148 See: <https://gong.hr/2023/05/02/saborsko-vijece-za-nadzor-obavjestajnih-agencija-o-ogradama-na-markovom-trgu-nismo-pogledali-u-sigurnosne-procjene/>.

149 See: <https://gong.hr/2024/01/03/ako-ustavni-sud-nije-nadlezan-nitko-ne-stoji-na-putu-vladi-koja-krsi-prava-gradana/>.

Policing practices, including dispersion of protests, use of force

On 26 August, during the Adriatic Climate camp on the island of Krk, around 100 protesters walked to the Liquefied Natural Gas (LNG) terminal, protesting against the expansion of the capacity of the LNG terminal. A self-organised group of activists called “Extinction Rebellion Zagreb” entered the terminal area, and intervention police attempted to stop them with water cannons. During the protest, a security intervention occurred, followed by the police intervention and the detention of about 30 activists. There is video documentation on the forced detention, but activists decided not to press charges.¹⁵⁰

Other

In 2023, the initiative “40 Days for Life” continued to be active. Framed as peaceful pro-life vigils, activities were organised in front of hospitals and health centres, in contravention of the Law on Public Assembly.

Every first Saturday of each month, the brotherhood “Knights of the Immaculate Heart of Mary” organised a collective prayer at the main squares across Croatia.¹⁵¹ The prayer is for the

homeland, peace and conversion of the Croatian people; for men - to become spiritual authorities in the family who will bravely witness and transmit the Catholic faith, for living in pre-marital chastity, for chastity in clothing and behaviour, and for the renewal of Catholic marriages; for the end of abortion and the openness of married couples to life; for holy, authentic and uncompromising church pastors and new spiritual vocations; for souls in purgatory and personal intentions. A group of activists contested this gathering with counter-protests.¹⁵² Both gatherings evidence the right to peaceful assembly and freedom of speech.

Freedom of expression and of information

Rules on hate speech and their enforcement

In Croatia in 2023, there was no information provided on the implementation of the Digital Services Act (DSA) and especially the allocation of the role of the Digital Services Coordinator (DSC), a body entrusted with numerous authorities, among which is the allocation of the “trusted flagger” status. Only at the end of October, information was found in the media, that the DSC will be entrusted to HAKOM, the Croatian Regulatory Authority

150 See: <https://www.index.hr/vijesti/clanak/interventna-privela-30ak-aktivista-kod-lng-terminala-na-krku/2490473.aspx>.

151 See: <https://muzevnibudite.com/i-ove-subote-muskarci-mole-krunicu-u-10-ak-hrvatskih-gradova-3/>.

152 See: <https://www.jutarnji.hr/kultura/art/arijana-lekic-fridrih-polozila-je-na-trgu-cvijece-u-formi-instalacije-u-spomen-7-ubijenih-zena-u-2023-godini-15390924>.

for Network Industries,¹⁵³ a body with possibly relevant technical expertise but no real contact or very limited previous contact with civil society. In this particular case of DSC, HAKOM would benefit from starting to consider their stakeholders differently (because they are usually market-oriented) and take steps to develop normal relationships and horizontal cooperation. A suggestion is to put an indicator for cooperation with civil society in the reports, oversight and analysis of the DSA implementation. Another suggestion is that Digital Services Coordinators should be obliged to organise a yearly event (counselling) with the civil society on the matter of the implementation of the DSA, to receive feedback relevant to the improvement of both implementation and cooperation. And lastly, it is important to remember the role of CSOs in the future AI Act and to prepare the terrain for the cooperation of authorities and civil society.

Other

It is important to highlight concerns regarding the Ministry of the Interior's rapid amendments to the Law on Offences against Public Order and Peace during a seven-day e-Consultation, opened on 2 April. Despite a directive from the Information Commissioner to extend the public discussion to 30 days, the Ministry closed the consultation on 9 April, ignoring the request. The government then submitted a

fast-tracked proposal for the Law on Offences against Public Order and Peace amendments to Parliament, facing opposition resistance on 14 April, before succeeding in passing it on 19 April under the urgent procedure. The Information Commissioner warned the Minister of the Interior about misinterpreting access to information laws, emphasising the inadequacy of MoI's justification for the short consultation period and the public's reaction to substantive changes. The Ministry revealed the establishment of an Interministerial Working Group to draft a new law, planning to publish it on the e-consultation portal for 30 days or more. However, the public was unaware of this group, and its members remained undisclosed. Criticism includes the fiscal irresponsibility of changing the law three times in less than a year.¹⁵⁴

Moreover, the Ombudsperson's Annual Report for 2022 highlighted the low acceptance rate (21%) of public input in consultations, indicating a lack of genuine consideration for public opinions.¹⁵⁵

Attacks and harassment

Administrative harassment

A report by the Human Rights House Zagreb from 2020¹⁵⁶ indicated a high level of distrust of Croatian CSOs, especially towards European

153 See: <https://www.vecernji.hr/vijesti/hakom-ce-istrazivati-i-kaznjavati-one-koji-prekrse-zakon-o-digitalnim-uslugama-1719643>

154 Centre for Peace Studies, [Ministre Božinoviću, poštuju propise ove zemlje!](#), published on 19 April 2023.

155 Ombudsperson's Office, Annual Report for 2022.

156 See: https://www.kucaljudskihprava.hr/wp-content/uploads/2021/03/Pristup-financiranju-za-organizacije-civilnog-drustva-u-Hrvatskoj_web.pdf.

Structural and Investment (ESI) funds, because of its demanding administrative tasks and non-transparent evaluation process, primarily lacking evaluation feedback, as opposed to the EU programs (such as Justice program, REC program, LIFE program) to which no similar problems were detected. The research identified significant administrative barriers that increase the workload of CSOs. The application process for associations' projects is often too demanding in the administrative sense. The project application phase is also problematic due to the inconsistent implementation of the indicative calendar of public calls for proposals and tenders for ESI funds and the state budget.

The same is not the case when applying for projects from the European Union Programs. Considering that the process of creating public policies is often carried out in a non-participatory manner, the CSOs are not able to put certain social problems and needs on the agenda to be included in civil society funding programs. In addition, delays in announcing and processing project calls have harmed the operational capacity of CSOs and the turnover of professional staff, which is crucial for the quality of social services provision. The findings of this research also point to the overly lengthy evaluation of projects within ESIF calls for proposals. Due to the frequently lengthy evaluation process for reports and requests for reimbursement of project funds from ESI funds, many associations encounter liquidity problems in the implementation of these projects.

In addition, the implementation of projects financed from ESI funds is characterised by significant administrative demands that negatively affect the associations' work with beneficiaries. The quality assessment method, based on the order in which applications are received (the so-called "fastest finger first" method - "*Najbrži prst*"),¹⁵⁷ favours associations that submitted projects earlier instead of considering the quality of the project proposal as the basic criterion for awarding funds.

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

In 2023, the verdict by the Municipal Court in Dubrovnik was issued in the biggest civil society SLAPP case, of the plaintiff Razvoj golf d.o.o. (a subsidiary of Elitech B.V., Netherlands) against the defendants – elected representatives of the leading Croatian environmental NGO Zelena akcija (Friends of the Earth – FoE Croatia). Since 2010, they have criticised the plan to build a gated community-style golf resort comprising 248 villas, 400 apartments, and two hotels in the vicinity of the UNESCO-protected old city of Dubrovnik. Razvoj Golf is an SPV formed for the implementation of the project. Since its involvement in the campaign, FoE Croatia has managed to get a judge to annul the permits for the project (an environmental permit and a location permit) on account of a breach of the environmental *acquis communautaire*. Following

157 See: <https://lidermedia.hr/biznis-i-politika/poduzetnici-bijesni-zbog-principa-najbrzi-prst-to-nije-rijesen-je-za-dodjelu-sredstava-142047>.

the annulment, in September 2017, the investor, via its Dutch-based shell company, initiated arbitral proceedings against the state of Croatia, allegedly claiming €500 million in damages. The claim was filed based on the Croatia-Netherlands Bilateral Investment Treaty (BIT) from the 1990s. This resulted in enormous pressure on the Croatian institutions to reissue the annulled permits. FoE Croatia reacted by running a public campaign which included posters of blood-smeared golf clubs and a message that the investor is interested in racketeering (and not golfing). Nevertheless, the permits were reissued just six weeks after Croatia was sued before the arbitration tribunal. The new permits were identical to the ones annulled by the court and have completely ignored the legal interpretations put forward in the annulment decision. FoE Croatia was sued by the investor in the civil court for damages (approximately €5,000), a gag order was requested banning any and all discussion about the project and elected officials of FoE Croatia were sued for libel in the criminal court. In May 2023, the arbitration tribunal denied the damages request in its entirety.

The domestic court of first instance found FoE Croatia officials guilty and fined them €3,374 each, plus expenses and an obligation to publish the 15-page decision in two national media outlets. The court found that their qualification of the investor's behaviour was untrue and therefore caused damage to the investor. The defendants appealed and the second instance decision is pending.

This SLAPP against FoE Croatia aims to silence, censor and intimidate the work of human rights defenders in the field of environmental protection. Legal proceedings against FoE Croatia initiated in 2017 by a private investor concerning the planned construction of a golf resort on Mount Srđ above Dubrovnik are still ongoing. The investor is claiming over €26,552 from the organisation in criminal proceedings for defamation and civil proceedings for damages. Meanwhile, the investor requested that the commercial court issue a provisional measure prohibiting activism and the right to freedom of expression against FoE during the realisation of the project on Srđ. Consequently, FoE Croatia has experienced a financial burden because of the duration and delays in the proceedings, consumption of the organisation's capacities, as well as the general public's negative perception of the organisation.

Online civic space

Law enforcement capacity to investigate online threats and attacks

After more than four years, the Municipal State Attorney's Office in the city of Šibenik in 2023 dismissed the criminal complaint filed by civil society organisations Gong, Human Rights House Zagreb and the Centre for Peace Studies from 2019 against the editor-in-chief of the HOP portal Igor Drenjančević and unknown authors of articles in which they published a list of the names of "chetniks" and "terrorists" in the Croatian police, or in other words, Serbs

employed by the Ministry of Interior.¹⁵⁸ The municipal state attorney's decision failed to identify the responsible individuals at the media portal. In addition, the application was rejected because the Municipal State Attorney's Office did not see the publication of the identities, residences and names of the police stations where employees of Serbian nationality work, coupled with unverified accusations that they tortured and killed Croats during the war, as an incitement to violence and hatred. The complaint was dismissed without addressing the instruction to clarify the right of the victims of the aforementioned criminal offence to take over the case, instead of merely the applicants of the criminal report. Moreover, the victims from the list, around 138 people, were never contacted to testify whether they had consequences stemming from this harmful and hateful content.

Public participation

Rules and practices on dialogue with civil society

Croatia faces difficulties and challenges that impede the enjoyment of the right to public participation. The involvement of civil society organisations in decision-making and consultation processes is often more formal than substantive, which weakens the opportunities for participation and harms the quality of public policies. Human rights defenders state that the

practice of appointing civil society organisations to the working groups and advisory bodies is often non-transparent, while candidates selected through the Council for Civil Society Development are not always the most qualified ones, which sends the message that the government does not care about civil society participation in decision-making processes in a meaningful way. Civil society organisations are unsatisfied with the e-consultations, stating that they are almost always a matter of pure formality instead of a genuine avenue for collecting the opinions from the interested public to improve the proposed policy solution. Authorities often have difficulties in responding in due time, and well-reasoned comments from experts and the public are often ignored.¹⁵⁹ The Information Commissioner emphasised the negative trend of shortening the consultation period without explanation. Of particular concern is the fact that shortening the duration of consultations has in most cases become the rule, especially at the local level. In addition to the shortening of the consultation period, there are still cases of reports on conducted consultations not being published, and public consultation plans not being adopted or published.¹⁶⁰

Other

The policy framework for the development of civil society is still inadequate – the last National Plan for Creating an Enabling

158 See: <https://www.portalnovosti.com/cetnici-u-ponudi-i-potraznji>.

159 See: https://www.kucaljudskihprava.hr/wp-content/uploads/2023/09/KLJP_GI2022_Eng.pdf.

160 Information Commissioner, Report on the Implementation of the Act on the Right to Access Information for 2022, March 2023.

Environment for Civil Society Development was for the period ending in 2016, resulting in seven consecutive years without a fundamental public policy on civil society development. Even though the process of drafting a new strategic document was initiated in 2021, while the Working Group for drafting the National Plan for Creating an Enabling Environment for Civil Society Development for 2021-2027 was established in January 2022, the document is still not adopted.¹⁶¹

In 2023, a new National Plan for Gender Equality for the period until the year 2027¹⁶² was introduced, as well as an Action Plan for the year 2024.¹⁶³ In these policy documents, civil society is only mentioned as a partner and stakeholder, but there are no adequate or effective measures to facilitate development in this area. Also, a new national plan for the protection and promotion of human rights and combating discrimination for the period

until the year 2027¹⁶⁴ was introduced, and was included in action plans for 2023,¹⁶⁵ while new action plans for the period 2024-2025 are being drafted.¹⁶⁶ In the new national plan, the role of civil society in the promotion and protection of human rights is recognised, and the plan foresees measures that,

*“increase the visibility of the activities of civil society organisations and strengthen the capacities of public officials to apply the standards of planning, implementation and monitoring of the allocation of financial resources[...] actions are planned that improve the transparency of financing of civil society organisations from public sources, financing models and sustainability for projects and programs of civil society organisations aimed at protecting human rights. Financial support aimed at strengthening the capacity of local civil society organisations to effectively address the needs of the local community is also planned”.*¹⁶⁷

161 See: http://www.kucaljudskihprava.hr/wp-content/uploads/2023/09/KLJP_GI2022_Eng.pdf.

162 Office for Gender Equality to the Government of the Republic of Croatia, [National Plan for Gender Equality for the Period Until the Year 2027](#).

163 Office for Gender Equality to the Government of the Republic of Croatia, [Action Plan for the Year 2024](#).

164 Office for Human Rights and the Rights of the National Minorities to the Government of the Republic of Croatia, [National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for the Period Until 2027](#).

165 Office for Human Rights and the Rights of the National Minorities to the Government of the Republic of Croatia, [Action plan for protection and promotion of human rights for 2023; Action plan for combating discrimination for 2023](#).

166 Office for Human Rights and the Rights of the National Minorities to the Government of the Republic of Croatia, [Development of the action plan for protection and promotion of human rights for 2024-2025; Action Plan for Combating Discrimination for 2024-2025](#).

167 Office for Human Rights and the Rights of the National Minorities to the Government of the Republic of Croatia, [National plan for the Protection and Promotion of Human Rights and Combating Discrimination for the Period until 2027](#).

However, neither the Action Plan for the Protection and Promotion of Human Rights for 2023 nor the Action Plan for Combating

Discrimination for 2023 introduce new measures concerning civil society that would facilitate stronger development in this area.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Conduct efficient investigations of human rights violations, and commit to timely and efficient implementation of decisions by supranational courts.*
- *Ensure accountability of the officials involved in systematic human rights violations in Croatia.*
- *Ensure independent and efficient monitoring of police work.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

According to the Danish Refugee Council's (DRC) reports,¹⁶⁸ unlawful expulsions from Croatian territory continued in 2023. From the beginning of January until the end of November, DRC recorded 3,210 pushbacks from Croatia to Bosnia and Herzegovina. The victims were mainly Afghan nationals. At least half of the victims reported denial of access to asylum, physical violence and theft or destruction of personal belongings. From September onwards,

at least 70% reported abusive and humiliating treatment, and some even arbitrary detention. Since autumn, according to the Border Violence Monitoring Network (BVMN), as well as other organisations, there has been an increase in police activities along the border in Una-Sana Canton, with reports of individuals being beaten and forced into the river by individuals identified as Croatian police. The BVMN documented instances of forced undressing, with reports of Croatian authorities burning clothes and belongings before pushing people back into Bosnian territory. Families with minors also reported experiencing violence from border authorities. Additionally, there are cases of

168 Danish Refugee Council (DRC), [Border Monitoring Factsheets January-November 2023](#).

individuals going missing after attempting to cross the border.¹⁶⁹

Since the beginning of 2023, Croatian authorities have been carrying out readmissions of migrants and refugees to Bosnia and Herzegovina in increasing numbers to expel people from Croatia.,^{170,171} The testimonies of expelled individuals, as well as information from non-governmental organisations¹⁷² working in Bosnia and Herzegovina, raise serious concerns that readmission procedures are being misused and applied in a manner that is contrary to European law, primarily by denying individuals access to asylum.¹⁷³ In addition to the potential neglect and violation of procedural rights of persons, this information also points to potential violations of key principles of international law, such as the principle of *non-refoulement* (including persons from Afghanistan, Syria, Cuba, Pakistan, Morocco etc.), and the

principle of the best interests of the child. The fact that individuals from especially vulnerable groups, such as unaccompanied children and families with young children, are among those returned through the readmission procedure is especially concerning.

Denial of access to asylum and pushbacks have led several national courts of the EU Member States to suspend Dublin transfers of asylum seekers to Croatia, in the light of the risk of violating Article 3 of the ECHR.¹⁷⁴ In 2023, the administrative court in Braunschweig, Germany, argued that there are indeed systematic deficiencies in the Croatian asylum system due to the widespread practice of pushbacks along its borders and it is not guaranteed that Dublin returnees are not also subject to this violation,¹⁷⁵ while the District Court of Amsterdam (The Netherlands), in two separate cases, ruled that the State Secretary should

169 Border Violence Monitoring Network (BVMN), Balkan Regional Report October 2023, 15 December 2023.

170 Novosti, Novi pristup: autobusom do granice pa..., 31 March 2023; Jutarnji list, Veliki zaokret Hrvatske u borbi protiv ilegalnih migranata: Sve se promijenilo 30. ožujka..., 6 April 2023; DW, Vraćanje migranata iz Hrvatske u BiH: zakonski push-back, 13 April 2023; BHRT, Iz Hrvatske ove godine vraćeno oko hiljadu migranata, 10 April 2023.

171 According to the Ministry of the Interior, from 1 January to 17 July 2023, 7,906 readmissions were announced, Bosnia and Herzegovina responded positively to 4,241, and 1,375 of them were implemented. Source: Jutarnji list, Opasna praksa u BiH: 'Namjerno odugovlače, daju im vremena da ilegalno pobjegnu iz Hrvatske', 27 July 2023.

172 Border Violence Monitoring Network, Illegal Pushbacks and Border Violence Reports: Balkan Region, March 2023.

173 Protecting Rights at Borders (PRAB) VI: What we do in the shadows, published on 30 May 2023.

174 CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 16, para 21.

175 Decision by the Administrative Court of Braunschweig (Germany) of 8 May 2023, file number 2 A 269/22.

conduct further investigation into the situation of Dublin returnees and risks of pushbacks, as that the information provided by the Croatian authorities was not sufficient to conclude that there were no risks of pushbacks.¹⁷⁶

Impunity and/or lack of accountability for human rights violations

As in previous years, victims of illegal expulsions in Croatia continue to face significant barriers to accessing remedies, such as unfamiliarity with the legal system, language issues, and illegal expulsions from the country. Crucially, according to European Court of Human Rights standards, the lack of an effective remedy before expulsion undermines the criteria for effectiveness. Illegal expulsions occurring outside legal procedures leave individuals without means to prevent unlawful actions by police officers.

Despite compelling evidence, the Croatian State Attorney's Office consistently rejects criminal complaints against authorities. The Ministry of Interior denies any wrongdoing, without providing justification or evidence of an unbiased investigation. Internal investigations, conducted by the Ministry on itself, lack independence and are undisclosed to the public and the Ombudsperson. The limited number of investigations signals the government's unpreparedness to address violence and uphold the rule of law. The absence of independent

inquiries further undermines the rule of law and the functioning of the legal state.

Follow-up to recommendations of international and regional human rights monitoring bodies

The Ombudsperson submitted an Alternative Report to the United Nations Committee for the Elimination of Racial Discrimination (CERD) for the 110th Session for the Combined Ninth to Fourteen Periodic Report of the Republic of Croatia. The report addresses various pressing issues related to human rights and discrimination in Croatia. The Anti-Discrimination Act, with its 17 prohibited grounds, is discussed, highlighting a rise in discrimination complaints, particularly in labour and employment, and an increase in negative sentiments toward the Serbian national minority. The Protocol for Hate Crime Cases, adopted in 2021, aims to enhance the monitoring and suppression of hate crimes. Concerns are raised about limited awareness of free legal aid options, with recommendations for increased communication. Roma discrimination remains a significant concern, especially in education and housing. Minority representation challenges persist, with a need for effective measures. Housing issues, particularly for returnees, and the prevalence of hate speech, both online and in public spaces, are emphasised. The report concludes with recommendations for legal amendments, consistent prosecution against hate speech,

176 Case numbers: NL23.7025 (appeal) and NL23.7026 (preliminary provision), decisions from 6 June 2023.

public campaigns, and the introduction of compulsory human rights education in schools. Croatia submitted the last report on the implementation of the Convention in 2020.¹⁷⁷

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

The European Implementation Network's (EIN) map of Europe shows the 46 signatory states of the European Convention on Human Rights and the number of unexecuted ECtHR judgments that have not yet been implemented. According to the map, in 2023, Croatia had 26 leading judgments pending implementation; the average time leading cases have been pending in Croatia was 2 years and 8 months; and the percentage of leading cases from the last 10 years still pending was 29%.¹⁷⁸

As previously reported, in April 2022, the ECtHR ruling in *M.H. and Others v. Croatia* became final.¹⁷⁹ In September 2022, the Committee of Ministers classified the case under enhanced supervision. The government submitted three action plans so far, and communications from the Ombudsperson of the Republic of Croatia and NGOs followed.¹⁸⁰ *M.H. and Others v. Croatia* was scheduled for examination on the consolidated indicative list of cases for the September 2023 CM-DH meeting.¹⁸¹ Decisions in the case as adopted by the Committee of Ministers at their 1475th CM-DH meeting outline individual measures, including the reopening of the criminal investigation, and general measures such as the establishment of an independent border monitoring mechanism. Decisions encourage Convention-compliant treatment of migrants, accessibility improvements in the asylum procedure, and efforts to enhance the effectiveness of criminal investigations. They also call for information on limiting the detention of children, preventing

177 Croatian Ombudsperson, [Alternativno izvješće UN-ovom Odboru za eliminaciju rasne diskriminacije \(CERD\)](#), 11 August 2023; Submission to the [United Nations Committee for the Elimination of Racial Discrimination for the 110th Session for the Combined Ninth to Fourteen Periodic Report of the Republic of Croatia](#), July 2023.

178 European Implementation Network, [Country Map](#); [Data for Croatia](#).

179 The Court found a violation of Article 2 of the European Convention on Human Rights as concerned the investigation into the death of the Afghan family's daughter, a violation of Article 3 in respect of the applicant children unanimously, a violation of Article 5 para 1 in respect of all the applicants, a violation of Article 4 of Protocol No. 4 to the Convention in respect of the applicant mother and her five children, and a violation of Article 34. The Court concluded that the evidence before it was sufficient to deduce that the restriction of contact between the applicants and their lawyer and the criminal investigation and pressure to which that lawyer was subjected were aimed at discouraging them from taking their case to Strasbourg.

180 All communication available here: [https://hudoc.exec.coe.int/ENG/?i=DH-DD\(2023\)891E](https://hudoc.exec.coe.int/ENG/?i=DH-DD(2023)891E).

181 CoE, Committee of Ministers, [Consolidated indicative list of cases for the 1475th meeting \(September 2023\) \(DH\)](#) adopted at the 1468th meeting, 7 June 2023.

delays in asylum proceedings, and ensuring accessibility of content in restriction of movement orders. The authorities were invited to provide relevant information by 1 June 2024.¹⁸² By the end of 2023, a year and a half since the judgement became final, the official criminal investigation into Madina's death still hasn't been opened, which makes the implementation of the judgement inadequate.

On 17 January 2023, the ECtHR delivered judgement in the case of *Daraibou v. Croatia* (Application no. 84523/17),¹⁸³ finding a grave violation of Article 2 of the Convention (right to life) in both its substantive and procedural aspects. The case concerned a fire that broke out in the basement room of a police station, used for migrant detention. Three migrants detained in the room died in the fire, and the applicant, also a detained migrant, had suffered severe injuries. The Court found that the police station and its personnel had been ill-prepared to deal with the outbreak of a fire and that several questions had been left unanswered, despite a prompt start to the investigation. Moreover, no attempt had been made to establish whether there had been broader institutional shortcomings which could have prevented a similar tragedy from happening again in the future. The judgement became final on 17 April 2023.

Other systemic issues

In 2023, there were issues with the effective investigation of possible criminal offences and police cover-ups in other areas as well.

In late September, Osijek police officer Marko Šmazil fatally shot student Mihaela Berak, initially claiming her death was a suicide. However, the police later deemed it accidental, stating that Šmazil fired while cleaning his gun. The case was reclassified as murder by the State Attorney's Office (DORH). The office confirmed Šmazil's detention but highlighted that, as per protocol, this was the result of the police acting independently. The case raised concerns about police conduct, particularly as Whatsapp messages between the victim and Šmazil revealed his possessiveness. Despite the conflicting narratives, DORH opted not to investigate the Osijek police for their handling of the case.¹⁸⁴ On 20 November, by taking to the streets and holding symbolic public actions in 16 cities in Croatia, women's organisations demanded justice for Mihaela Berak and her family and sanctions for all those responsible for omissions in this case.¹⁸⁵

On 11 November, former minister of defence Mario Banožić was involved in a traffic accident in which the driver of another vehicle

182 Council of Europe, Committee of Ministers, 1475th CM-DH meeting (19-21 September 2023): [Decisions in *M.H. and Others v. Croatia*](#).

183 See: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2284523/17%22%5D%22%7D>.

184 Index.hr, [DORH neće istraživati policiju koja je tvrdila da je policajac slučajno ubio djevojku](#), 14 November 2023.

185 Novi List, [Žene izlaze na ulice i zahtijevaju pravdu za Mihaelu Berak i njenu obitelj](#), 17 November 2023.

was killed.¹⁸⁶ There were many inconsistencies during the investigation that still puzzle the public, the biggest one being the results of the breathalyser. The prosecutor's office first announced that the minister's blood sampled at the hospital in Vinkovac contained 0.21 parts per million of alcohol, yet two days after the accident, the Ministry of Interior's Ivan Vučetić Forensic Science Centre reported that the blood sample did not contain alcohol. The second issue concerns the fact that the minister is a protected person and as such he has an escort and a driver. If the minister does not want an escort, he must give a written statement to that effect and renounce the status of a protected person. On this occasion, the ex-minister was driving alone and there was no mention of the reasons why he gave up on the escort or driver. This case deviates from other traffic accidents with fatal outcomes where the perpetrators were treated differently, in a stricter manner, and the public was precisely informed on the circumstances.

Late November 2023, high-ranking officials in the Sisak police force were arrested due to suspicion of covering up the illegal use of firearms during an attempted arrest of suspected drug dealers. The incident, which happened in early November, involved the attempted arrest of suspected drug dealers, during which shots

were fired, resulting in conflicting accounts and a criminal complaint against the officers. Contradictory statements about the handling of surveillance footage further complicated the case. A crucial piece of evidence was a school surveillance video contradicting police claims, showing an officer firing at the departing vehicle. The investigating judge of the Zagreb County Court ordered pre-trial detention for the Sisak-Moslavina Police Administration deputy chief Nikica Batinović, the head of criminal police Igor Pasanec, the leader of the Public Order and Safety Sector Marijan Brnad, and two police officers from the Drug Department, Igor K. and Igor P. They are accused of forging official reports and attempting to justify improper use of firearms. The arrests raised concerns about potential police misconduct and misuse of force.¹⁸⁷

Fostering a rule of law culture

Efforts by state authorities

There were no significant initiatives by the state authorities for fostering a rule of law culture. The representation of the European Commission in Croatia published an article in July 2023 upon

186 See: <https://www.jutarnji.hr/vijesti/crna-kronika/ovo-su-sve-nelogicnosti-u-slucaju-banozic-nas-poznati-odvjetnik-u-nevjerici-ako-je-to-istina-15400640>.

187 Jutarnji list, [Doznali smo što su rekli uhićeni policajci koje su 'pokušali pregaziti dileri': 'Možda smo malo pretjerali...'](#), 1 December 2023; [Pucali na dilere, lažirali da su ih pokušali pregaziti, a onda se pojavila nadzorna snimka...](#), 30 November 2023.

the publication of the fourth report on the rule of law.¹⁸⁸ The Ombudsperson's Office published an article on their webpage regarding the recommendation for the government to improve the implementation of the Ombudsperson's recommendations.¹⁸⁹

Contribution of civil society and other non-governmental actors

A meeting with the President of the European Bank for Reconstruction and Development, Ms. Odile Renaud-Basso, was held on 6 July 2023 with the representatives of civil society (Human Rights House Zagreb, Centre for Peace Studies, SOLIDARNA Foundation), who presented the findings of the Rule of Law report for 2023.¹⁹⁰

188 See: https://croatia.representation.ec.europa.eu/news/izvjesce-o-vladavini-prava-za-2023-napredak-u-pogledu-65-preporuka-ali-potrebne-su-daljnje-mjere-2023-07-05_hr.

189 See: <https://www.ombudsman.hr/hr/europska-komisija-pozvala-republiku-hrvatsku-da-poboljsa-provedbu-preporuka-pucke-pravobraniteljice/>.

190 See: <https://www.ebrd.com/news/2023/ebd-president-to-visit-croatia.html>.

LIBERTIES

RULE OF LAW REPORT

2024

CZECH REPUBLIC

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LIGA LIDSKÝCH PRÁV



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About the authors



LIGA LIDSKÝCH PRÁV

The League of Human Rights (LLP) is a non-governmental non-profit human rights organization that monitors the state of respect for fundamental rights in the Czech Republic, and points out their violations. LLP has long advocated systemic changes in the area of violations of fundamental rights in the Czech Republic, through various instruments. At present, we focus on the protection of the rights of vulnerable people, including patients, mothers, people with psychosocial disabilities, children and involuntarily sterilised women.

Key concerns

Regarding the justice system, there is no progress. Although people generally trust that the judiciary and court proceedings are becoming shorter, long-standing problems persist. The necessary reforms have not been completed, including digitisation projects. Courts are losing staff and judges' salaries are being reduced, which could significantly negatively affect the quality of the judiciary in the future. When comparing this situation to the recommendations of the European Commission in their last Rule of Law Report, progress is not satisfactory. The reform of the Czech Republic's Public Prosecutor's Office has fundamental shortcomings. The implementation of digitisation projects is still slow, and the judiciary faces staffing

challenges that could affect the quality of work. Support for court experts is lacking. However, court proceedings are at least slightly faster.

As it relates to the anti-corruption framework, there was no progress from the previous year. The Czech Republic is progressing very slowly in the fight against corruption. GRECO highlighted that the Czech Republic has satisfactorily fulfilled only 3 out of 14 recommendations, with no significant progress by year-end. This progress is not satisfactory in relation to the Commission's recommendations, as efforts to ensure faster investigation of high-level political corruption have not succeeded, nor has information been shared about it. The new draft of the lobbying law was still not submitted. The Parliamentary Code of Ethics has not

been adopted. An amendment to the conflict of interest law still contains shortcomings and gaps.

With respect to the media environment and media freedom, improvement has been noted. There was an improvement in the ranking of Reporters Without Borders (from 20th to 14th), a stricter law on media ownership was adopted (unfortunately it does not include online media), amendments to the Act on Czech Television and the Czech Republic were approved, and the Senate will now decide on a third of the members of the Councils.

Additionally, there were no physical attacks on journalists and a major media law amendment was presented. Therefore, progress in this area compared to the 2023 recommendations is satisfactory.







In the area of checks and balances, there was no progress from the previous year, nor were there any improvements based on the 2023 recommendations (thus, non-satisfactory change). The National Human Rights Institution has not been established without any progress on this matter, nor the Office of Ombudsperson for Children.

In addressing issues related to civic space, there has been no progress in relation to the previous year. Cooperation between the government and the civil sector is functional. We do not agree with the unbalanced distribution of funds for the civil sector.




Regarding the disregard of human rights obligations and other systemic issues affecting the

rule of law environment, there was progress compared to the previous year. The situation of the protection of fundamental rights in the Czech Republic is not favourable, but it could be significantly worse. The solution to some key problems is moving forward (for example, the redefinition of rape), but many remain unsolved (for example, sterilization as a condition for official gender change). However, we also consider the ongoing discussion of key stakeholders to be partial progress.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system -

Key recommendations

- *Complete the tasks set out in the field of digitization of justice.*
- *Ensure sufficient staffing of the courts.*
- *Ensure more efficient court proceedings - especially in guardianship cases.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The newly elected President of the Czech Republic, Petr Pavel, had a major task in 2023: to appoint seven new Constitutional Court judges (out of a total of 15 judges). The President said that he wanted the selection process to be transparent and the Constitutional Court to be “diverse” in terms of the diversity of the personalities of the individual judges, their experience, professional and value orientation, world-view, age, gender (as of the end of 2023, there are four female judges on the Constitutional Court) etc.¹ The President first invited more than 20 institutions, including law schools and courts, to submit nominations for candidates for Constitutional Court judges. The nominations were then reviewed by the

President’s advisory panel, led by constitutional lawyer Jan Kysela.²

The selection process was only partially transparent, as only the outputs of the advisory panel’s meetings and the President’s subsequent actions in the form of nominations for Senate approval were publicly available, but not the actual course of the meetings of the advisory panel and the President.³ Individual candidates must be approved by the Senate of the Parliament of the Czech Republic. However, approval is not a mere formality. It is preceded by extensive debates, addressing objections from the Senate’s Constitutional and Legal Committee etc. Two of the President’s candidates were not appointed.

The first of them, Robert Fremr, was initially approved, but later withdrew his nomination in the wake of media pressure, which focused on

1 https://www.irozhlas.cz/zpravy-domov/petr-pavel-ustavni-soud-soudce-prezident_2303201633_bko

2 <https://advokatnidenik.cz/2023/09/04/vyber-ustavnich-soudu-se-z-vetsi-casti-odehrava-za-oponou-mini-petr-suk-z-ns/>

3 Ibid

his controversial past as a judge before 1989.⁴ Fremr justified his withdrawal by saying, among other things, that the distrust of part of society could jeopardise the overall trust in the institution of the Constitutional Court. The Fremr case then opened a discussion in society on the topic of coming to terms with the pre-November 1989 past and resulted in the fact that candidates with experience in the judiciary from the communist era were no longer nominated for the post of Constitutional Court judge. The second candidate, Pavel Simon, a judge of the Supreme Court, was not appointed in large part because of his formalist approach and some decisions that were later annulled by the Constitutional Court.⁵

In addition to the 'ordinary' Constitutional Court judges, the leadership of the Constitutional Court was also renewed. The President of the Court, Pavel Rychetský, who spent 20 years on the Constitutional Court, called on the President to select new Constitutional Court judges with a view to preserving the value of continuity of the Constitutional Court.⁶ He was later succeeded as President by Josef Baxa, the former President of the Supreme Administrative Court. Baxa promised that he

would exercise his mandate in a less activist way than his predecessor.⁷ The new Vice-Presidents are Vojtěch Šimíček and Kateřina Ronovská.

In addition to the Constitutional Court judges, Petr Pavel also appointed the Chairman of the Prague Regional Court and 52 new judges at the end of the year, of whom 31 are women.⁸

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

In 2023, the so-called third decade of the Constitutional Court came to an end. A total of seven out of fifteen Constitutional Court judges completed their terms of office, including the President of the Court, Pavel Rychetský, who served on the Constitutional Court for 20 years. It was then up to the President of the Republic, Petr Pavel, to appoint new Constitutional Court judges. For more see above.

4 https://www.irozhlas.cz/zpravy-domov/fremr-ustavni-soud_2308141558_jar

5 <https://denikreferendum.cz/clanek/35750-po-fremrovi-opacny-extrem-jak-sezmeni-vyber-ustavnich-soudcu>

6 https://www.irozhlas.cz/zpravy-domov/rychetsky-pavel-ustavni-soud-obmena-soudcu_2302201847_til

7 <https://ct24.ceskatelevize.cz/clanek/domaci/nejsme-aktivisticky-organ-ktery-by-chtel-nahrazovat-politiku-rika-novy-sef-ustavniho-soudu-baxa-3451>

8 https://www.ceskenoviny.cz/zpravy/2440308?_zn=aWQIM0QxODE0MjA2MzYzNjY2NzU0MDYwMi-U3Q3QIM0QxNzA0ODI4NDg1LjYyOCU3Q3RIJTNEMTcwNDgyODQ4NS42MjglN0NjJTNEMTMyN-TU2Mzc2OUI2Njg5QTNEQjBDQzIjBODIFNjNFMDU%3D

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

According to a Eurobarometer survey, public opinion in the Czech Republic on the independence of courts and judges improved by 8 percentage points year-on-year to 65%.⁹ People in the Czech Republic generally respond positively to the question of whether the position of judge effectively guarantees the independence of courts (6th highest rating).¹⁰ According to Czechs, the question of the independence of the judiciary also plays a role to a certain extent in terms of resistance to political pressure and interference in the affairs of courts.¹¹

However, the Vice-President of the Supreme Court, Petr Šuk, warns of a possible threat to the independence of justice. He claims that the Czech judiciary lacks sufficient funding. Last year, there was already discussion about the pitifully low salaries of court employees (e.g. assistants or administrative staff), who are essential for the functioning of justice. Now, the media reported that 160 administrative staff are at risk

of leaving.¹² Finance Minister Zbyněk Stanjura has pledged that their salaries will be increased and will reach the average salary in the public sector by 2025, excluding the salaries of teachers and armed forces.

As part of the so-called consolidation package, which is intended to bring money into the state budget, the government has changed the calculation of judges' salaries. Instead of the original calculation by multiplying the average wage in the national economy by the statutory coefficient of three, the coefficient of 2.822 will now be used.¹³ As a result, they will not actually increase by 6% in 2024, as planned. According to the head of the Judges' Union, Libor Vávra, dozens of judges are therefore planning to file a complaint with the Constitutional Court.¹⁴ The Vice-President of the Supreme Court then pointed out that the reduction of judges' salaries threatens to reduce the social attractiveness of the judicial profession, and the quality of justice could thus deteriorate.¹⁵

9 Perceived independence of the national justice systems in the EU among the general public, p. 2, see at <https://europa.eu/eurobarometer/surveys/detail/2667>

10 Ibid, p. 8

11 Ibid, p. 12.

12 https://www.irozhlas.cz/zpravy-domov/justice-administrativni-pracovnici-ostrava-exekuce_2311221320_pj

13 <https://ct24.ceskatelevize.cz/clanek/domaci/vlady-si-kupuji-voalice-za-nase-penize-soudci-se-ohradili-proti-uprave-svych-platu-1054>

14 <https://www.novinky.cz/clanek/domaci-stiznosti-na-platy-soudcu-prijdou-k-us-desitky-mini-sef-unie-40455368>

15 <https://www.ceskenoviny.cz/zpravy/2409149>

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

The process of reform of the Public Prosecution Service is still ongoing.¹⁶ The amendment to the Act on the Public Prosecution Service, submitted by the Ministry of Justice, aims to introduce statutory guarantees for the possibility of dismissing the Chief Public Prosecutor so that the Czech legal regulation reflects European standards of independence concerning the Public Prosecution Service. The draft amendment to the Act passed the second reading in the Chamber of Deputies and is now awaiting consideration by the Constitutional and Legal Committee.¹⁷

In last year's report on the state of the rule of law in the Czech Republic, the European Commission mentioned the main points of the new legal regulation.¹⁸ The Chief Public Prosecutor can be dismissed from his office according to two procedures, namely as part of disciplinary proceedings and, similarly to present, by a government decision, following a proposal by the Minister of Justice. The choice of the method of dismissal is therefore decided by the Minister of Justice.¹⁹ However, the dual track of the possibility of dismissal is associated

with practical problems, which the government's Legislative Council points out.²⁰ Within disciplinary proceedings, the Chief Public Prosecutor can appeal as a two-tier disciplinary proceeding is being introduced, not only for public prosecutors but also for judges or bailiffs. By contrast, the government's decision to dismiss will not be subject to the administrative procedure, so the procedural protections for the Chief Public Prosecutor are different. The law therefore specifies the conditions under which the Chief Public Prosecutor can be dismissed, but it does not provide the government with procedural rules for dismissal nor does it offer the Minister of Justice any guidance on which method of dismissal to choose. It is also not clear how any potential conflicts between the two methods of dismissal will be resolved.

In addition, there is also discussion about the length of the term of office of the Chief Public Prosecutor as part of the reform of the Public Prosecution Service, which the Ministry of Justice proposed should be seven years without the possibility of re-election. This is criticized by both the Chief Public Prosecutor's Office and the Government's Legislative Council.²¹ According to them, the term of office should be extended with the possibility of at least one re-election, as is usual for other positions.

16 <https://www.odok.cz/portal/veklep/material/ALBSCKJAZ4GG/>

17 <https://www.psp.cz/sqw/historie.sqw?o=9&t=463>

18 https://commission.europa.eu/publications/2023-rule-law-report-communication-and-country-chapters_en#files

19 <https://www.odok.cz/portal/veklep/material/ALBSCKJAZ4GG/>

20 Ibid.

21 <https://www.odok.cz/portal/veklep/material/ALBSCKJAZ4GG/>

As for the reform of the judiciary, it is closely linked to the reform of the Public Prosecution Service, as the already mentioned (old) new form of two-tier disciplinary proceedings also applies to judges (and consequently to bailiffs).²² In the past, there was already a two-tier disciplinary proceeding in the Czech Republic, but it was later abandoned and is now being reintroduced primarily due to the state's commitments in the context of the implementation of the National Recovery Plan and the GRECO recommendation.²³ In the first instance, two regional courts will be competent in terms of substance. The appeal will then be decided by the Supreme Court and the Supreme Administrative Court.

Criticism of the new legislation has been voiced in the media by some experts, regarding the potential strengthening of the position of the Minister of Justice in the form of the power to file a disciplinary complaint or enter into disciplinary proceedings. This strengthens the position of the Ministry of Justice as the centre of the administration of justice, as the Czech justice system would no longer be self-governing. Some experts then point to the unbalanced distribution of state power in favour of the executive. On the other hand, other experts point out that the potential for the Minister of

Justice to file a disciplinary complaint is only an extreme measure for ensuring the effective administration of justice. The proposal would then be decided by the courts, not the Minister of Justice.²⁴

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In the Czech Republic, just under two-thirds of the population trust the courts. However, only 56% of people believe that a high-ranking official will actually go to prison if convicted of corruption. Similarly, the level of trust in the independence of the general courts is one of the lowest since the fall of communism.²⁵

Similar results were also found by the Eurobarometer of the European Commission, which found that the Czech Republic generally performs better than the average of EU countries.²⁶

As for people's trust in constitutional institutions, the most trusted institutions are the Constitutional Court and the institution of the President of the Republic (over half of the population). This is certainly good news with the

22 <https://www.odok.cz/portal/veklep/material/ALBSCKJAZ4GG/>

23 <https://www.odok.cz/portal/veklep/material/ALBSCKJAZ4GG/>

24 https://www.irozhlas.cz/zpravy-domov/prezident-soudcovske-unie-libor-vavra-platy-justice-ustavni-soud-propousteni_2311222147_elev; https://www.irozhlas.cz/zpravy-domov/ministerstvo-spravedlnosti-justice-zmeny-rozhovor_2311201124_trs

25 https://www.irozhlas.cz/zpravy-domov/pruzkum-soudy-justice-cesko-duvera_2307041500_bko

26 <https://europa.eu/eurobarometer/surveys/detail/2667>

inauguration of the new President Petr Pavel.²⁷ However, the STEM Institute for Empirical Research points out that people's trust in the Constitutional Court has slightly decreased. STEM attributes this to the controversies surrounding the selection of new Constitutional Court judges.²⁸

Other

Court proceedings in the Czech Republic have become somewhat faster than before.²⁹ Civil proceedings are now two days faster, and criminal proceedings are almost one month faster. However, the guardianship agenda, which covers not only proceedings involving children but also people with reduced legal capacity (i.e. proceedings concerning supportive measures, restrictions of legal capacity, or appointment of a guardian), remains heavily overloaded.³⁰ One of the related problems and possible reasons for the overload appears to be a shortage of qualified court experts, the number of which the Ministry of Justice plans to increase through a revision of the Act on Court Experts, including an adjustment of fees.³¹

The President of the Supreme Court, Petr Angyalossy, made jokes about rape at a seminar on professional ethics for future judges. He did not see anything wrong with his behaviour, despite the jokes being sexist and highly inappropriate for someone in Angyalossy's position.³²

Quality of justice

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The European Commission already criticised the slow pace of digitization of the judiciary in the Czech Republic in its 2022 Rule of Law Report. Unfortunately, little has changed in this area. In the fall, the Ministry of Justice objected to a newspaper article that pointed out that digitization is stagnating and could cost the state CZK 1.5 billion (€58.9 million). The Ministry stated that digitization is one of the priorities of the current government, which

27 <https://www.stem.cz/duvera-v-ustavni-instituce-2>

28 <https://www.stem.cz/duvera-v-ustavni-instituce-2>

29 https://www.irozhlas.cz/zpravy-domov/soud-rychlost-cesko_2309111733_ako

30 <https://www.ceska-justice.cz/2023/09/v-rychlosti-soudu-panuji-rozdily-soudci-v-opatrovnickyh-agen-dach-jsou-pretizeni/>

31 https://www.irozhlas.cz/zpravy-domov/soud-rychlost-cesko_2309111733_ako; <https://www.novinky.cz/clanek/domaci-ministerstvo-spravedlnosti-zmirni-podminky-pro-znalce-hrozil-kolaps-systemu-40451054?zn=aWQIM0Q0OTU5MzQ2ODEwOTMxMDc0MjE4JTdDdCUzRDE3MDQ2NTkwOD-MuNTMwJTdDdGUIM0QxNzA0NjU5MDgzLjUzMCU3Q2M1M0Q3MUZGRkRBMUU3RjE2QjRD-Mzg3NDAxOTNGRkUyM0QyRQ%3D%3D>

32 <https://a2larm.cz/2023/10/patriarchat-chrochta-blahem-aneb-jak-predseda-nejvyssiho-soudu-vtipkoval-o-znasil-neni/>

is investing significant resources in the implementation of all planned innovative projects.³³ In March 2023, the Strategic Framework for eJustice 2023+ was approved, and in May, the Information Strategy of the Ministry of Justice for the period 2023-2028. Currently, work is underway on the eSIR portal (new bankruptcy register) and eSPIS (electronic case file).³⁴

At the end of the year, it was at least possible to present the eSbírka platform, an electronic collection of laws, and eLegislativa, an electronic tool for creating new legislation.³⁵

Work is also underway on the so-called eDokladovka, or electronic wallet, where people will be able to store their personal documents in digital form.³⁶

Anti-corruption framework

Key recommendations

- *Enact the Lobbying Act.*
- *Ensure proper and effective investigation of corruption cases.*
- *Ensure the existence of a code of ethics for both Houses of Parliament.*

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Ministry of Justice is formulating a new lobbying law, but it remains inadequate. While exemptions for municipalities and churches have been removed, the proposed law still excludes the President of the Czech Republic, as well as parliamentary assistants.³⁷ The organization Rekonstrukce státu also criticises the stringent lobbyist documentation requirement,

33 <https://justice.cz/web/msp/tiskove-zpravy?clanek=reakce-ministerstva-spravedlnosti-na-clanek-idnes-digitalizace-justice-stoji-na-miste-statni-rozpocet-to-muze-stat-1-5-miliardy->

34 Ibid.

35 <https://www.mvcr.cz/clanek/elektronicka-sbirka-zakonu-i-elektronicka-tvorba-legislativy-resort-vnitra-predstavil-projekty-modernizujici-pristup-k-pravu-a-jeho-tvorbe.aspx>

36 <https://www.dia.gov.cz/>

37 <https://denikn.cz/1283452/ministerstvo-upravilo-zakon-o-lobbovani-zustava-v-nem-velka-dira-varuje-expert/>

which may deter some from transparently reporting their activities.³⁸ Adoption of the proposed law is further complicated by the fact that the Ministry of Finance objects to the costs of creating a lobbyist registry and six officials to handle the new agenda.³⁹ The adoption of the law is already taking too long, as criticized by the GRECO group.⁴⁰

Despite long-term recommendations from international institutions, including the UN, OSCE, GRECO, and the European Commission, the Czech Republic still lacks an ethical code for legislators. MPs and senators lack binding rules for accepting gifts or other advantages, interacting with lobbyists, or preventing conflicts of interest. The Chamber of Deputies began working on the creation of a code of ethics for deputies only at the end of 2023,⁴¹ while the Senate outright refuses to develop any ethical code.

Despite persistent conflicts of interest, Pavel Blažek continues to hold the position of

Minister of Justice. He is currently under investigation by the National Headquarters Against Organized Crime of the CPIS (NCOZ) police for corruption and dealings with Brno municipal property, overseen by the High Public Prosecutor's Office in Olomouc (VSZO). He appointed the High Public Prosecutor of VSZO and repeatedly requests information from the Prosecutor's Office regarding active cases, in which he himself is a suspect or someone he knows is accused.⁴² The Minister of Justice has also met several times with entrepreneur Martin Nejedlý,⁴³ who has ties to the Kremlin and Vladimir Putin's close circle, attracting attention from the Security Information Service (BIS) and NCOZ.⁴⁴ In November 2023, he dismissed the inconvenient whistleblower Jan Benýšek from the Ministry of Justice.⁴⁵

Rekonstrukce státu, Oživení, Frank Bold, and Transparency International have pointed out that the current setup of internal processes at the Office for the Protection of Competition fosters opacity, unpredictability, and uncertainty

38 <https://www.rekonstrukcestatu.cz/archiv-novinek/zakon-o-lobbovani-bez-nejvetsich-lobbistu-ministerstvo-predstavilo-deravy-a-prokorupcni-navrh>

39 https://www.irozhlas.cz/zpravy-domov/protikorupcni-zakony-urednici-kapacity-zakony-lobbing-oznamovatele_2

40 <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab9d41>

41 <https://ct24.ceskatelevize.cz/clanek/domaci/ve-snemovne-vznika-kodex-poslance-ma-nastavit-mantinely-chovani-zakonodarcu-343924>

42 https://www.irozhlas.cz/zpravy-domov/natlak-na-zalobce-ministr-spravedlnosti-blazek-ziva-kauza-nezavislost_2303020600_mkl

43 <https://www.seznamzpravy.cz/clanek/domaci-kauzy-nejedly-priznal-dalsi-schuzku-s-blazkem-ale-neresili-jsme-nic-235845>

44 <https://www.transparency.cz/blazkovo-setrvani-ve-funkci-otrasa-virou-v-pravni-stat/>

45 <https://www.respekt.cz/tydenik/2023/51/blazkuv-podrizeny-chteji-se-me-zbavit>

in decision-making, creating the possibility of pressure to make expedient decisions. The organisations emphasise in particular that the Czech Republic is the only country in Europe where decisions (often involving billion-dollar contracts) are made by a single individual in the position of the chairman of the office. Decision timelines are unpredictable, leaving both the private and public sectors in uncertainty. Strong anti-corruption safeguards are lacking.⁴⁶ In July, there was a partial reform of the Office for the Protection of Economic Competition, reducing decision-making power concentration in the hands of the chairman, introducing, among other things, six-year terms for deputy chairpersons, qualification requirements for their appointment, and the possibility of dismissal only for legal reasons.⁴⁷ While this represents a step in the right direction, this reform does not address all problems and comprehensive reform is still needed.

The public procurement environment in the Czech Republic remains problematic, as evidenced by incidents such as the intervention by the General Staff of the Czech Army regarding the contract for the “internet network” of

soldiers.⁴⁸ Doubts also accompany the tender for the Prague metro section.⁴⁹

In May, the Chamber of Deputies overruled the Senate, rejecting the Senate’s proposal for a public procurement law, which suggested increasing the limits for small-scale contracts. The proposal aimed to raise the limits from two to three million for supplies and services, and from six to nine million for construction work. Despite concerns about weakening anti-corruption safeguards, where up to a quarter of contracts could be shifted from the regulated legal framework, ultimately, this did not happen. However, rejecting the Senate’s proposal also meant not adopting rules to strengthen the enforceability of the conflict of interest in public procurement. Members of the government and their companies can continue to compete for state contracts. Lastly, the bill expands the possibility of using the so-called vertical cooperation, an exception from the procurement law when one state entity provides services to another state entity. This change is expected to facilitate the operation of the new Digital Information Agency, which is intended to assist in implementing an IT system across public administration.⁵⁰

46 <https://www.rekonstrukcestatu.cz/archiv-novinek/proc-je-dobre-reformovat-urad-pro-ochranu-hospodarske-souteze>

47 <https://www.rekonstrukcestatu.cz/archiv-novinek/pomohli-jsme-prosadit-castecnou-reformu-uohs-dulezity-krucek-k-odstraneni-koncentrace-pravomoci-predsedy-uradu>

48 https://www.irozhlas.cz/zpravy-domov/generalni-stab-acr-armada-zasah-ncoz-police_2309190835_ako

49 <https://www.transparency.cz/tendr-za-desitky-miliard-na-druhy-usek-metra-d-provazi-pochybnosti-vedeni-prahy-a-dopravni-podnik-spekulacim-nahravaji/>

50 <https://www.rekonstrukcestatu.cz/archiv-novinek/poslanci-prehlasovali-senat-v-novele-zakazkoveho-zakona-co-se-zmeni>

Rules on preventing conflicts of interest in the public sector

On 10 August 2023, the President of the Czech Republic signed a tightening amendment to the conflict of interest law, which came into effect on 1 January 2024. According to this amendment, politicians are now specifically prohibited from operating radio and television broadcasting or publishing periodicals. The law applies to the actual owner of the media operator, not the controlling person. A change in the functioning of the Supervisory Office for Oversight of Financing of Political Parties and Movement in the Czech Republic has also taken place.⁵¹ However, the law still contains numerous deficiencies and gaps that allow circumvention, potentially complicating public oversight, particularly as it fails to address issues related to public procurement and budgets in any meaningful way.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The Whistleblower Protection Act came into effect on 1 August 2023, marking a

positive step in the fight against corruption. However, it has several shortcomings highlighted by organisations such as Frank Bold, Oživení, Transparency International, and the Government Council for the Coordination of Anti-Corruption Efforts. These include the lack of protection for anonymous reports and the exclusion of disclosures involving offences below CZK 100,000 (€3,927).⁵² Moreover, the law was approved almost a year and a half after the expiration of the transposition deadline for the directive on the protection of persons who report breaches of Union law, exposing the Czech Republic to the risk of a fine of up to CZK 69 million (€2.71 million) from the European Commission.⁵³ The implementation of the law is also facing staffing issues, with the Ministry of Justice allocating roughly only a quarter of the employees originally envisaged in the explanatory memorandum to handle whistleblower protection matters.⁵⁴

Any other relevant measures to prevent corruption in the public and private sector

In April 2023, with a three-month delay (originally scheduled to be released along with the action plan on 1 January 2023), the

51 https://www.irozhlas.cz/zpravy-domov/stret-zajmu-lex-babis-vlastnictvi-medii-politika-petr-pavel_2308101322_har

52 <https://www.transparency.cz/poslanci-schvalili-nekvalitni-zakon-o-ochrane-oznamovatelu-klicova-anonymni-podani-nejsou-zahrnuta-cesku-tak-hrozi-zaloba/>

53 https://www.irozhlas.cz/zpravy-domov/pokuta-evropska-komise-neprijeti-zakona-o-ochrane-oznamovatelu-54-milionu_2306250500_tec

54 <https://www.rekonstrukcestatu.cz/archiv-novinek/oznamovatele-korupce-v-ohrozeni-ministerstvo-nevycleni-lo-k-jejich-ochrane-dost-lidi>

anti-corruption strategy for the period beginning 2023 to 2026 was adopted.⁵⁵ It outlines four priority areas in the fight against corruption: an efficient and independent public sector, transparency and open access to information, prudent management of state assets, and the development of civil society. In July 2023, the anti-corruption action plan for 2023 and 2024 was also adopted. It includes a set of anti-corruption measures to which the Czech Republic

is committed at the international level. Many measures are repeatedly mentioned in the strategies, indicating a limited willingness to effectively implement them. It is essential not only to enact quality legislation but also to ensure proper implementation, meaning that authorities should have sufficient funds and personnel, operate independently, and be subject to functional oversight.

Media environment and media freedom

Key recommendations

- *Legal regulation of online media should be adopted.*
- *Expand the competence of the Supreme Audit Office to exercise control over the management of public media.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The increase in fees for the use of the services of Czech Television and Czech Radio was

proposed in a major amendment to the laws on public service media. The definition of a fee-payer will change. Accordingly, everyone who has a mobile phone, tablet or computer will have to pay the TV and radio fee, or alternatively it is paid as a household. Both of these adjustments will have a positive impact on public media revenue. The public media will also have more options on where to advertise.⁵⁶

55 <https://korupce.cz/wp-content/uploads/2023/04/Vladni-koncepce-boje-proti-korupci-na-leta-2023-az-2026.pdf>

56 <https://www.rekonstrukcestatu.cz/archiv-novinek/novou-medialni-novelou-koalice-sve-programove-prohlase-ni-nenaplni>

Private media have protested against the amendment of the law, as they are opposed to public media receiving additional funding.⁵⁷

Unfortunately, it is only a one-time change and the concept of sustainable financing is still lacking.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies

In 2023, the Parliament approved an amendment according to which the Senate will elect a third of the board members of Czech Television and Czech Radio (till now, only the Chamber of Deputies had this authority). The television board will have 18 members instead of 15, and it will no longer be possible to dismiss the public media boards as a whole. These positive changes will strengthen the resistance of both media formats to potential political pressure.

Proposals for members of the Council of Czech Television and the Council of Czech Radio are to be submitted by organisations that have existed for at least ten years and represent cultural, regional, social, trade union, employer, religious, educational, scientific, ecological and national interests.⁵⁸

Pluralism and concentration

Levels of market concentration

The company *Seznam Média* (an online newspaper) wants to buy the company *Silky*, which is the majority owner in the publishing house of the newspaper *Právo*. The transaction, announced at the end of 2022, has been approved by the Office for the Protection of Economic Competition in 2023. According to the office, *Seznam.cz* and *Silky* do not directly compete because one of them is an online medium and the other is printed. On the contrary, they have been cooperating for a long time.

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

The ban on media ownership by top politicians will be stricter from 2024 (the amendment to the law was adopted in 2023). For example, politicians will not be able to transfer media ownership to a person close to them or to a trust fund, and there will be higher fines if this duty is breached.⁵⁹

57 <https://www.seznamzpravy.cz/clanek/ekonomika-firmy-ministerstvo-nahrava-ct-a-rozhlasu-stezuji-si-soukromu-media-238540>

58 https://www.idnes.cz/zpravy/domaci/senat-novela-zakona-o-ceske-televize-o-ceskem-rozhlasu-clenove-rad-verejnopravnich-medii.A230621_051329_domaci_kop

59 <https://zpravy.aktualne.cz/domaci/zakaz-vlastnictvi-medii-vrcholnymi-politiky-bude-prisnejsi-p/r~b-f05ea96376f11eeb1f50cc47ab5f122/>

This restriction does not affect online media, as the Czech Republic has no legal regulation of online media thus far.

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

Czech law still lacks a definition of online media, and therefore they are not subject to the same legal requirements as traditional offline media (print, radio and television). Nonetheless, a conflict of interest can arise concerning politicians and online content. The Senate, in its resolution from August 2023, called on the government to address this matter.

Reconstruction of the State (NGO) analysed the current state of Czech media legislation and the approach to the topic in other European countries and suggested different ways to define what constitutes online media.⁶⁰

Public trust in media

The overall trust of Czechs in the media reached a record low level in June 2023. This is evidenced by the latest results of the annual report of the Oxford Reuters Institute. According to the Digital News Report, only 30% of domestic respondents declared having trust in the

media. This is four percentage points less than in 2022.⁶¹

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

More verbal attacks from government politicians (especially Pavel Blažek) were recorded this year. Blažek's regular targets include a pair of *Seznam Zprávy* investigative journalists, Adéla Jelínková and Lukáš Valášek. They brought to light serious revelations about the events at the Department of Justice and about the private contacts of Minister Blažek with Martin Nejedlý, the pro-Kremlin adviser to ex-president Miloš Zeman.⁶²

Confidentiality and protection of journalistic sources (including whistleblower protection)

As mentioned elsewhere in this report, the Whistleblower Protection Act came into effect on 1 August 2023, marking a positive step in the fight against corruption.

Access to information and public documents

The Constitutional Court ruled that the denial of information about obstetrics in the

60 <https://www.rekonstrukcestatu.cz/archiv-novinek/budou-online-media-konecne-v-hledacku-ceskych-zakonu>

61 <https://www.lupa.cz/aktuality/digital-news-report-duvera-v-ceska-media-je-rekordne-nizka/>

62 <https://www.transparency.cz/fialova-vlada-je-nervozni-zacina-napadat-media/>

Czech Republic was illegal. The publication of information about procedures performed in individual maternity hospitals is undoubtedly in the public interest, as information and

transparency can contribute to the improvement of the healthcare system as a whole. The ruling thus opened the way to information in the field of healthcare.⁶³

Checks and balances

Key recommendations

- *To establish the National Human Rights Institution.*
- *To establish the Office of Ombudsperson for Children.*
- *Change the Electoral Administration Act so that the so-called postal vote is introduced.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

In March, an amendment to the valorisation of the pension was hastily adopted during a legislative emergency. Several experts, including the former President of the Supreme Court and Vice-President of the Constitutional Court,

Eliška Wágnerová, expressed reservations. She argued in particular that the conditions for declaring a legislative emergency were not met and highlighted the retroactivity of the adjustment.⁶⁴ The reduction in the valorisation of the pension came at the last minute, and the government did not act swiftly, despite being aware of rising inflation since the beginning of the year. A group of Members of Parliament submitted a proposal to the Constitutional Court to annul part of the pension insurance law. The court has not yet ruled, and a public hearing was scheduled for 10 January 2024.⁶⁵ The President of the Constitutional Court,

63 <https://www.usoud.cz/aktualne/odepreni-informaci-o-porodnictvi-v-ceske-republice-pred-ustavnim-soudem-neobstalo>

64 https://www.irozhlas.cz/zpravy-domov/eliska-wagnerova-snizeni-valorizace-duchodu-legislativni-nouze_2303250500_jg

65 <https://www.usoud.cz/aktualne/k-valorizaci-duchodu-probehne-verejne-jednani-ustavni-soud-zverejnil-dosavadni-stanoviska-stran>

Josef Baxa, described the case as “one of the most serious cases the Constitutional Court has dealt with”. Czech President Petr Pavel stated that if the opposition did not submit the proposal, he would do so himself.⁶⁶

Independent authorities

The Czech Republic has been criticised⁶⁷ for being one of the last EU countries without a national human rights institution or an independent children’s ombudsman. In July 2023, the Czech government proposed a bill to create both institutions.⁶⁸ However, the bill has not yet been passed by Parliament.

The Ombudsman of the Czech Republic has stressed that the institutions should be adequately funded and staffed to ensure that they can effectively fulfil their mandate.⁶⁹

The current Office of the Public Defender of Rights works very well: it helps people to protect themselves from the authorities, conducts research, writes recommendations etc.⁷⁰ Within its special mandate as a national preventive

mechanism according to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it strengthens the protection of people restricted in their freedom (as part of punishment, or as a result of dependence on care) from ill-treatment.⁷¹ It also monitors the fulfilment of the rights of people with disabilities according to the Convention on the Rights of People with Disabilities.⁷²

Accessibility and judicial review of administrative decisions

As of 1 January 2024, the Czech Republic has five leading judgements from the European Court of Human Rights awaiting implementation,⁷³ representing an increase of one judgement compared to the previous year. Since the release of the European Commission’s 2023 report, there has been no implementation of any judgement, and one new judgement has been added.

66 https://www.irozhlas.cz/zpravy-domov/valorizace-penzi-ustavni-soud-baxa-ovm_2310151743_fos

67 https://www.ochrance.cz/aktualne/vznik_narodni_lidskopravni_instituce_nhri_i_zrizeni_detskeho_ombudsmana_by_ochranu_lidskych_prav_v_cesku_posilily_shoduji_se_ombudsman_i_jeho_zastupce/

68 <https://www.odok.cz/portal/veklep/material/ALBSCSSKUT84/>

69 <https://www.odok.cz/portal/veklep/material/ALBSCSSKUT84/>

70 <https://eso.ochrance.cz/>; https://www.ochrance.cz/dokument/zpravy_pro_poslaneckou_snemovnu_2023/

71 https://www.ochrance.cz/dokument/2016/2016_1_Q-10-let-NPM.pdf

72 <https://www.ochrance.cz/pusobnost/monitorovani-prav-osob-se-zdravotnim-postizenim/>

73 [https://hudoc.exec.coe.int/eng#f{%22execdocumenttypecollection%22:\[%22CEC%22\],%22execlanguage%22:\[%22ENG%22\],%22execstate%22:\[%22CZE%22\],%22execisclosed%22:\[%22False%22\],%22exec-type%22:\[%22L%22](https://hudoc.exec.coe.int/eng#f{%22execdocumenttypecollection%22:[%22CEC%22],%22execlanguage%22:[%22ENG%22],%22execstate%22:[%22CZE%22],%22execisclosed%22:[%22False%22],%22exec-type%22:[%22L%22)

Electoral framework

Limitations on the right to vote

In the Czech Republic, it is common for people to be restricted in their voting rights, both active and passive, as part of a proceeding to restrict their legal capacity. This has been confirmed by research by the Czech Public Defender of Rights. The research found that 55% of people with restricted legal capacity were allowed to retain their voting rights, but 35% had their active and passive voting rights restricted.⁷⁴ There are no indicators that this practice has significantly improved in the Czech Republic.

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

The Chamber of Deputies has approved a draft law on election administration, which, among other things, allows citizens to request a voting card at any municipal office. This is made possible by a newly introduced centrally managed election information system, including a unified voter list, precinct election commissions, and a register of candidate lists.⁷⁵ The system also

facilitates electronically signing petitions in support of candidacy.⁷⁶ However, the proposal lacked provisions for the adjustment of postal voting methods in elections.

At the beginning of 2024, the Czech government supported a change to the Electoral Administration Act that would allow for the introduction of a so-called postal vote for citizens living abroad.⁷⁷ This voting method could be used as early as 2025, when the Czech Republic will hold elections for the Chamber of Deputies.⁷⁸ The possibility of introducing a postal vote was already discussed by the Andrej Babiš government, but it did nothing to implement it. This would mean that thousands of Czechs living abroad could now vote relatively easily, which could be significant in the event of a close election result. The opposition criticises the proposal, arguing that postal voting is easily manipulated and that it is not possible to guarantee that the ballot cast is a true and free expression of the will of the voter. However, it is also possible to question the current voting system, where it is possible to come to a polling station with a sealed envelope containing a ballot paper. It is not surprising that the current opposition criticises postal voting, as both opposition parties received only a negligible

74 https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf, p. 8

75 https://www.irozhlas.cz/zpravy-domov/zakon-o-sprave-voleb-hlasovaci-listky-volicke-prukazy-schvaleni_2310241922_til

76 <https://www.mvcr.cz/clanek/dalsi-krok-k-modernejsim-volbam-politicke-strany-se-shodly-na-efektivnej-si-sprave-voleb.aspx>

77 <https://www.odok.cz/portál/zvlady/jednani-detail/2024-01-03/>

78 https://www.irozhlas.cz/zpravy-domov/korespondencni-volby-hlasovani-v-zahranici-vlada_2401031658_dno

number of votes from Czechs living abroad in the last parliamentary elections.⁷⁹

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

Presidential candidate and leader of the ANO movement, Andrej Babiš, circumvented the ban on political advertising on television by paying the company Česká muzika to broadcast a television program on the TV station *Šlágr*. Transparency International stated that the interview was conducted in such an uncritical and promotional manner that it constituted an election campaign. The disclosed payment in the transparent election account confirms that

both parties were aware of the purpose behind the interview. The issue is problematic as the television station broadcasts in the territory of the Czech Republic based on a Slovak licence with a foreign clause.⁸⁰ The Slovak Council for Media Services, prompted by Transparency International, imposed the highest possible sanction on the broadcasting company, stating that the program was thematically linked to news coverage without any effort to create balance, clarification, or to place the stated opinions in a broader context.⁸¹

Civic space

Key recommendations

- *Improve early detection of disinformation and strategic communication of the state.*
- *Start addressing gender-based violence against female politicians and publicly active women in a systemic way.*
- *Effectively address the issue of so-called flow-through accounts.*

79 https://www.irozhlas.cz/komentare/korespondencni-volba-hlasovani-zahranici-vlada-opozice-komentar-hartman_2401041630_edr

80 <https://echo24.cz/a/HdZJq/zpravy-domov-babis-placeny-rozhovor-obesel-zakaz-politicka-reklama-pripad-zabyva-slovenska-medialni-rada>

81 <https://rpms.sk/tlacove-spravy/tlacova-informacia-zo-zasadnutia-rady-pre-medialne-sluzby-dna-8-11-2023>

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc.)

The government has decided that organisations caring for socially vulnerable individuals and families will have to financially contribute to some of their projects starting from November. In the case of new calls under the Employment Plus Operational Program after 1 November, the share from non-governmental non-profit organisations increased from 0% to 5%.⁸² This represented a mitigation of the original proposal, which envisaged co-financing by drawing 10% from European funds, 13% from nationwide calls, and 50% from Prague.⁸³ Non-profit organisations expressed their objection to the original proposal through an open letter.⁸⁴ A significant number of comments were also sent by the Government Commissioner for Human Rights, Klára Šimáčková Laurenčíková, and several ministries (MMR, MPSV, and MŠMT)

expressing negative opinions. However, this could still be a burden, especially for small non-profit organisations.

During the September meeting, the Committee of the Government Council for Non-Governmental Non-Profit Organisations addressed the reallocation of funds from the ESF+ to the Cohesion Fund within the Operational Program Transport (Operační program Doprava). The committee demands the return of unused funds to the ESF+. NGOs would use the financial resources primarily for launching the Housing Support Act, transforming psychiatric care, transforming residential services for people with disabilities, strengthening professional counselling in the field of indebtedness and debt relief, and helping people reintegrate into the regular economy, supporting Ukrainian children in education etc. Furthermore, co-financing is set at 5% for calls within the Program Partnerships OPZ+, despite the Minister of Labour and Social Affairs promising to negotiate 0%.⁸⁵

The committee met twice during the year and mainly addressed legislative issues. Specifically, it dealt with the issue of private donations, including the exemption of VAT on donated goods, systemic changes in financing, the

82 <https://www.novinky.cz/clanek/ekonomika-neziskovky-pecujici-o-lidi-v-nouzi-budou-platit-i-ze-sveho-ty-mensi-na-to-nebudou-mit-varuji-40445420>

83 https://www.irozhlas.cz/ekonomika/ministerstvo-financi-neziskove-organizace-vydaje-evropske-fondy_2308090600_ep

84 See https://www.glopolis.org/site/assets/files/1383/dopis_proti_navyseni_spolufinancovani-eu-fondy_2023-06-27.pdf

85 https://vlada.gov.cz/assets/ppov/rnno/zapisy-ze-zasedani/Zapis_RVNNO_25_09_2023.pdf

question of the deductibility of a gift to reduce the tax base, and amendments to the Public Collections Act and the Registered Social Enterprise Act under the guarantee of Ministry of Labour and Social Affairs.

Impact of rules on foreign funding, accounting and auditing rules, anti-money laundering regulations

The government has started addressing the issue of money laundering. At the end of August, the government instructed the Minister of Justice to draft and submit a bill regulating the option to confiscate illegally acquired property, which experts consider to be the fastest and most effective response. However, the deadline for this is set until 31 December 2024. According to foreign analyses, the Czech Republic is one of the most attractive countries for laundering proceeds from criminal activities, as it struggles to effectively address the issue of so-called flow-through accounts.⁸⁶ According to police statistics, approximately CZK 6 billion (€235.7 million) of unclear origin flowed from the east to Czech accounts in recent years. Empty properties, dormant companies, and suspicious amounts in accounts are prevalent in the Czech Republic.⁸⁷ Many experts feel that the government is not progressing fast and effectively

enough on this issue. If the proposal is not prepared until the end of 2024, there is a risk that the current government will not have enough time to review and approve it on time.

Several proposals related to money laundering emerged by the end of the year, excluding flow-through accounts. In August, for example, the government approved legislation allowing for the seizure of assets in cases where it is highly likely that they originate from illegal sources.⁸⁸ The Ministry of Finance's amendment expands the range of entities covered by the anti-money laundering law, currently affecting entities such as credit institutions, real estate agencies, auditors, and trustees of trust funds. The amendment would also extend the law's impact to insolvency administrators, restructuring administrators, operators of online lotteries and online bingo, as well as traders in precious metals⁸⁹ and virtual assets.⁹⁰ The amendment also raises the upper limit of fines for individuals for failing to conduct the required checks on institutions subject to the law to CZK 1 million. The amendment also introduces regulations for the transport of higher amounts of cash across Czech territory. Individuals transporting more than €15,000 in cash will be required, upon the request of Customs Administration, to disclose the owner and recipient of this cash and explain

86 <https://www.rekonstrukcestatu.cz/archiv-novinek/ceska-pracka-na-spinave-penize-pojede-jeste-bezmala-500-dni>

87 <https://ct24.ceskatelevize.cz/clanek/domaci/do-ceska-miri-miliardy-korun-z-vychodu-pres-prutokove-ucty-pro-tikorupcni-urady-apeluji-na-vladu-699>

88 <https://denikn.cz/1221639/k-zabaveni-majetku-by-stacilo-podezreni-ministerstvo-tak-chce-omezit-prani-spinavych-penez/>

89 <https://advokatnidenik.cz/2023/10/25/snemovna-podporila-zpriseni-pravidel-proti-prani-spinavych-penez/>

90 <https://advokatnidenik.cz/2023/11/20/mf-chce-rozsirit-zakon-proti-prani-spinavych-penez-i-na-kryptomeny/>

why they are transporting it. The same obligation will apply to sending more than €15,000 in cash through mail or other postal services to another European Union state.

Other

According to a report from the European Civic Forum published in March, the Czech Republic should improve the involvement of non-profit organisations in public policy and increase the level of cooperation between NGOs and the government, which is currently insufficient. This area is highly fragmented and not uniform in the Czech Republic. However, the report praises the adopted methodology of participation in policy formation and the functioning of advisory bodies. NGOs also lack assistance in coping with the record level of inflation. This, along with obstacles to long-term funding and insufficient digitalization, has had a negative impact on civil society organisations. On the contrary, the report highlights the strength and solidarity of the Czech civil society in addressing the consequences of Russian aggression in Ukraine and aiding people on the run.⁹¹

Freedom of peaceful assembly

Bans on protests

The City Hall of Prague cancelled a demonstration in support of Palestine with the slogan

“From the River to the Sea, Palestine will be free”. In its decision, the City Hall associated this slogan with terrorist attacks by the Hamas movement and the endorsement of genocide, as well as incitement to deny and restrict human rights based on nationality, religion, or political beliefs. The Municipal Court in Prague overturned the decision of the City Hall, stating that the disputed slogan could have multiple meanings, and it cannot be said to carry a clearly violent or even genocidal message, as asserted by the City Hall of Prague.⁹²

The Last Generation activists, who organised events such as the ‘March 30 for Prague’ (Pochod 30 pro Prahu), had their march route altered by the City Hall of Prague but were not prohibited. The City Hall requested that demonstrators proceed only on the footpath.⁹³ The Municipal Court annulled this decision of the Prague City Hall, disagreeing with the change of route. It stated that if a footpath is missing on a section of the road, pedestrians have the right to use the left roadside. The argument about the busy nature of the main road did not hold, as the court mentioned that temporary traffic restrictions on this road are common. Finally, it emphasised that each participant in the protest bears responsibility for their health, and the state should not assume that responsibility for them. However, the court agreed with the officials regarding the decision to prohibit blocking the main road, deeming it too intrusive to the

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

92 <https://www.ceska-justice.cz/2023/12/zruseni-prosincove-demonstrace-na-podporu-palestiny-bylo-nezakonne-rozhodl-soud/>

93 https://prazsky.denik.cz/zpravy_region/praha-pochod-posledni-generace-aktiviste-magistrala-20230912.html

rights and freedoms of others.⁹⁴ The activists had demanded a reduction in the speed limit in cities from 50 km/h to 30 km/h. In addition to the ‘March 30 for Prague’ campaign, they launched the ‘30 for Brno’ campaign in March 2023. These campaigns involved challenges to relevant authorities, petitions, and, above all, protest gatherings. Since September 2023, they have focused on the unfinished humanization of the north-south main road and the fulfilment of Prague’s climate commitment.⁹⁵

Freedom of expression and of information

Criminalisation of speech

There have been several condemnatory judgments against disinformation agents. The Supreme Administrative Court upheld penalties for hate speech against Ukrainians for Tomáš Čermák and Patrik Tušl. The former had his suspended sentence confirmed, while the latter received a 10-month prison term. In August of last year, both men broadcast a video on social media denigrating Ukrainians.⁹⁶ Čermák also had an unconditional prison sentence of five and a half years confirmed by the High Court

in Prague for promoting terrorism and inciting violence against politicians.⁹⁷ Disinformation propagator Jakub Netík was also penalised for his statements against peace. In live Facebook videos, he repeatedly defended the Russian invasion of Ukraine and expressed regret that Russia did not advance further into Europe. The court found him guilty of the crime of publicly approving and justifying a crime against peace.⁹⁸ While these judgements are commendable, the court proceedings against disinformation agents have also revealed challenges, as supporters of Čermák and Tušl, through loud outbursts and chanting slogans, questioned the role of the justice system. Through social media, they send a message to the rest of society, gaining attention that could help them further spread disinformation.

Spread of and responses to disinformation

The Czech Republic continues to grapple with disinformation campaigns, particularly in connection with the war in Ukraine and Ukrainian refugees within its territory, as well as the conflict in Gaza. The tragic shooting incident at the Faculty of Arts of Charles University in Prague has also been an event awash in disinformation.⁹⁹

94 <https://www.ceska-justice.cz/2023/10/soud-stat-nesmi-omezovat-pravo-na-shromazdeni-obavou-o-zdravi-ucastniku/>

95 <https://www.posledni-generace.cz/faq/>

96 <https://domaci.hn.cz/c1-67232740-podminka-pro-cermaka-desetimesicni-vezeni-pro-tusla-soud-potvrdil-tresty-za-nenavistne-vyroky-o-ukrajincich>

97 <https://domaci.hn.cz/c1-67226130-cermak-pujde-na-5-5-roku-do-vezeni-vyzyval-k-nasili-vuci-politikum-prislaho-podporit-asi-stovka-lidi>

98 <https://www.novinky.cz/clanek/krimi-soud-potrestal-dezinformatora-netika-za-vyroky-proti-miru-40454138>

99 <https://cesti-elfove.cz/special-strelba-na-filosoficke-fakulte/>

The strained relationship between the Romani and Ukrainian communities is to a large extent a consequence of disinformation.¹⁰⁰ The wave of disinformation has also affected presidential elections, and according to a survey by the company Median, 63% of Czechs consider the uncontrolled spread of false and manipulative news to be a problem.¹⁰¹

However, there is a lack of consensus between the government and the opposition on the necessity of combating disinformation. It could be argued that the government, led by Prime Minister Petr Fiala, does not adequately address this issue. In the spring, the government's special office for disinformation was abolished without replacement. The fight against disinformation was taken over by the National Security Adviser, Tomáš Pojar, who, alongside this responsibility, manages a broad agenda and logically cannot dedicate enough attention to the issue of disinformation. In October, a disinformation advisor to the prime minister, Miloš Gregor, was appointed, but experts do

not view this step as effective. The advisor has not been granted any special powers, no budget allocation for the role, no team of staff, and no executive authority, significantly limiting his practical capabilities.¹⁰²

Miloš Gregor stated that many people, including politicians, perceive the fight against disinformation as censorship, mentioning the Freedom and Direct Democracy (Svoboda a přímá demokracie - SPD) political party, for example.¹⁰³ He further emphasised the need for the Czech Republic to improve in early detection of disinformation and strategic communication.¹⁰⁴ The spokesperson for the Czech Elves (Čeští Elfové) highlighted the importance of establishing strategic communication for the state, which is currently lacking. Civil initiatives or individuals within the armed forces still largely substitute the state's activities.¹⁰⁵ While praising the work of the KRIT (krizový informační tým) and CHH (Centrum proti hybridním hrozbám) teams at the Ministry of

100 https://www.irozhlas.cz/komentare/konflikt-ukrajinci-romove-nenavist-tolerance-dezinformace-komentar-hrstkova_2307250629_ara

101 https://www.irozhlas.cz/zpravy-domov/pruzkum-median-dezinformace-boj-z-dezinformacemi-konspiracni-teorie_2307090500_jgr

102 <https://www.respekt.cz/tydenik/2023/43/jmenovani-premierova-poradce-je-na-ucinny-boj-s-dezinformacemi-malo>

103 https://www.irozhlas.cz/zpravy-domov/gregor-dezinformace-poradce_2310312324_mst

104 <https://www.seznamzpravy.cz/clanek/domaci-politika-lide-nekterym-nesmyslum-uverili-kampan-uz-to-nezme-ni-rika-fialuv-poradce-241955>

105 <https://plus.rozhlas.cz/bojovat-s-dezinformacemi-mel-stat-nechava-ale-na-obcanskych-iniciativach-chybi-9013929>

the Interior,¹⁰⁶ there is a clear need for greater state involvement.

Online content regulation

The Supreme Administrative Court upheld the judgement of the Municipal Court in Prague, stating that the state's efforts to block disinformation websites in connection with Russia's attack on Ukraine did not constitute an unlawful infringement of public rights. According to the judges, it does not involve enforceable actions by public authorities but rather represents a non-binding political proclamation of a recommending nature. The organisations that filed the lawsuit are considering filing a constitutional complaint.¹⁰⁷

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

At the end of May, supporters of former journalist Jana Peterková attacked the judicial guard and broke the doors of the courtroom. Chants and gestures reminiscent of the Gestapo and a fascist state echoed in the hallway. The police were called to the scene and detained two men.

Subsequently, eight people were charged with disorderly conduct, five of them additionally with violence against a public official, and one additionally with contempt of court. The group included Pavel Zítko, a former presidential candidate. Peterková was sentenced to a two-year suspended sentence by the court for spreading false information during the COVID-19 pandemic.¹⁰⁸ She has appealed to the Supreme Court. Peterková has repeatedly spread disinformation, denied the existence of the Czech Republic, the COVID-19 pandemic, claimed the Czech Republic was occupied by NATO forces, alleged an attempt was made to poison her in the hospital, and threatened that mobilisation would be declared after President Petr Pavel took office.¹⁰⁹ She publicly supports convicted disinformation agent Čermák, mentioned above.¹¹⁰

Verbal attacks

The StopHatred (StopNenávisti) project by the Forum 50% highlights gender-based violence against female politicians and publicly active women. This is a prevalent phenomenon both in the real world and cyberspace and can be one of the main barriers to increased political and public participation of women. They encounter

106 https://www.idnes.cz/zpravy/domaci/dezinformace-boj-vlada-absence-strategicke-komunikace-odbornici-sbirka.A230915_083228_domaci_vank

107 https://www.irozhlas.cz/zpravy-domov/zaloba-dezinformace-blokovani-weby-zasah-nss_2308101501_cib

108 <https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-kvuli-deni-u-soudu-s-peterkovou-je-obvinenych-osm-lidi-238778>

109 https://www.idnes.cz/zpravy/domaci/jana-peterkova-soud-dezinformace-poplasna-zprava.A231114_133734_domaci_sdlk

110 https://www.idnes.cz/zpravy/domaci/shromazdeni-policie-peterkova-cermak-zitko.A231106_132309_domaci_prch

stereotypical remarks regarding intelligence, competence, and appearance, as well as degrading and dehumanising comments. In the Czech Republic, this is a topic that is not sufficiently researched and remains systematically unresolved.¹¹¹

Online civic space

Digital surveillance

The government has approved a proposal according to which the Czech Telecommunication Office (ČTÚ) is to ensure unified supervision over new European regulations, thus becoming the national coordinator of digital services. In the future, its scope will expand to include oversight of the regulation on digital services, a portion of the data governance regulation, and the data regulation. For example, it will grant the status of trusted notifiers or authorised research workers to applicants who meet the legal conditions.¹¹²

The new agenda of the office will strongly impact the fundamental rights of citizens on the internet, such as freedom of speech or the right to information. The guardian of the Czech internet should be politically independent. However, the Ministry of Industry and Trade¹¹³ proposes abolishing the collective governing body. The current Council of ČTÚ will

be replaced by a chairman and two vice-chairmen. According to the proposal, these individuals will be appointed and dismissed by the government upon the recommendation of the Minister of Industry and Trade. This will lead to the concentration of decision-making powers in a single person, who is additionally appointed and dismissed solely at the discretion of the government. It is necessary to introduce safeguards for independence, rather than weakening independence.

Digital attacks to IT infrastructure

According to the director of the association VIA, nearly one-fifth of non-profit organisations in the Czech Republic do not address potential data leaks. Three-quarters do not have basic security rules documented. The research has shown that almost 40% of organisations have encountered some form of cyberattack. Nearly 50% of non-profits stated that they lack sufficient funds for adequate security and use personal computers as well as mobile phones.¹¹⁴

Attacks, threats and hate speech online

The current government praises Czech non-profit organisations, and President Petr Pavel officially supports them. In June, he even opened the castle to them during Children's Day. This marks significant progress compared

111 <https://padesatprocent.cz/cz/o-nas/projekty/stopnavisti-osveta-o-ruznych-formach-nasili-vuci-verejne-aktivnim-zenam>

112 <https://advokatnidenik.cz/2023/08/18/dohled-nad-jednotnymi-evropskymi-digitalnimi-predpisy-zajisti-ctu/>

113 <https://www.rekonstrukcestatu.cz/archiv-novinek/nezavislost-ctu-je-treba-s-novou-digitalni-agendou-posilit>

114 https://www.irozhlaz.cz/zpravy-domov/kyberzlocinci-neziskovky-it-zabezpeceni-online_2309151342_lpr

to the previous government led by Andrej Babiš, which repeatedly attacked the non-profit sector. Similarly, former President Miloš Zeman did

not have a positive relationship with the non-profit space, which he publicly expressed.¹¹⁵

Disregard of human rights obligations and other systemic issues affecting the rule of law environment



Key recommendations

- *Ensure progress is made on creating systematic changes to address the discrimination of the Roma people.*
- *Resolve the issue of same-sex marriage as soon as possible.*
- *Abolish the requirement for sterilisation for legal sex change.*

Systemic human rights violations

Systemic discrimination against Roma people

One of the long-standing systemic human rights problems in the Czech Republic is the approach to the Roma people, their systemic discrimination, marginalisation and ostracisation. However, a positive step in this area is the establishment¹¹⁶ of the position of Government

Commissioner for Roma Minority Affairs, which was also praised by the UN High Commissioner for Human Rights Volker Türk.¹¹⁷

The Ministry of Education, Youth and Sports commissioned a new analysis, which shows that Roma children are still segregated within the educational system. Diagnosed with a mild mental disability, they are transferred from regular elementary schools to special schools. These children are then less employable in the

115 <https://hlidacipes.org/soros-neni-cimrman-predvolebni-utoky-na-neziskovsky-jako-cesko-slovensky-politicky-folklor/>

116 https://vlada.gov.cz/cz/ppov/zmocnenci_vlady/vladni-zmocnenkyne-pro-zalezitosti-romske-mensiny-201904/

117 <https://waps.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session42/HC-letter-Czech-Republic-EN.pdf>

labour market, which causes the state to lose considerable money.¹¹⁸ According to the public defender of rights, Roma pupils are diagnosed with the mentioned diagnosis of mild mental disability up to 10 times more often than their non-Roma peers.¹¹⁹ The Ombudsman's research also shows that an average of 3.5% of pupils attending primary schools are Roma. On the contrary, among pupils with reduced educational needs, 26.2% comprise Roma pupils. This undesirable situation could be improved precisely by an improved diagnostic system for pupils.¹²⁰ After 16 years, the Czech Republic has still not fulfilled its obligations arising from the decision of the European Court of Human Rights in *D.H. v. Czech Republic*.¹²¹

Hate Speech

In mid-2023, the Ministry of the Interior recorded 69 hate crimes. At the moment, the police have resolved fewer than half (29).¹²² Hate speech, incitement to hatred, and spreading

alarmist (and/or disinformation) messages are commonplace on social networks. However, the police investigate significant cases.¹²³ An example is a case arising from the terrorist attack of the Hamas movement on Israel and the subsequent Israeli-Palestinian armed conflict, which saw the Supreme Prosecutor's Office issue an interpretative opinion on the legal assessment of possible hate speech.¹²⁴ In this context, for example, one of the demonstrations in support of Palestine was banned in Prague due to different interpretations of the slogan of the demonstration "From the River to the Sea Palestine will be free", some of which may have extremist undertones.¹²⁵ This case demonstrates the conflict that can arise between the right to freedom of expression and the right to protection from violence.

Same-sex marriage

In 2023, the initiative to enact the so-called marriage for all, i.e. the right to marry also for

118 https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-diskriminace-romu-trva-zdrave-deti-konci-ve-specialnich-skolach-a-s-diagnozou-232324?_zn=aWQlM0QzMTM1ODgzMzIyODk2Njk0NjQ5JTdDdCUz-RDE3MDUxNDE4MDcuNTIzJTdDdGUIM0QxNzA1MTQxODA3LjUyMyU3Q2MIM0RENDFCRE-U4MTFERjk0NUNEMUVCMYTY1MEZGRDNCRTQwMw%3D%3D

119 https://www.ochrance.cz/aktualne/podle_pravidel_pro_zaky_s_lehkym_mentalnim_postizenim_se_porad_uci_vice_romskych_deti_nez_by_odpovidalo_zastoupeni_romu_mezi_vsemi_skolaky/

120 Ibid.

121 <https://radiozurnal.rozhlas.cz/romske-deti-jsou-ve-vzdelavacim-systemu-stale-znevychodnovany-rika-michal-cerny-z-9103208>

122 <https://advokatnidenik.cz/2023/08/04/mv-letos-eviduje-69-nenavistnych-cinu-policie-objasnila-mene-nez-polovinu-z-nich/>

123 <https://www.irozhlas.cz/zpravy-tag/nenavist>

124 https://verejnazaloba.cz/wp-content/uploads/2023/12/1_sl_732_2023_14_male_stanovisko.pdf

125 https://www.irozhlas.cz/zpravy-domov/praha-magistrat-slogan-palestina-demonstrace-zakaz_2312012237_ava

same-sex couples, was a major issue in Czech society. Although it is up to each state to decide on this issue, it marked a symbolic expression of how the State is inclined towards equal rights for all groups of people. Along with the proposal for marriage for all, a proposal to amend the constitution was also discussed in the sense that only a union between a man and a woman is considered a marriage. Currently, the situation seems to be that the rights of gay couples could be equated with the rights of spouses, however, a union for same-sex couples would be called a partnership.¹²⁶ In addition to the legal aspect, the aforementioned symbolism is also important here, which in this case indicates that the State still perceives same-sex couples as somewhat inferior to heterosexual couples. At the same time, the absolute majority of Czechs support marriage for gay people.¹²⁷

Redefinition of rape

We see positive progress in the area of the redefinition of rape, which was approved by the government at the end of 2023.¹²⁸ According to this new development, it will be important to examine the will or defencelessness of the victim in assessing whether rape has occurred.

Originally, the definition was supposed to be based on the victim's disapproval, but this would not pass the current Chamber of Deputies.¹²⁹

Ban on corporal punishment

In the past, the Czech Republic was criticised by, for example, the European Committee for Social Rights, because its legal system does not contain an explicit prohibition of physical punishment for children. The Ministry of Justice is currently working on an amendment to the Civil Code.¹³⁰

Repeal of the sterilisation requirement for legal gender change

Gradually, at the ministerial level, work is also starting to abolish the sterilisation condition for legal sex change. The Czech Republic is one of the last countries in Europe that still has this inhumane condition for official gender change in the law.¹³¹ The plenum of the Constitutional Court will soon also decide on the abolition of the part of the Civil Code that anchors the condition.¹³²

126 <https://www.ceskenoviny.cz/zpravy/2434928>

127 <https://www.novinky.cz/clanek/domaci-vetsina-cechu-podporuje-manzelstvi-homosexualu-40435353>

128 <https://odok.cz/portal/veklep/material/ALBSCUSEM5LD/>

129 <https://ct24.ceskatelevize.cz/clanek/domaci/ne-znamena-ne-vlada-schvalila-zmenu-definice-znasilneni-opousti-podminku-pouziti-nasili-344332>

130 <https://www.novinky.cz/clanek/domaci-ministerstvo-chce-zakazat-telesne-tresty-deti-40447943>

131 <https://www.novinky.cz/clanek/domaci-zmena-pohlavi-bez-kastrace-i-kvuli-mladistvym-40447710>

132 <https://advokatnidenik.cz/2023/12/19/plenum-us-se-bude-znovu-zabyvat-podminkou-operace-pro-uredni-zmenu-pohlavi/>

Ratification of Istanbul Convention

The Czech Republic has still not ratified the so-called Istanbul Convention (Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence). Lawmakers are, with exceptions, rather negative about the adoption of the convention, given the fact that, according to them, Czech law has sufficient guarantees for the protection of victims of domestic violence. This is despite the fact that domestic violence is still very present in the Czech Republic, which is confirmed by the new action plan for its prevention for the years 2023-2026, which is inspired by the Istanbul Convention.¹³³

The government recommended that the Chamber of Deputies should accept the convention,¹³⁴ but the Senate committee later called it a superfluous ideological document.¹³⁵ Senator Chalánková pointed out the possible disruption of the traditional roles of men and women in the event of the adoption of the convention.¹³⁶ Senator Jirsa said the convention discriminated against men.¹³⁷ On the contrary, Member of Parliament Zuna and

Government Commissioner for Human Rights Klára Šimáčková Laurenčíková supported the adoption of the Istanbul Convention, and Laurenčíková points to the negative consequences of its non-acceptance, including the current high expenses for assistance to victims of domestic violence.¹³⁸ Both chambers of the Parliament are due to discuss the ratification of the convention soon,¹³⁹ but so far only a round table has taken place (without much progress).¹⁴⁰ Again, we are one of the last countries that has not yet ratified the convention.

133 https://www.tojеровnost.cz/wp-content/uploads/2023/08/AP_DGPN-2023_final.pdf

134 See https://www.irozhlas.cz/zpravy-domov/istanbulska-smlouva-umluva-snemovna-senat_2307260615_jgr

135 https://www.irozhlas.cz/zpravy-domov/nadbytecny-ideologicky-dokument-istanbulska-umluva-senat-ratifikace-ne_2308221424_nel

136 https://www.irozhlas.cz/zpravy-domov/istanbulska-umluva-vlada-ratifikace-ods-chalankova_2308260826_ank

137 <https://www.novinky.cz/clanek/domaci-senatori-istanbulska-umluva-diskriminuje-muze-40438812>

138 <https://denikn.cz/minuta/1238964/>; <https://www.seznamzpravy.cz/clanek/domaci-politika-vahani-s-istanbulska-umlouvou-nas-negativne-poskozuje-tvrdi-zmocnenkyne-237147>

139 <https://www.psp.cz/sqw/historie.sqw?o=9&t=486>

140 <https://www.novinky.cz/clanek/domaci-senatori-vyvraceli-myty-o-istanbulske-umluve-40446920>

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ESTONIAN HUMAN
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Estonian Human Rights Centre (EHRC) is an independent public interest foundation dedicated to the advancement of protection of human rights in Estonia. EHRC is engaged in research, monitoring, advocacy and awareness-raising activities to advance the protection of human rights. The mission of EHRC is to work together for Estonia to become a country that respects the human rights of each person in the country. EHRC develops its activities according to the needs of the society. EHRC's focus is currently on the advancement of equal treatment of minority groups, diversity & inclusion, the human rights of asylum seekers and refugees, hate speech and hate crime, and data and privacy. EHRC coordinates the Estonian Diversity Charter. EHRC also monitors the overall human rights situation in Estonia and publishes independent human rights reports about the situation in Estonia. As a whole, EHRC carries out a broad-based, effective, and sustainable advocacy in the field of human rights.

Key concerns

In the area of justice, the same issues persist from the previous year – the state legal aid system is underfunded and needs reform, and the lack of human resources threatens the quality of the justice system. While small steps have been taken to solve these issues, more effort is required.

As regards the anti-corruption framework, the distribution of “roof money” (*katuseraha*) was abolished, but significant and long-awaited

laws remain unadopted. The EU Directive on Whistleblowing and legal amendments requiring Members of Parliament to disclose their lobbying meetings publicly are still not implemented. On the other hand, it is positive that there is a willingness to address the guidelines on conflicts of interest by developing a draft amendment to the Anti-Corruption Act, but the draft law has not yet reached the Parliament.

Although Estonia has dropped in some international freedom of speech rankings, the

country has not enacted any laws restricting media freedom, nor has it implemented any new positive measures to support media freedom. Moreover, public authorities continue to classify documents as “for internal use only” without good reason.

Regarding checks and balances, laws have been rushed through the Parliament with minimal time for consultation with stakeholders. The opposition’s obstruction has led to draft laws being tied to votes of confidence in the government. Furthermore, prisoners are still prohibited from voting and further voting restrictions are considered for Russian and Belarusian citizens.




There have been no major developments in the Estonian civic space compared to last year, and the EU Commission’s 2023 report did not make any relevant recommendations in this area.

In terms of disregard of human rights obligations, two violations repeatedly pointed out by the Chancellor of Justice and the Estonian Human Rights Centre over the years remain unaddressed.

State of play (versus 2022)

- Justice system
- Anti-corruption framework
- Media environment and freedom of expression and of information
- Checks and balances
- Enabling framework for civil society
- Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system –

Key recommendations

- *Collaborate with the Estonian Association of Judges and the Council for Administration of Courts to find solutions for the generational change among judges.*
- *Collaborate with the Estonian Bar Association to reform the state legal aid system.*

Judicial independence

The perception of independence of the judiciary remains high among the general public.

According to a 2023 survey on the trustworthiness of institutions in Estonia, 71% of respondents consider the courts trustworthy. This result matches the figure from the same

survey conducted in 2021 and represents the highest level of trust recorded.¹

The Disciplinary Chamber of the Supreme Court reviewed two cases in 2023. In the first, the Chamber found a judge from Harju County Court guilty of unjustifiably refusing to administer justice by recusing himself from handling a civil case.² In the second case, the Chamber found another Harju County Court judge guilty of delaying the settlement of civil cases, violating the reasonable procedural time requirement and not making court decisions within the stipulated time. The judge admitted that in many cases the resolution of the case was delayed due to heavy workload, inadequate work organisation and diagnosed burnout.³

Quality of justice

In February 2023, the Parliament adopted amendments to the Courts Act (*Kohtute seadus*), establishing specialised departments in every court. The amendments updated the management⁴ structure of county courts, transferring them from court-based management to sectoral

management. In some courts, there has been no opposition to the creation of departments and the work is going smoothly. Other courts have expressed that the reorganisation has not been easy, but they are working to implement the changes.⁵

Accessibility of courts

On 31 January 2023, the Minister of Justice amended the relevant regulation to increase the fees paid to lawyers for providing state legal aid.⁶ This decision followed warnings from the country's Bar Association and the Chancellor of Justice that the state legal aid system is not sustainable or constitutional, as the underfunding may pose a threat to the right to a fair trial.⁷ The hourly fees for all types of state legal aid increased by up to 30%. The amendments also stipulate a fee for presenting a court decision to a minor and a fee for representing multiple individuals, among other changes. The Ministry of Justice is also analysing the possibility of creating additional options alongside the Bar Association to ensure uninterrupted service in case the need

1 Supreme Court of Estonia (*Riigikohus*), [Uuring: kohtuid usaldab 71% eestimaalastest](#), 28 November 2023.

2 Supreme Court of Estonia (*Riigikohus*), [Judgement of the Disciplinary Chamber in case no. 9-13/22-3](#), 30 March 2023.

3 Supreme Court of Estonia (*Riigikohus*), [Judgment of the Disciplinary Chamber in case no. 9-13/23-1](#), 1 December 2023.

4 Parliament (*Riigikogu*), [Kohtute seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 633 SE](#).

5 Council for Administration of Courts (*Kohtute haldamise nõukoda*), [Minutes of the 125th meeting of the Council for Administration of Courts](#), 2 June 2023.

6 Riigi Teataja, Justiitsministri 26. juuli 2016. a määruse nr 16 „Advokaadile riigi õigusabi tasu maksmise ja kulude hüvitamise kord” muutmise.

7 Estonian Public Broadcasting (*ERR*), [Advokatuur: riigi õigusabi süsteem vajab reformimist](#), 10 June 2022; Chancellor of Justice, [Ettepanek riigi õigusabi osutamise eest makstava tasu määrade kohta](#), 17 November 2022.

for state legal aid unexpectedly increases or if a representative with specific skills is required, such as in cases related to children.⁸

Lawyers have pointed out that the new fee rates are still much lower than the market rates. In addition, there is a cap on how many hours can be invoiced – it may happen that a fee can be requested for 1.5 hours of work, even if the actual working time is, for example, 4 hours. The head of the Bar Association suggested that it might be fair if the state also procured legal aid services through a tender, like other services.⁹

Resources of the judiciary

The lack of human resources has been highlighted as the biggest concern in the Estonian legal system. Supreme Court Chief Justice Villu Kõve has repeatedly drawn attention to the challenges of generational change among judges. Within the next five years, about 65 out of Estonia's nearly 250 judges are eligible for retirement, yet there are few candidates competing to fill these positions. Last year, three civil law judgeships in county courts were left unfilled. Kõve emphasised the need to make working in the courts more attractive for young people and to consider the changed

expectations of upcoming generations regarding their careers, for example, by creating more opportunities for transitioning between different professions, working flexibly or part-time. Additionally, Kõve believes that it is necessary to review the social security benefits for judges. Among other measures, the state could make additional contributions to the judges' pension fund. According to Kõve, it is also worth considering easing the activity restrictions on judges, such as allowing them to engage more in activities such as entrepreneurship, provided that it does not interfere with their primary duties.¹⁰

In response to these concerns, in November 2023, the Ministry of Justice announced its intention to develop a draft law amending the Courts Act. The aim of the draft law is to allow a judge to work part-time over an extended period, to permit a judge to engage in business activities (provided that it does not conflict with the judges' code of ethics or impair the performance of a judge's official duties or independence), to give a higher-level judge the competence to provide feedback to a lower-level judge, and to make it easier to apply for an extension of the maximum working age.¹¹ This legislative initiative is currently in the consultation process with other ministries.

8 Estonian Public Broadcasting (*ERR*), Riigi õigusabi osutavate advokaatide tasu tõuseb kuni 30 protsenti, 2 February 2023.

9 Sorainen, Riik peaks hakkama õigusabi ostma turupõhise hinnaga nagu muidki teenuseid, 27 January 2023.

10 Supreme Court of Estonia (*Riigikohus*), Villu Kõve: õigussüsteemi suurimaks mureks on kvaliteetse inimressursi puudus, 10 October 2023.

11 Draft Legislation Information System (*Eelnõude Infosüsteem*), Kohtute seaduse muutmise seaduse eelnõu väljatöötamise kavatsus, 16 November 2023.

On 6 December 2023, the Parliament adopted a law that amends the Salaries of Higher State Servants Act (*Kõrgemate riigiteenijate ametipalkade seadus*). Specifically, it modifies the indexing of salaries in a way that reduces the growth of salaries for higher-ranking public servants in the four years following the enactment of the law, in order to decrease the deficit of the state budget. According to the draft law, the salary increase for the Prime Minister, members of the Supreme Court (except the Chief Justice of the Supreme Court), Prosecutor General, ministers, circuit, county, and administrative court judges, and other public servants will be reduced so that the increase over a four-year period constitutes half of the salary increase calculated according to the existing methodology.¹² During the legislative process, the Estonian Association of Judges asked Parliament to exclude judges from the scope of the amendment in order to ensure the sustainability of the judicial system.¹³ However, the final version of the amended law still includes judges.

Fairness and efficiency of the justice system

Length of proceedings

The current government coalition in Estonia has set a goal to continue with court reforms to reduce the amount of bureaucracy in the functioning of courts.¹⁴ In August 2023, the Ministry of Justice sent a legislative proposal for a draft law to stakeholders for their opinions, aiming to amend the rules of administrative court proceedings to enable faster and more efficient resolutions of complex and voluminous administrative cases.¹⁵ For example, it is planned to give the courts the opportunity to make an interim decision to identify the errors in the contested administrative decision and to give the administrative body the opportunity to eliminate these deficiencies, after which the court proceedings would continue from where they left off. It is also planned to increase the role of the court in compromise negotiations and to set a time limit for the negotiations, as well as making it possible to request a legal opinion from the Supreme Court.¹⁶

In January 2023, the European Court of Human Rights found that Estonia had violated

12 Parliament (*Riigikogu*), *Kõrgemate riigiteenijate ametipalkade seaduse täiendamise seadus 305 SE*, 6 December 2023.

13 Estonian Association of Judges (*Eesti Kohtunike Ühing*), *Pöördumine kõrgemate riigiteenijate ametipalkade seaduse täiendamise seaduse eelnõu muudatusettepaneku algatamiseks*, 27 October 2023.

14 Government of the Republic (*Vabariigi Valitsus*), *Coalition agreement 2023–2027*.

15 Ministry of Justice, *Ministeeriumi ettepanek muudaks keeruliste haldusajade lahendamise efektiivsemaks*, 8 August 2023.

16 Draft Legislation Information System (*Eelnõude Infosüsteem*), *Halduskohtumenetluse seadustiku muutmise seaduse eelnõu (kohtumenetluse tõhustamine) väljatöötamise kavatsus*, 8 August 2023.

Article 5 § 3 of the European Convention on Human Rights (ECHR) due to the excessive length of pre-trial detention of an applicant, lasting approximately four and a half years, calculated from the applicant's remand in custody until his conviction by the first-instance court. The Court acknowledged that the case

– which concerned organised crime – was particularly difficult to investigate for the authorities and the courts, but it also noted that there were periods of inactivity in the proceedings, when no hearings were scheduled or held. The Court awarded the applicant €4,500 in compensation.¹⁷

Anti-corruption framework –

Key recommendations

- *Adopt the Protection of Whistleblowers Reporting Violations of European Union Law in the Workplace Act currently under review in the Parliament, thereby transposing the EU Directive on Whistleblowing.*
- *Adopt the necessary legal amendments for the Members of the Parliament to start making their lobbying meetings public.*

Levels of corruption

According to the Global Corruption Index released by the international risk analysis company Global Risk Profile (GRP), Estonia dropped by one place in the 2023 Index and is now ranked sixth, yet it continues to be among the countries with a very low corruption risk.¹⁸ In the 2022 Corruption Perception Index published by Transparency International in January 2023, Estonia remains stable

compared to previous years, sharing 14th-17th place with Canada, Iceland and Uruguay, with 74 points.¹⁹

Framework to prevent corruption

As a result of the work of an expert group convened by the Government Office, an open governance roadmap was created in spring 2023 with the aim to improve inclusive decision-making and strengthen cooperation

17 European Court of Human Rights, [Case of Abuladze v. Estonia \(Application no. 12928/20\)](#), 24 January 2023.

18 Global Risk Profile, [Global Corruption Index 2023](#).

19 Transparency International, [Corruption Perception Index 2022](#), 2022.

in public affairs.²⁰ The roadmap won the annual title of Anti-Corruption Act 2023 from Transparency International Estonia. The organisation found that the implementation of the roadmap could result in clearer rules, more appropriate methods for engaging with stakeholders, improved skills and attitudes, and a culture of cooperation.²¹

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

For many years, the Network of Estonian Nonprofit Organisations and other stakeholders have criticised the system of distributing “roof money” (*katuseraha*), a non-transparent method which allowed Members of the Parliament to distribute state funds to NGOs at their discretion once a year.²² In 2023, the new coalition abolished the practice of *katuseraha* distribution. Prime Minister Kaja Kallas stated that the *katuseraha* system was non-transparent

and not in accordance with principles of good governance.²³

The previous composition of the Parliament was lukewarm on regulating meetings with lobbyists, and no major steps have been taken since the spring elections. In November 2023, the Anti-Corruption Select Committee of the Parliament examined the opinion of political groups on the possibility of regulating meetings between lobbyists and Members of the Parliament, in order to determine whether and how to move forward with the issue.²⁴

Rules on preventing conflicts of interest in the public sector

The Ministry of Justice sent a draft amendment to the Anti-Corruption Act for consultation with ministries and civil society in November 2023. The draft amendment clarifies the obligation of an official to remove themselves from cases where a personal conflict of interest exists, and introduces requirements for declaring new types of assets, such as virtual currencies. In addition, the draft clarifies the concepts

20 Government Office (*Riigikantselei*), [Aasta korruptsioonivastane tegu on Riigikantselei avatud valitsemise teekaart](#), 14 December 2023.

21 Transparency International Estonia (*Korruptsioonivaba Eesti*), [Korruptsioonivastase teo tunnustuse pälvis avatud valitsemise teekaardi koostamine](#), 9 December 2023.

22 A. Rammo, [Human Rights Report 2020: Freedom of assembly and association](#), Estonian Human Rights Centre, December 2019.

23 Government of the Republic (*Vabariigi Valitsus*), [Kallas in the Riigikogu: a proper budget is an important security guarantee for Estonia](#), 27 September 2023.

24 Estonian Public Broadcasting (*ERR*), [Komisjon uurib riigikogu fraktsioonidelt lobistide registri kohta](#), 7 November 2023.

of “procedural restriction” and “connected person”.²⁵

Measures in place to ensure whistleblower protection and encourage reporting of corruption

After the 2023 parliamentary elections, the draft law on the Protection of Whistleblowers Reporting Violations of European Union Law in the Workplace passed its first reading in Parliament.²⁶ In its opinion, Transparency International Estonia drew attention to the fact that the substantive scope of the draft is significantly limited and restricted to only those employment-related infringements which would also constitute infringements under EU law. The organisation reiterated its position that anyone who reports an infringement that took place in the context of work should be protected. In the case of a narrower transposition of the Whistleblower Directive, limited by a clause stating that reports of breaches must be related only to breaches of EU law, the whistleblower has to navigate more than 140 pieces

of EU legislation to find out whether the violation could be related to EU law. At the same time, the organisation supports swift passage of the draft law, as Estonia is one of the last two EU Member States (out of 27) that have not transposed the EU Whistleblower Directive.²⁷ Estonia missed the deadline to transpose the Directive on 17 December 2021, and the European Commission initiated infringement proceedings against Estonia in January 2022.²⁸ The first draft of the Whistleblower Protection Act,²⁹ which completed its first reading in the Parliament in January 2022, sparked lively social and political debate and raised concerns about the potential creation of a major complaint system.³⁰ Nearly 300 amendments were proposed in the Parliament, which caused the bill’s processing to stall. With the end of the term of the Parliament, the draft law fell out of the legislative process in February 2022.³¹

25 Draft Legislation Information System (*Eelnõude infosüsteem*), *Korruptsioonivastase seaduse muutmise seadus*. 1 November 2023.

26 Parliament (*Riigikogu*), *Töölasest Euroopa Liidu õiguse rikkumisest teavitaja kaitse seadus 257 SE*, 11 September 2023.

27 Transparency International Estonia (*Korruptsioonivaba Eesti*), *Seisukoht töölasest Euroopa Liidu õiguse rikkumisest teavitaja kaitse seaduse eelnõule*, 13 October 2023.

28 Estonian Public Broadcasting (*ERR*), *Vilepuhuja direktiivi ülevõtmise tulevik jääb uue riigikogu otsustada*, 16 February 2023.

29 Parliament (*Riigikogu*), *Rikkumisest teavitaja kaitse seadus 504 SE*, 10 January 2022.

30 Estonian Public Broadcasting (*ERR*), *Vilepuhumise seadus puhub ka poliitkired lõkkele*, 31 January 2022.

31 Estonian Public Broadcasting (*ERR*), *Vilepuhuja direktiivi ülevõtmise tulevik jääb uue riigikogu otsustada*, 16 February 2023.

Media environment and media freedom -

Key recommendations

- *Authorities should refrain from introducing additional regulations that could lead to further classification of public documents.*
- *Authorities should refrain from classifying documents without proper justification.*

Media and telecommunications authorities and bodies

In international freedom of speech rankings, Estonia fell during the previous year. According to Reporters without Borders (RSF), Estonia ranked eighth out of 180 countries in the world in 2023, down from fourth in 2022. The reason for the fall is the risk of self-censorship by journalists due to the legal regulation of defamation and cyber-bullying.³² Estonia scores 93 out of 100 in the Internet freedom assessment by Freedom House, where 100 is perfect Internet freedom.³³

In summer 2023, the Consumer Protection and Technical Regulatory Authority (TTJA) proposed to include in the draft law amending the Media Services Act an obligation for media service providers to ensure truthful, unbiased

and balanced presentation of facts and events in news programmes.³⁴ In the context of this obligation, TTJA would have acted as an independent media regulator for the entire media market. The Association of Estonian Media Companies stated in its feedback that it is absolutely against the idea that the executive power (TTJA) could be an independent media regulator, expressing that the press can only be independent if it is neither directly nor indirectly subject to the control of the executive power.³⁵ TTJA eventually expressed regret and clarified that their proposal only concerned broadcasts from third countries.³⁶ The Media Services Act has not been updated yet.

Public trust in media

The Eurobarometer survey carried out last autumn found that the credibility of Estonian

32 Reporters Without Borders, [Press Freedom Index 2023](#), 2023.

33 Freedom House, [Internet Freedom 2023](#), 2023.

34 B.-M. Alas, [TTJA tahab seadusega reguleerida meedia erapooletust ja tasakaalukust](#), Postimees, 4 July 2023.

35 Estonian Public Broadcasting (ERR), [Meedialiit: TTJA ei saa olla terve meediaturu sõltumatu regulaator](#), 4 July 2023.

36 Estonian Public Broadcasting (ERR), [TTJA peadirektor: meie ettepanek puudutab ainult kolmandate riikide saateid](#), 5 July 2023.

public TV and radio stations had fallen by 8% in 2023 compared to the previous year. In 2022, 67% of respondents considered public TV and radio stations to be trustworthy,³⁷ compared to 59% in 2023.³⁸ According to a public opinion survey published in September 2023 by the Government Office, 65% of the population trusted Estonian media in covering the war in Ukraine, down from 73% in February 2022.³⁹

Safety and protection of journalists and other media actors

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

An analysis commissioned by the Supreme Court and the Ministry of Justice shows that the nature of the offences on which the award of compensation for non-material damage suffered is based has changed in recent years. While in the past compensation was mainly awarded against media companies, it is now being awarded increasingly for defamation on social media and in comment sections. The analysis examined the judgments issued in civil cases from 2020 to 2022, where the court

awarded compensation for non-material damage suffered as a result of the aforementioned infringements of personal rights. During the analysed period, compensation for a violation of personal rights was awarded in 71 cases, with the average compensation amounting to €1,502 and the median compensation being €500 – the number of cases where the compensation was bigger or smaller than this amount was equal. If the infringer was a private individual, the median compensation was between €300 and €500, but if the infringer was a media outlet or channel, the median was significantly higher, at €2,000.⁴⁰

Access to information and public documents

Over the past year, there has been debate and public criticism regarding public authorities classifying documents as “for internal use only” merely for reasons of convenience.⁴¹ In his annual report, the Auditor General highlighted a concerning trend of excessive classification of documents. Addressing the Parliament, he emphasised that even Members of Parliament have faced barriers in accessing contracts and documents, often for reasons that are not clearly justified. Furthermore, he also noted that journalists frequently encounter obstacles in their requests for information, frequently receiving

37 Eurobarometer, *Media & News Survey 2022*, p. 37.

38 Eurobarometer, *Media & News Survey 2023*, p. 44.

39 Government Office (*Riigikantselei*), *Uuringud*.

40 Supreme Court of Estonia (*Riigikohus*), *Au teotamise eest mõistetakse aina enam hüvitisi välja eraisikutelt*, 20 December 2023.

41 Estonian Public Broadcasting (*ERR*), *Dokumentide massiline salastamine AK-märke abil jätkub*, 25 August 2023.

material that is irrelevant to their inquiries.⁴² Moreover, when the Ministry of Justice sent a letter to state authorities in October 2023 inquiring about ways to improve data sharing, the responses it received were mostly proposals on what else could be classified.⁴³ Afterwards,

the Association of Estonian Media Companies expressed its disagreement with the attempts of the ministries to restrict public information more than before and opposed the idea that more classification is in the public's interest.⁴⁴

Checks and balances

Key recommendations

- *Reduce the speed of the legislative process and ensure that citizens and interest groups have the opportunity to participate.*
- *Lift the blanket ban on prisoners voting in elections.*
- *Refrain from depriving third-country nationals of their right to vote in local elections.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

After the parliamentary elections in March 2023, opposition parties organised a large-scale obstruction to prevent the passing of amendments to increase taxes and reduce family benefits.⁴⁵ The opposition parties submitted more than 1,000 amendments to the draft laws. In June 2023, to avoid filibustering, the government decided to bind the draft Family Benefits Act and the amendments to tax laws to a vote of

42 Estonian Public Broadcasting (*ERR*), [Estonian ministries would like to restrict public access to many documents](#), 16 November 2023.

43 Eesti Päevaleht, [Juhtkiri: Aitab salastamisest! Muudame Eesti tagasi avatud riigiks](#), 20 November 2023.

44 Association of Estonian Media Companies (*Eesti Meediaettevõtete Liit*), [Meedialiit ei toeta avaliku teabe suuremat salastamist](#), 20 November 2023.

45 Estonian Public Broadcasting (*ERR*), [Opposition obstructs tax, benefit change amendment readings](#), 8 May 2023.

confidence in the government.⁴⁶ Since then, the government has tied numerous other draft laws to votes of confidence, including the draft law to establish marriage equality. Opposition politicians criticised this approach, and complained that the governing coalition did not hold a debate on the issue of legalising same-sex marriage.⁴⁷ President Alar Karis has also expressed disagreement with tying so many amendments to a vote of confidence in the government, saying that if the government were to make all proposed laws subject to a vote of confidence, it would be manifestly unconstitutional and result in the end of parliamentary democracy. He also highlighted a recent Supreme Court decision⁴⁸ that warned against misusing both votes of confidence and the filibuster. Prime Minister Kaja Kallas reacted to President Karis by saying that all of these laws were passed in accordance with the Constitution and that the draft laws were only subject to a vote of confidence when they were obstructed, as the confidence vote is the only weapon against filibustering.⁴⁹

The Chancellor of Justice has criticised the hasty processing of draft laws and extremely short consultation times, which can lead to

mistakes.⁵⁰ Civil society representatives have also recommended reducing the speed of the legislative process, as it does not provide citizens and interest groups the opportunity to have their say.⁵¹

Electoral framework

The Parliament (Riigikogu) is currently reviewing a draft law amending the Riigikogu Election Act. The aim of the draft law is to make the regulation of electronic voting clearer and eliminate the shortcomings that have arisen in practice. The amendments would bring the regulation established by the decisions of the National Electoral Committee to the level of law, making the regulation of electronic voting more consistent with the principle of legality, as well as being clearer and easier to monitor. The functioning of electronic voting is not fundamentally or technically changed by these amendments. The second goal of the amendments is to clarify the conditions and procedures for the use of mobile devices in electronic voting, specifying the roles and procedures for establishing relevant technological requirements. The draft law creates a legal basis for the

46 Government of the Republic (*Vabariigi Valitsus*), [The Government bound the adoption of the Family Benefits Act and tax changes to an issue of confidence in the Riigikogu](#), 8 June 2023.

47 Estonian Public Broadcasting (*ERR*), [Opposition accuses coalition of not holding same-sex marriage debate](#), 20 June 2023.

48 Supreme Court of Estonia (*Riigikohus*), [Judgment of the Constitutional Review Chamber in case no. 5-23-31](#), 22 June 2023.

49 Estonian Public Broadcasting (*ERR*), [President Karis worried about government's excessive use of confidence vote](#), 27 June 2023.

50 Estonian Public Broadcasting (*ERR*), [Madise: seaduseelnõudega kiirustamine toob kaasa vigu](#), 23 May 2023.

51 A. Rammo, [Human Rights in Estonia 2024 – Freedom of assembly and association](#), Estonian Human Rights Centre, 11 December 2023.

introduction of Smart-ID, in addition to the currently used personal identification tools.⁵²

Regarding the 2023 parliamentary elections, 17 complaints were submitted to the Supreme Court, of which 12 were reviewed, and five were left unreviewed.⁵³ Eight of the reviewed complaints were related to electronic voting. The Supreme Court did not uphold any of the complaints. Two complaints from the Conservative People's Party of Estonia (EKRE) challenging the constitutionality of electronic voting gained the most attention. Although the complaints were not upheld, the Supreme Court emphasised the need to clarify the rules of electronic voting to ensure compliance with constitutional principles and better public understanding.⁵⁴ The Chief Justice of the Supreme Court provided a concurring opinion, agreeing that the complaints were handled correctly, however, he stressed that the rules of electronic voting should be clearly defined and understandable without special expertise.⁵⁵

The same has been recommended by the OSCE/ODIHR election expert team, which

observed the parliamentary elections in 2023. They concluded that Estonia's legal framework complies with international standards, and the organisation of the elections, including e-voting, was effective and lawful, although there were some minor technical errors. One of the recommendations of the expert team was that election authorities should increase public trust in e-voting, particularly by responding more promptly to stakeholders' questions.⁵⁶

Limitations on the right to vote

The coalition agreement of the current government includes the goal of developing a legal framework for the "suspension of the right of citizens of the Russian Federation and Belarus to vote in local government elections in Estonia without the need to amend the Constitution".⁵⁷ The Minister of the Interior has confirmed that an analysis has been prepared by the Ministry of Justice on the constitutionality of depriving Russian citizens of the right to vote. Estonian Public Broadcasting (ERR) requested access to the analysis from the Ministry of Justice,

52 Parliament (*Riigikogu*), Riigikogu valimise seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 344 SE, 13 November 2023.

53 Supreme Court of Estonia (*Riigikohus*), Riigikohtule esitati seoses tänavuste Riigikogu valimistega 17 kaebust, 3 April 2023.

54 Supreme Court of Estonia (*Riigikohus*), Judgment of the Constitutional Review Chamber in case no. 5-23-20, 30 March 2023.

55 Supreme Court of Estonia (*Riigikohus*), Concurring opinion of Supreme Court Judge Villu Kõve in case no. 5-23-20.

56 OSCE Office for Democratic Institutions and Human Rights, Estonia Parliamentary Elections 5 March 2023, ODIHR Election Expert Team Final Report, 30 August 2023.

57 Government of the Republic, Coalition agreement 2023-2027. 2023.

however, the ministry refused to release it, arguing that it is intended for internal use.⁵⁸

All prisoners in Estonia are still deprived of their right to vote. This has been widely criticised, including by the Supreme Court, which

has found that the blanket ban on prisoners' right to vote is contrary to the Constitution interpreted in the light of the case law of the European Court of Human Rights.⁵⁹ The Ministry of Justice has stated that changing the law is not in their immediate plans.⁶⁰

Civic space

Key recommendations

- *Public meetings should not be banned; however, if such a measure is deemed necessary, it must be a last resort and strongly justified.*
- *Amend the Penal Code in terms of criminalisation of hate speech in accordance with EU law.*

Freedom of association

Formation, establishment and registration of associations, including rules on membership

The new Commercial Register Act entered into force on 1 February 2023.⁶¹ The conditions of the liquidation of NGOs have been slightly clarified and, as a result, an organisation that has been deleted from the register will be

allowed to continue its activities, which will somewhat reduce bureaucracy. The change may lead to a more forceful deletion of NGOs from the register if they fail to submit their annual reports. Experts, however, do not view this as a violation of the freedom of association.⁶²

58 Kook, U. 2023. [Justiitsministeerium pani AK-templi Vene kodanike valimisõiguse analüüsile](#), ERR, 17 August 2023.

59 Supreme Court of Estonia (*Riigikohus*), [Judgment in case no. 3-4-1-2-15](#), 1 July 2015.

60 [Response of the Ministry of Justice to the Estonian Human Rights Centre's request for information](#), 11 September 2023.

61 Riigi Teataja, [Commercial Register Act \(*Äriregistri seadus*\)](#).

62 A. Rammo, [Human Rights in Estonia 2024: Freedom of assembly and association](#), Estonian Human Rights Centre, December 2023.

Freedom of peaceful assembly

Bans on protests

From 26 July to 2 August 2023, the Police and Border Guard Board, a unified governmental agency within the administrative area of the Ministry of Interior responsible for law enforcement and internal security, banned public meetings in Narva motivated by Russian war propaganda-related anniversaries.⁶³ The basis used was the section of the Law Enforcement Act that allows the prefect to prohibit a meeting if “there is reason to believe that holding a meeting creates a serious immediate threat and the threat cannot be countered by using a less infringing measure”.⁶⁴

The Southern Prefecture of the Police and Border Guard Board completely banned the event “In support of the human rights of the Palestinians – the right to life, the right to humanitarian aid, the right to a future”, planned for 18 November 2023 in Tartu Town Hall Square,⁶⁵ this time on the basis of § 62 section 3 of the Law Enforcement Act, which prohibits events inciting hatred, violence or discrimination. The reason given was that “other citizens

may attend the meeting, using posters which may contain justifications of aggression”.⁶⁶

Bans on the use of symbols/slogans in protests

In November 2023, the police removed five people from a demonstration in Tallinn in support of Palestine and took them to a police station for further questioning. The people in question were using the slogan “From the river to the sea, Palestine will be free”. The police fined the five people in question under § 151¹ of the Penal Code, which prohibits supporting and justifying international crime.⁶⁷ Four of them appealed the decision with the assistance of the Estonian Human Rights Centre, explaining that the people at the demonstration were exercising their constitutional right to freedom of expression and that their participation in the demonstration was linked to their desire to stand up for a peaceful world. The court was asked to declare § 151¹ of the Penal Code unconstitutional and – consequently – invalid. The provision is intended to punish people who intentionally support and justify international crimes. According to the Estonian Human Rights Centre, however, it currently also allows

63 Estonian Public Broadcasting (*ERR*), [Police ban Russian war propaganda-related public meetings in Narva](#), 25 July 2023.

64 A. Rammo, [Human Rights in Estonia 2024: Freedom of assembly and association](#), Estonian Human Rights Centre, December 2023.

65 Estonian Public Broadcasting (*ERR*), [PPA banned November Tartu demonstration planned in support of Palestinians](#), 6 December 2023.

66 A. Rammo, [Human Rights in Estonia 2024: Freedom of assembly and association](#), Estonian Human Rights Centre, December 2023.

67 Estonian Public Broadcasting (*ERR*), [Police impose fines on 5 participants in demonstration in support of Palestine](#), 5 December 2023.

people to be punished if they have inadvertently committed an infringement.⁶⁸

Policing practices, including dispersion of protests, use of force

In spring 2023, the Law Enforcement Act was brought into line with the Weapons Act, granting the right to also use munitions (e.g. various grenades, gases) “as a last resort to counter an immediate threat” when applying direct coercion, in addition to physical force, special equipment and weapons. The latter may only be used by the police and Border Guard, the Internal Security Service and the defence forces, and the use of munitions in peaceful public gatherings against crowds is prohibited.⁶⁹ The amendment was intended to better respond to extraordinary hybrid threats, but experts say it could also have a potential impact on freedom of assembly.⁷⁰

Freedom of expression and of information

Rules on hate speech and their enforcement

On 12 June 2023, the government initiated the Act Amending the Penal Code, the Code of Criminal Procedure and the Code

of Misdemeanour Procedure (incitement to hatred and offences with a hate motive), which passed its first reading in the Parliament on 27 September 2023. The new draft provides for the punishment of individuals who incite hatred in a way that may endanger public order. According to the Explanatory Memorandum of the draft, a public provocation that is likely to lead to various offences, such as arson or destruction of property, as well as to systematic intimidation, persecution, discrimination or humiliation of people, constitutes a threat to the security of society.⁷¹ The stakeholders were pleased about the inclusion of disability as a new protected group in the draft. However, they are concerned that the Explanatory Memorandum failed to explain why there are no plans to add other categories, such as age and gender identity, which could also be directly affected by hate speech.⁷²

Attacks and harassment

Physical attacks on people and property

On 11 June 2023, a Finnish pastor, attending the Baltic Pride event as a speaker, was assaulted. The assailant, who was sober and held Russian citizenship, hurled insults and ranted

68 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), [Estonian Human Rights Centre Takes Legal Action to Protect Freedom of Expression](#), 21 December 2023.

69 Riigi Teataja, [Relvaseaduse muutmise ja sellega seondult teiste seaduste muutmise seadus](#), 22 February 2023.

70 A. Rammo, [Human Rights in Estonia 2024: Freedom of assembly and association](#), Estonian Human Rights Centre, December 2023.

71 Parliament (*Riigikogu*), [Karistusseadustiku, kriminaalmenetluse seadustiku ja väärteomenetluse seadustiku muutmise seadus \(vaenu õhutamine ja vaenumotiiviga kuriteod\) 232 SE](#), 12 June 2023

72 K. Grossthal, [Human Rights in Estonia 2024: Prohibition of discrimination](#), Estonian Human Rights Centre, December 2023.

about God's wrath against homosexuals, believing he was fulfilling God's will. The pastor was hospitalised, and two others at the scene

needed first aid. Police apprehended the suspect and initiated a criminal investigation.⁷³

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Amend the Electronic Communications Act to stop indiscriminate retention of communications data, thereby bringing Estonian law in line with EU law.*
- *Address the situation of prisoners with mental health disorders in accordance with the recommendations of the Chancellor of Justice and the European Committee for the Prevention of Torture.*

Systemic human rights violations

The Chancellor of Justice has repeatedly drawn attention to the issue of the treatment of prisoners with mental disorders. The situation in the psychiatric department of prisons (located in Tartu Prison) has remained unchanged for years, and the prison has not followed the recommendations of the European Committee for

the Prevention of Torture⁷⁴ or the Chancellor of Justice⁷⁵ that were issued in the past. These recommendations concerned the ward's living conditions and therapy options, as well as video surveillance and the use of restraint measures.⁷⁶

The Estonian state has still not addressed the issue of violation of privacy rights in relation to the indiscriminate retention of communications data of all Estonian residents. The Electronic

73 Estonian Public Broadcasting (ERR), Man attacks Finnish pastor at Association of Gay Christians event, 12 June 2023.

74 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Estonia: Visit 2017 – Health-care services at Tartu Prison, p. 62-63, 26 April 2018.

75 Chancellor of Justice (Õiguskantsler), Inspection visit to Tartu Prison and the psychiatric department of prisons, 5 May 2021.

76 Chancellor of Justice (Õiguskantsler), Inspection visit to Tartu Prison and the psychiatric department of prisons, 31 August 2023.

Communications Act § 111¹ requires general and indiscriminate retention of metadata by providers of electronic communications services for one year from the date of the communication, which can be forwarded to the state authorities listed in the act based on relevant laws.⁷⁷ In 2021, the Supreme Court confirmed that indiscriminate retention of electronic communications data based on § 111¹ (2) of the Electronic Communications Act is in conflict with EU law.⁷⁸ The Supreme Court's decision was based on a preliminary ruling of the CJEU requested by the Supreme Court in the same case.⁷⁹ The decision triggered amendments to the Code of Criminal Procedure, which as of 2022 requires judicial authorisation for requesting communications data from service providers for the purpose of criminal proceedings, however, the Electronic Communications Act remains unchanged. The action plan of the Ministry of Justice does not include plans to amend the Electronic Communications Act.⁸⁰

Fostering a rule of law culture

Contribution of civil society and other non-governmental actors

The Estonian Human Rights Centre contributes to fostering a rule of law culture through strategic litigation – by offering legal aid to people whose cases are of strategic significance, with the aim to influence the quality of law and its implementation.⁸¹ A strategic litigation case, concerning access to information, freedom of speech, and protection of private and family life of asylum seekers in a detention centre, recently reached a successful end. According to the internal rules of the detention centre, all detainees (asylum seekers and returnees) used to be subject to a ban on using mobile phones and the internet. A detained asylum seeker approached the Estonian Human Rights Centre, after requesting access to the internet and a mobile phone in the detention centre and being refused. The Estonian Human Rights Centre, on behalf of the asylum seeker, turned to the Administrative Court. The latter upheld the complaint and referred the case to the Supreme Court for constitutional review. On 20 June 2023, the Supreme Court declared the provision of the internal rules of the detention

77 Riigi Teataja, *Electronic Communications Act (Elektroonilise side seadus)*, § 111¹, 8 December 2004.

78 Supreme Court (*Riigikohus*), Case No 1-16-6179, 18 June 2021.

79 Court of Justice of the European Union, *Case C-746/18*, 2 March 2021.

80 Ministry of Justice, *Strateegilised alusdokumendid*.

81 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), *Strategic litigation*.

centre which prohibited mobile phones to be in conflict with the Constitution and therefore invalid.⁸²

Another way civil society has contributed to fostering a rule of law culture has been by helping voters make educated choices in the elections by publishing analyses of election programmes of political parties. Before the 2023 parliamentary elections, various advocacy organisations compiled such analyses, covering topics such as human rights,⁸³ equal treatment and gender equality,⁸⁴ LGBT+ rights,⁸⁵ children's rights,⁸⁶ mental health,⁸⁷ green thinking,⁸⁸ and animal rights.⁸⁹

82 Supreme Court of Estonia (*Riigikohus*), Judgment of the Constitutional Review Chamber in case no. 5-23-16, 20 June 2023.

83 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), Valimislubaduste analüüs 2023, 15 February 2023.

84 Feministeerium, Keda valida? Pedagoogiline valgusfoor, 9 February 2023.

85 Estonian LGBT Association (*Eesti LGBT Ühing*), LGBT+ valimiskompass, 20 February 2023.

86 Estonian Union for Child Welfare (*Lastekaitse Liit*), Erakondade valmisprogrammide analüüs 2023.

87 Peaasi.ee, Vaimse tervise poliitika Eesti valimisprogrammides AD 2023.

88 Estonian Roundtable for Development Cooperation (*Arengukoostöö Ümarlaud*), Rohekompass.

89 Loomus, Loomuse valimiskompassi analüüs, 11 February 2023.

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RULE OF LAW REPORT

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About the authors



VoxPublic is a non-profit organisation composed of a permanent team of four advocacy specialists based in Paris. It is governed by a seven-member executive board and receives support from an active community of volunteers, the ‘VoxPublic Agora’ members. The association was created in 2016 and ever since has been working on empowering French civil society organisations and citizen initiatives in their advocacy actions. VoxPublic thereby provides support and capacity-building to victims of discrimination and social injustices wishing to challenge decision-makers. VoxPublic also works with issues regarding the rule of law, respect for fundamental freedoms, and the protection of the democratic space, which are essential for civil society actors to defend their causes. VoxPublic provides partners with operational support in terms of campaign building, networking, strategic document writing, as well as strategic use of social media and media.

Key concerns

There has been no progress on the recommendations of the European Commission in their annual Rule of Law Report. A reform has allocated more financial resources to the justice system. However, at the same time, judicial police now fall under the control of prefects (representatives of the State at the department level) and the Ministry of the Interior, limiting the autonomy of the judiciary in investigations. The Court of Justice of the Republic has once again demonstrated its lack of impartiality.

Anti-Corruption Framework

Regarding the anti-corruption framework, during Emmanuel Macron’s presidency, ministers and advisors implicated in corruption or moral offence cases did not step down. Simultaneously, civil society organisations fighting against impunity, like Anticor, have experienced constraints on their legal advocacy power.

Media Environment and Media Freedom

As it concerns the media environment and media freedom, France fell from 34th to 26th place in the press freedom index of Reporters

Without Borders. The NGO warned about the risks posed by the concentration of media in the hands of a few major leaders in the economic and financial world.

Checks and Balances

In the area of checks and balances, due to a relative majority in the National Assembly, the government extensively employs a legislative procedure known as ‘49.3’, allowing it to impose legislative texts without a vote in the Assembly. This article has been used 23 times in 2023.







Civic Space

Regarding civic space, the government disproportionately employs the ‘separatism law’ to request the dissolution of associations and prohibit numerous demonstrations. The environmental movement is also subjected to extensive surveillance measures by anti-terrorism intelligence services.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

In relation to the disregard of human rights obligations and other systemic issues affecting the rule of law environment, the overpopulation in prisons, excessive use of force, police violence, racial profiling, and deportations to countries where the risk of torture exists are major concerns raised by civil society and international institutions. Despite these warnings, the government appears indifferent, even admitting a willingness to disregard the judgments of the European Court of Human Rights (ECtHR).

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system –

Key recommendations

- *Abolish the Court of Justice of the Republic.*
- *Restore judicial police independence and provide the means for its follow-through.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Court of Justice of the Republic is tasked with judging government members for criminal or delinquent acts committed in the course of their duties. The Court of Justice of the Republic (CJR) consists of fifteen judges: twelve parliamentarians (including six deputies and six senators) and three judges of the Court of Cassation, the highest court in the French judiciary. Despite promises from several Presidents of the Republic to abolish it, including Emmanuel Macron, the CJR in 2023 raises major concerns regarding its impartiality and independence.

The recent trial of Eric Dupond-Moretti, the sitting Minister of Justice accused of conflict of

interest,¹ highlights these concerns. He faced accusations of leveraging his ministerial position to settle personal scores with judges, whom he had previously criticized during his tenure as a lawyer. Notably, following his appointment, he instigated two administrative investigations.² Although the Court acknowledged an objective conflict of interest, it concluded the absence of intent from the minister. The result of this procedure followed a well-known formula in France, according to which the minister is found ‘liable but not guilty’. This decision has fuelled the criticisms about the Court as symbolizing a two-tier justice system, delivering unconvincing convictions and inconsistent judgments. The impartiality of the Court, composed not of judges but of politicians, is also questioned: on one hand, political allies may be inclined towards leniency; on the other hand, opponents may lean towards severity. This kind of justice must be biased, or suspected of being

1 HATVP, or ‘Haute Autorité pour la Transparence de la Vie Publique’ (High Authority for Transparency in Public Life), defines a conflict of interest as a situation where public and private interests intersect, potentially influencing or appearing to influence the independent, impartial, and objective execution of a function. For further details, you can refer to the official legal text on the Légifrance website: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028056315/>.

2 https://www.francetvinfo.fr/politique/eric-dupond-moretti/eric-dupond-moretti-juge-pour-conflit-d-interets-le-guide-pour-tout-comprendre-au-proces-inedit-d-un-ministre-de-la-justice-en-exercice_6145950.html

so. Regardless of the decision rendered, its authority is bound to be contested.³

Promotion of judges and prosecutors

In the French judicial system, prosecutors remain under the authority of the Minister of Justice. Even if the Minister of Justice commits not to give specific instructions to prosecutors, they still receive general political recommendations. Moreover, their promotion still depends on the minister. Therefore, the institutional arrangement cannot guarantee their independence.

Quality of justice

Resources of the judiciary (human/financial/material)

The recent justice reform by Eric Dupont-Moretti foresees an increase in the budget, rising from €9.6 billion in 2023 to nearly €11 billion by 2027. The reform also includes new hires. The Magistrates' Union considers "these additional resources as significant and beneficial for the French judiciary. However, it expresses some reservations about the ambition of the law, emphasizing the lack of an overall vision."⁴ More specifically, the reform does not include measures to address the issue of prison

overcrowding in France despite the increase in budget. On the contrary, it strengthens the expedited trial procedures,⁵ known to lead to a significant increase in the prison population. The lack of structural responses to this problem casts doubt on the sufficiency of the additional resources.

Other

The reform of the judicial police, which refers to the whole criminal investigation system, has sparked strong opposition and brought together, in an unprecedented manner, magistrates, police officers, and lawyers. This reform is built on the departmentalisation of police services and aims to centralize their command under the authority of a Departmental Director of National Police (DDPN), placed under the jurisdiction of the prefect.

Presented as a mere reorganisation of these services, the reform in reality embodies a new philosophy of police action, particularly focused on public security at the expense of prolonged investigations (such as combating organized crime or corruption, for example). A consequence of the reform is that many investigators from the judicial police have been diverted from their mission and instead, mobilized for other tasks.

3 https://www.lemonde.fr/idees/article/2023/12/14/la-cour-de-justice-de-la-republique-n-etant-pas-adaptee-a-sa-fonction-il-reste-a-en-tirer-les-consequences_6205768_3232.html

4 https://www.francetvinfo.fr/societe/justice/plan-d-action-de-la-justice-une-reaction-mitigee-de-la-part-du-syndicat-de-la-magistrature_5582556.html

5 The expedited trial procedures known in France as 'immediate appearance' is a procedure bringing the defendant directly before the court at the conclusion of a police custody period. Consequently, the defendant is left with minimal time to prepare their defence, and no additional investigations are initiated.

The reform also raises concerns among magistrates regarding the independence of investigators and the preservation of the confidentiality of investigations. According to criminal lawyer Sarra Dajeau, “Entrusting the management of the judicial police to the departmental director of national police, rather than solely under the authority of the prosecutor or examining magistrate, dangerously affirms the executive power’s right to have a say over the progress of judicial investigations. By strengthening executive control over the judicial police, this reform mechanically weakens the connection with judicial authority.”⁶ This represents a genuine political takeover of the judicial police, a service that was previously little criticized but overall had proven its ability to reach the executive power, particularly when investigating corruption cases.⁷

Fairness and efficiency of the justice system

Respect for fair trial standards including in the context of pre-trial detention

France was condemned in December 2023, in an emblematic case in front of the ECtHR: *Syndicat des Journalistes de France and others v.*

France. The ECtHR recognized a breach to the journalist’s rights to fair trial. The Syndicat des Journalistes de France highlights in their press release:

“To our knowledge, this is the first time that judges of the Cour de Cassation [highest judicial court in France] have been officially criticized for their lack of impartiality. The French government, which has lost out in this case, has three months in which to refer the case to the Grand Chamber of the ECtHR.”⁸

During the urban unrest following the death of Nahel Merzouk (17 years old), who was killed by a police officer, over 3,600 individuals were placed in police custody. These arrests resulted in numerous swift court appearances and harsh convictions. On Wednesday, 19 July on RTL, Justice Minister Eric Dupond-Moretti announced that 1,056 people had been sentenced and 600 were currently imprisoned. Among those sentenced, 742 received a custodial sentence with an average duration of 8.2 months of incarceration.⁹

Following the Minister of Justice’s statement, which called for a “quick, firm, and systematic” judicial response,¹⁰ many lawyers have expressed

6 <https://www.dalloz-actualite.fr/node/reforme-organique-de-police-judiciaire-non-dits-et-perspectives>

7 https://actu.fr/societe/politique-un-tres-grave-recul-de-l-etat-de-droit-une-reforme-de-la-police-qui-inquite_52971431.html

8 <https://www.snj.fr/article/magistrats-pris-en-flagrant-d%C3%A9lit-de-conflit-d%E2%80%99int%C3%A9r%C3%AAt-la-france-condamn%C3%A9e-par-la-cedh-1796464432>.

9 https://www.lemonde.fr/societe/article/2023/07/19/emeutes-plus-de-1-000-personnes-ont-ete-condamnees-et-600-personnes-incarcerees-selon-eric-dupond-moretti_6182603_3224.html

10 https://www.francetvinfo.fr/faits-divers/adolescent-tue-par-un-policier-a-nanterre/violences-apres-la-mort-de-nahel-eric-dupond-moretti-appelle-a-une-reponse-judiciaire-ferme-y-compris-pour-les-parents_5922761.html

concerns regarding the nature of these convictions. This apprehension is notably rooted in the fact that a significant number of these convictions were obtained through simplified and expedited investigations, since 905 individuals were judged through the procedure of immediate appearance.

The widespread use of immediate appearances, which does not afford the accused the opportunity to adequately prepare their defence, the

lack of personalized sentencing, and the severity of the convictions have all faced substantial criticism.¹¹ According to the Magistrates' Union, this wave of arrests is perceived as a display of authority to convey a message of strictness. "In such a context, and under political and media pressure, judges are unable to maintain the necessary impartiality to adjudicate individuals with complete equanimity", asserts the Magistrates' Union.¹²

Anti-corruption framework

Key recommendations

- *The authorization of an association to take legal action in corruption cases should not belong to the jurisdiction of the government (Minister of Justice), but rather to an independent authority, such as the Defender of Rights.*
- *Establishing a unified platform to publish all documents submitted by lobbyists to public decision-makers (parliamentarians, government members and their teams, local authorities), along with the interactions between them, would enable citizens to be informed. In case of need, citizens could propose counter-expertise and arguments in support of the public interest.*
- *Strengthen judicial independence by entrusting all investigations related to the integrity of public officials solely to independent examining magistrates, rather than prosecutors under the supervision of the Minister of Justice.*

11 https://www.francetvinfo.fr/faits-divers/adolescent-tue-par-un-policier-a-nanterre/on-a-sacrifie-l-individu-au-profit-de-la-collectivite-apres-les-emeutes-la-severite-des-condamnations-en-justice-pose-question_5934383.html

12 <https://information.tv5monde.com/societe/incarcerations-suite-la-mort-de-nahel-ce-quon-pu-cri-tiquer-cest-labsence-dindividualisation>

Levels of corruption

The 2022 edition of Transparency International’s ‘Together Against Corruption’ annual report was released at the beginning of 2023. With a score of 72 out of 100 and securing the 21st position in the rankings, France reaffirms its position in the leading group of the Corruption Perceptions Index in the public sector for 2022. Despite gaining one point and one place in the rankings since the previous year, the country has only made modest progress, with a total of two points and two places gained since 2017, indicating a relatively low-intensity effort in the fight against corruption.¹³

The National Financial Prosecutor’s Office has initiated a judicial investigation into suspicions of ‘misappropriation of public funds’, ‘breach of trust’, and ‘conflict of interest’ in the management of the Marianne Fund, established in 2021 by former Secretary of State Marlène Schiappa to combat ‘religious separatism’. Out of the 17 funded associations, two of them have come under particular scrutiny because they yielded insufficient results in comparison to the resources they received through the granted subsidies. These two organisations appear to have fallen short of implementing what they initially presented to defend the values of the Republic on social media.

The first organisation produced limited content that failed to generate significant engagement.¹⁴ The second organisation created content that did not align with the project’s specifications or requirements.¹⁵ This criticism raises concerns about the effective utilization of the allocated funds and the organisations’ ability to fulfil their intended objectives. In July 2023, the Senate’s inquiry committee delivered highly critical conclusions regarding the minister’s decisions, describing it as a “fiasco” and citing a selection of “friendly associations” led by acquaintances of the Secretary of State.¹⁶ The committee also highlighted a “hasty, opaque, and fragmented” selection process.

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

It is unacceptable that the arguments put forth by lobbyists are communicated in complete opacity. Measures of transparency should be implemented, as being adequately informed is crucial to civil society’s capacity to respond effectively to the arguments presented by

13 https://transparency-france.org/wp-content/uploads/2023/06/Rapport-dactivite-2022_WEB-1.pdf

14 <https://www.publicsenat.fr/actualites/societe/luseppm-principale-beneficiaire-du-fonds-marianne-peine-a-justifier-lutilisation-des-subventions>

15 <https://www.publicsenat.fr/actualites/societe/fonds-marianne-on-ne-nous-a-jamais-interdit-de-faire-des-contenus-politiques-assure-la-presidente-de-reconstruire-le-commun>

16 https://www.lemonde.fr/politique/article/2023/07/06/fonds-marianne-la-commission-d-enquete-du-senat-fustige-un-fiasco-fait-d-opacite-et-de-desinvolture_6180819_823448.html

lobbying groups. Since the enactment of the ‘Loi Sapin’¹⁷ in 2016, the High Authority for Transparency in Public Life, an independent administrative entity, has been tasked with the responsibility of maintaining the public register of interest representatives and overseeing their activities. However, a significant number of influencing activities go unrecognized, prompting the need to broaden the definition of interest representatives.

Presently, activities that fall outside the scope of lobbying or being identified as a lobbyist include:

- A company whose employees collectively spend less than 50% of their time on lobbying and engage in fewer than 10 lobbying actions per year.
- Special interest activities solicited by public actors or communication not initiated by interest representatives.
- Interest representation that does not constitute the main activity of the individual or is not done regularly.
- Special interest activities conducted by religious associations.

According to Anticor, an anti-corruption organisation, all these conditions serve to

bypass the transparency obligations of the interest representatives’ register. It is imperative to broaden the definition of interest representatives for greater accountability.¹⁸

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The transposition of the European directive on whistleblower protection into French law, known as the ‘Waserman’ law,¹⁹ alongside its implementing decree dated 3 October 2022,²⁰ brings about significant changes to the existing rules. Noteworthy modifications encompass:

- An expanded definition of whistleblowing;
- A broader range of individuals eligible to report or enjoy protection related to whistleblowing;
- Introduction of new procedural rules, which aim at minimizing the risks of experiencing pressure.

While the substantive alterations primarily pertain to general whistleblowing, designated as ‘internal professional alerts’, the new framework also encompasses what are termed ‘sectoral’ alerts falling under specific regulations. In brief, different authorities are in charge of providing protection to whistleblowers depending on the

17 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528>

18 <https://www.anticor.org/2022/04/07/les-15-propositions-danticor-pour-une-presidence-ethique/>

19 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388745>

20 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000046357368>

sector that the information concerns. However, the legislation aims at establishing a ‘common foundation’ of minimum safeguards applicable to all whistleblowers, regardless of whether the report falls under the general or specific regime. Moreover, the Defender of Rights has to protect and defend all whistleblowers’ rights, directing, informing and advising them during the procedure. Finally, in October 2023, the Competition Authority instituted a dedicated system for collecting and processing all whistleblower reports, accessible through its website.²¹ These provisions have been integrated and put into practice by administrative authorities in 2023.

Any other relevant measures to prevent corruption in the public and private sector

According to Transparency International, France has demonstrated positive steps by establishing key institutions such as the National Financial Prosecutor’s Office (PNF – founded in 2013), the High Authority for Transparency in Public Life (established in 2013), and the French Anti-Corruption Agency (AFA - established in 2016). However, these institutions currently face a critical shortage of resources, administrative staff, and a lack of political will to effectively combat corruption.²²

In a potentially positive development, Bruno Le Maire, the Minister of the Economy, Finance, and Industrial and Digital Sovereignty, has revealed plans for a future initiative aimed at combating corruption and improving the 2016 law in early 2024. However, specific details regarding the content of this plan were not provided.²³

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

Nicolas Sarkozy Case:

Former President of the Republic from 2007 to 2012, Nicolas Sarkozy, received on 17 May 2023, a three-year prison sentence, with one year served, for corruption and influence peddling. This reaffirmed the conviction, an unprecedented consequence for a former head of state.²⁴ Additionally, Nicolas Sarkozy has been deprived of his civil rights for three years,

21 https://transparency-france.org/wp-content/uploads/2023/06/Rapport-dactivite-2022_WEB-1.pdf

22 https://www.francetvinfo.fr/replay-radio/le-brief-eco/loi-anti-corruption-bruno-le-maire-annonce-un-futur-plan-pour-lutter-contre-ce-ver-qui-peut-pourrir-la-democratie_6207963.html

23 https://www.francetvinfo.fr/politique/nicolas-sarkozy/affaire-des-ecoutes-nicolas-sarkozy-condamne-en-appel-a-trois-ans-d-emprisonnement-dont-un-an-ferme-pour-corruption-et-traffic-d-influence_5828717.html

24 https://www.lemonde.fr/societe/article/2023/11/16/la-confirmation-de-l-annulation-de-l-agrement-d-anticor-une-decision-revoltante-qui-ebranle-le-combat-contre-la-corruption-pour-l-avocat-de-l-association_6200510_3224.html

rendering him ineligible for running for public office.

His legal team promptly announced their intention to appeal to the Court of Cassation. As the Paris Court of Appeal did not include a request for the provisional execution of the sentence in its decision, the execution of this conviction is suspended pending the outcome of this appeal. Consequently, the former head of state is not currently subject to electronic monitoring, and his civil rights remain intact during this appeal.

Sarkozy's two co-defendants, his longstanding lawyer Thierry Herzog and former senior magistrate Gilbert Azibert, were also convicted for corruption and influence peddling, as well as sentenced to the same terms. Legal expert Thierry Herzog is additionally prohibited from practising his profession for three years. These convictions stem from a 'sub-case' discovered during investigations into the financing of Nicolas Sarkozy's 2007 presidential campaign by Libya, another ongoing legal matter.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Anticor Case:

Following a complaint filed by two former members and a lawyer close to the President of the Republic, the Administrative Court of Appeal of Paris confirmed in November 2023

the withdrawal of Anticor's anti-corruption approval for 2021-2023 due to a drafting error in the granting decree by former Prime Minister Jean Castex. This government approval allowed the association to take legal action and act as a civil party in corruption cases, particularly in the absence of action by the public prosecutor.

According to the association's lawyer, "This is a revolting political decision that undermines the fight against corruption, proving that the approval process serves only to silence those mobilized against breaches of integrity just as they increasingly affect those in power."²⁵

While the association had requested the renewal of its approval for the period 2024 to 2026 from the current Prime Minister, Elisabeth Borne, it received no official response before the 26 December 2023 deadline, effectively amounting to an implicit refusal.

Other

Eric Dupont-Moretti Case:

The Minister of Justice, Eric Dupont-Moretti, underwent investigation and trial for illegal conflicts of interest in his ministerial duties, with no subsequent resignation or a call for it from the President of the Republic. In an unprecedented trial under the Fifth Republic, Justice Minister Eric Dupont-Moretti was acquitted on 29 November 2023 by the CJR. He was suspected of using his position to settle scores with magistrates with whom he had conflicts during

25 <https://www.kantarpublic.com/fr/barometres/barometre-de-la-confiance-des-francais-dans-les-media/barometre-2023-de-la-confiance-des-francais-dans-les-media>

his time as a lawyer. During the trial from 6-16 November 2023, the prosecutor had requested a one-year suspended prison sentence.

The CJR, predominantly composed of parliamentarians rather than magistrates, stated in its

reasoning that the ‘material element’ of illegal conflict of interest was established but not the intentional element. Many political and judicial figures are calling for the abolition of this court, deemed biased.

Media environment and media freedom

Key recommendations

- *Eliminate from the Law on protecting the confidentiality of journalists’ sources introduced on January 4 2010,²⁶ the overly vague concept of ‘preponderant imperative of public interest,’ which allows for exceptions to the protection of journalistic sources and authorises the arrest and search of journalists.*

Pluralism and concentration

Levels of market concentration

Kantar Group, an expert in comprehensive public policy surveys and government consulting, conducts an annual barometer assessing the trust of the French population in the media. For the year 2023, the survey was conducted with a sample of 1,500 individuals, carefully chosen to be representative of the French population aged 18 and above. On the subject of levels of market concentration, 45% of the French population considers the ownership of several major press or media groups by large industrial

conglomerates as a ‘negative development’ while only 15% perceive it positively.²⁷

In 2022, a Senate investigative commission on ‘Media Concentration in France’²⁸ aiming to illuminate the processes contributing to, or potentially resulting in, media concentration in the country. It also sought to evaluate the impact of this concentration on democracy. The commission proposed 32 recommendations that advocate for regulations adapted to the digital era, create a framework to restore trust, and fortify cultural sovereignty. The key recommendations emphasise the enhancement of collective assurances for journalists, with a

26 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000021601325/>

27 <https://www.kantarpublic.com/fr/barometres/barometre-de-la-confiance-des-francais-dans-les-media/barometre-2023-de-la-confiance-des-francais-dans-les-media>

28 <https://www.senat.fr/travaux-parlementaires/structures-temporaires/commissions-denquete/commissions-denquete/commission-denquete-concentration-des-medias-en-france.html>

particular focus on improving the economic status of producers through the establishment of a guaranteed minimum salary and the assurance of equal rights for journalists in press agencies. Furthermore, there is a need for a more nuanced consideration of the distinctive nature of television news in response to the growing influence of digital media. Lastly, it is underscored that reinforcing the independence and ethical standards of the media, along with expanding the role of the ARCOM (Communication Regulatory Authority), is crucial.²⁹ However, as of 2023, there has been no assessment of the implementation of these recommendations.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

After acquiring *Le Journal du Dimanche*, a prominent and widely-followed weekly newspaper, from the Lagardère group, neoconservative billionaire Vincent Bolloré appointed far-right-leaning editor-in-chief Geoffroy Lejeune.³⁰ Lejeune, known for his extreme right-wing views, had been ousted a few weeks earlier from the ultra-conservative magazine *Valeurs actuelles* due to his perceived radical positions. Following forty days of strikes, protesting the appointment of G. Lejeune and resulting in the

departure of numerous journalists as a sign of protest, the newspaper resumed its weekly publication with a new editorial direction strongly influenced by the far-right parties' agenda.

Senator David Assouline, rapporteur of the Senate Investigative Commission on Media Concentration, sees this appointment as “a provocation” and, more significantly, a “danger” to democracy and pluralism.³¹ According to Assouline, “*Vincent Bolloré is determined to create a propaganda empire serving extremist ideas.*”³²

Public service media

Financing (including transparency of financing)

As promised by President Emmanuel Macron during his presidential campaign, the government abolished the TV licence³³ in 2022. One of the reasons for abolition would be to lower taxes and stop relying on the middle class for the funding of this public service. However, considered as a key funding source for public media, without presenting a sustainable alternative this decision reflects an improvised approach that could undermine the independence and diversity of information, as noted by Reporters Without Borders.³⁴ The tax originally contributed €4 million in funding. Despite the

29 <https://www.senat.fr/rap/r21-593-1/r21-593-1-syn.pdf>

30 https://www.francetvinfo.fr/economie/medias/geoffroy-lejeune-a-la-tete-du-jdd-le-gouvernement-doit-etre-un-protecteur-de-l-independance-des-medias-selon-le-senateur-david-assouline_5983586.htm

31 <https://rsf.org/fr/pays/france>

32 [Grève au JDD : devant le Sénat, Vincent Bolloré se défendait de tout intérêt idéologique dans le rachat de médias - Public Sénat \(publicsenat.fr\)](#)

33 <https://www.thelocal.fr/20220704/explained-what-frances-tv-licence-pays-for-and-what-might-replace-it>

34 <https://lvsl.fr/qui-veut-la-peau-de-laudiovisuel-public/>

government's assurance of its commitment to uphold this financial support, there are growing concerns that the essential €4 billion for broadcasting and creative content will face gradual reductions.³⁵ Furthermore, public broadcasting is subjected to numerous criticisms, especially from different leaders of the right-wing parties and extreme right-wing parties. Both the National Rally and Reconquest, both of which agreed with the abolition of the TV licence, have expressed their intent to privatize the public broadcasting company should they come to power.

Ultimately, despite the 2023 finance law confirming an awaited increase in the budget for the public broadcasting service in 2024, concerns persist, particularly regarding the unresolved issue of funding methods for public service channels and radio stations following the abolition of the TV licence fee.³⁶

Online media

Competence and powers of bodies or authorities supervising the online ecosystem

Created in 2021, ARCOM is the national agency responsible for regulating audiovisual

and digital communication. It directly influences the regulation of online platforms, social networks, search engines, and citizen participation platforms. At the European level, ARCOM is a member of the European Regulators Group for Audiovisual Media Services (ERGA). In 2023, ARCOM coordinated the work of ERGA regarding the evolution of the European regulatory framework, including legislation on digital services (Digital Services Act - DSA).

As part of the bill aimed at securing and regulating the digital space ('sécuriser et réguler l'espace numérique' - SREN law), currently under discussion in the French Parliament, ARCOM is expected to be designated as the coordinator for digital services. The agency is anticipated to assume new responsibilities, notably, the protection of minors concerning their use of social networks.

The authority also has disciplinary powers. For instance, in 2023, it repeatedly fined the French television channel C8, compelling it to pay fines of up to €3.5 million.³⁷ Convictions have occurred for reasons such as infringing upon the rights of interviewees and violating their honour and reputation,³⁸ as well as failing to

35 <https://www.lesechos.fr/tech-medias/medias/marine-le-pen-et-laudiovisuel-public-une-privatisation-a-hauts-risques-1401242>

36 <https://www.telerama.fr/television/audiovisuel-public-malgre-un-budget-2024-en-hausse-les-inquietudes-persistent-7017362.php>

37 <https://www.arcom.fr/nos-ressources/espace-juridique/decisions/decision-du-9-fevrier-2023-portant-sanction-pecuniaire-lencontre-de-la-societe-c8>

38 <https://www.radiofrance.fr/franceinter/insultes-de-hanouna-a-un-depute-l-arcom-inflige-une-amende-record-de-3-5-millions-d-euros-a-c8-7522002>

uphold the obligation of honesty and rigour in the presentation and handling of information.³⁹

Public trust in media

The public's confidence in the media remains low, according to the 2023 annual report from the Kantar Public Institute. The findings indicate that 54% of French citizens believe that 'most of the time, one should approach the media's coverage of major current issues with caution', while 37% express a general trust in them.⁴⁰ Among the causes of this mistrust, doubts about the impartiality and independence of journalists are significant, particularly as French citizens fear political influence.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

Several French journalists, particularly those specialised in monitoring far-right activities such as *Libération*⁴¹ and *StreetPress*,⁴² as well as

journalists from regional daily newspapers like *Le Pober* and *France 3 Bretagne*, are facing serious threats from far-right groups. Most of these threats were cyberattacks and verbal violence. At the moment, there is no initiative on the part of the authorities to investigate the threats made against these journalists.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Since 2019, the French government has increased intimidation against media outlets investigating state secrets. In late 2022, four members of the investigative media outlet *Disclose* were subjected to investigations led by French domestic intelligence services. On September 19 2023, one of the journalists, Ariane Lavrilleux, was arrested at her home, which was searched, and her professional equipment was seized. She was held in custody for 39 hours with the aim of identifying her sources that allowed her to reveal several state scandals, particularly in the areas of military affairs, intelligence, and arms sales to foreign countries.⁴³ This procedure was done contrary

39 https://www.lemonde.fr/televvisions-radio/article/2024/01/23/c8-a-nouveau-sanctionnee-par-l-arcom-pour-une-sequence-de-touche-pas-a-mon-poste_6212493_1655027.html#:~:text=La%20cha%C3%A9ne%20C8%2C%20propri%C3%A9t%C3%A9%20du,%C3%A9mission%20%C2%AB%20Touche%20pas%20%C3%A0%20mon

40 <https://www.kantarpublic.com/fr/barometres/barometre-de-la-confiance-des-francais-dans-les-media/barometre-2023-de-la-confiance-des-francais-dans-les-media>

41 https://www.liberation.fr/politique/solidarite-avec-pierre-plottu-journaliste-menace-par-lextreme-droite-20220621_CO3KCK44OJAFDHOVTUIRH5N4VQ/

42 <https://www.radiofrance.fr/mouv/le-site-d-information-streetpress-victime-d-intimidations-de-la-part-de-l-extreme-droite-4155405>

43 https://www.lemonde.fr/en/politics/article/2023/09/22/detention-of-french-journalist-sparks-outrage-among-press-freedom-advocates-silence-from-government_6138561_5.html

to the law on Press Freedom (also known as the ‘1881 law’), explicitly stating that no journalist can be forced to reveal their sources.⁴⁴

Confidentiality and protection of journalistic sources (including whistleblower protection)

Since 2022 and throughout 2023, France has been exerting pressure on its European counterparts to legalise the surveillance of journalists in cases involving a threat to ‘national security’ or exhibiting a link to a range of roughly thirty offences (such as terrorism, sabotage, scams, or counterfeiting)⁴⁵ in the negotiation for the European Media Freedom Act. This would mean that calls, emails, and secure exchanges between journalists and their sources could be intercepted - entirely within the bounds of the law - by intelligence services. In this lobbying effort, France finds itself in alignment with Italy, Finland, Greece, Cyprus, Malta, and Sweden. Even though Member States’ EU ambassadors endorsed a provisional agreement, ongoing negotiations between the European Parliament and the Council of Europe will determine the outcome of this bill.⁴⁶

44 <https://rsf.org/en/rsf-demands-overhaul-frances-law-confidentiality-journalists-sources#:~:text=Under%20France's%20Law%20on%20Press,judge%20of%20freedoms%20and%20detention%22>

45 <https://disclose.ngo/fr/article/espionnage-des-journalistes-la-france-fait-bloc-aux-cotes-de-six-etats-europeens>

46 <https://www.europarl.europa.eu/news/pt/press-room/20231207IPR15742/deal-on-the-eu-media-freedom-act>

Checks and balances

Key recommendations

- *The abolition of Article 49.3 of the Constitution, which allows the imposition of legislative texts without a vote in the Assembly, is crucial. The frequent use of this procedure⁴⁷ undermines power balances of the French democratic system.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

The legislative power is currently undermined in its ability to debate and build consensus through the excessive use of Article 49.3 of the Constitution. This article allows the government pass a law through the National Assembly without a vote, forcing the deputies to choose between either outvoting the government or tacitly approving the controversial bill without actually casting a vote. Used to impose pension reform, Article 49.3 was activated 23 times by Prime Minister Elisabeth Borne in 2023.⁴⁸ The

Constitutional Council, seized regarding the use of Article 49.3 on pension reform, deemed that the government was justified in resorting to Article 49.3 since “the exercise of this prerogative conferred upon the prime minister is not subject to any other condition.”⁴⁹

In an opinion, the Venice Commission, an advisory group of the Council of Europe providing legal opinions on draft laws or existing texts to states, argues that this mechanism “raises questions regarding the principles of pluralism, the separation of powers, and legislative sovereignty”. According to the advisory group the article constitutes a “significant interference by the executive in the powers and role of the legislative power”.⁵⁰

Ecologist deputy Jérémie Jordanoff attempted to present a bill to remove Article 49.3 from

47 https://www.lemonde.fr/les-decodeurs/article/2023/11/23/avec-dix-huit-recours-en-dix-huit-mois-le-gouvernement-borne-banalise-l-article-49-3_6199896_4355771.html

48 https://www.francetvinfo.fr/monde/europe/l-article-49-3-souleve-des-interrogations-au-regard-de-la-separation-des-pouvoirs-estime-le-conseil-de-l-europe_5887815.html

49 https://www.lemonde.fr/les-decodeurs/article/2023/04/14/retraites-ce-que-le-conseil-constitutionnel-a-garde-ou-ecarte-des-differentes-saisines_6169591_4355770.html

50 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)024-f](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)024-f)

the Constitution, but his proposal was quickly rejected.⁵¹

Independent authorities

Opinions from independent authorities such as the Defender of Rights (DDD) or the National Consultative Commission on Human Rights (CNCDH) are not legally binding. Despite being intended to influence public policy development, their recommendations appear to have little impact on the decision-making process under President Emmanuel Macron's administration. Despite numerous recommendations from CNCDH and DDD regarding means to restore trust between the police and the population,⁵² incidents of police violence, identity checks,⁵³ and the risks associated with immigration legislation,⁵⁴ the government seems impervious to the advice of these independent institutions, significantly diminishing their influence in the decision-making process.

The General Inspectorate of the National Police (IGPN) - often presented as 'independent' by the Ministry of the Interior to which it is subordinate - faces criticism for its structural lack of independence. Comprising 285 agents, with nearly 75% being police officers, the IGPN is

responsible for overseeing the actions of the National Police and the Paris Police Prefecture. However, its lack of transparency and direct affiliation with the General Directorate of the National Police raise significant concerns about its legitimacy. Recent periods of social unrest against pension reform (spring 2023), marked by police violence, have heightened criticism, highlighting the need for true independence and appropriate sanctions against law enforcement involved in violent acts.

A study conducted by three researchers, an international comparison in about twenty countries of 'police oversight agencies' (ACP) - bodies responsible for overseeing the ethics of law enforcement - concludes that the French Defender of Rights is among the most independent. However, it is also the least endowed of these agencies, both in terms of personnel and resources, relative to the number of police officers and gendarmes it oversees.⁵⁵

51 https://www.cncdh.fr/sites/default/files/2023-10/A%20-%202023%20-%202020-%20Avis%20Rapport%20entre%20police%20et%20population%2C%20octobre%202023_3.pdf

52 <https://www.cncdh.fr/publications/avis-sur-la-prevention-des-pratiques-de-controles-didentite-abusives-etou>

53 <https://www.defenseurdesdroits.fr/projet-de-loi-immigration-la-defenseure-des-droits-maintient-ses-alertes-avant-le-passage-en-510>

54 https://www.liberation.fr/societe/police-justice/le-defenseur-des-droits-agence-de-controle-de-la-police-la-plus-pauvre-deurope-selon-une-etude-20230120_NEXLX4VERZFTRAA2AAIDMWKB2I/

55 https://amnestyfr.cdn.prismic.io/amnestyfr/6a3cbef6-bbe8-45dc-ae01-622f8a114d31_french-2022_2023-03-22a+%281%29.pdf

Civic space

Key recommendations

- *Strengthening the rights of associations and their activists against administrative and legal hindrances, which may be similar to SLAPP suits.*
- *Abolition of the so-called ‘separatism law’, which aims at strengthening the respect of the ‘principles of the Republic’.*
- *Transparency and assurance of pluralism in the allocation of public subsidies.*

Freedom of association

Involuntary dissolution

According to the latest annual report from Amnesty International (2022-23),⁵⁶ France has garnered attention in recent years for its attempts to curtail freedom of association, primarily through the controversial use of the ‘separatism law’.⁵⁷ The broadening of the dissolution criteria outlined in the separatism law was originally aimed to target associations displaying radical religious activities and sectarian tendencies. However, in 2023, only one association linked to radical Islam and conspiratorial discourse underwent investigation, along with a Catholic association holding antisemitic views. Throughout the year, five dissolution decrees were approved in the Council of Ministers (Bordeaux Nationalist, Les Alerteurs, Les

Soulèvements de la Terre, Civitas, and Division Martel). Most of the dissolved associations are primarily targeted for their political engagements. This includes those advocating hatred and racism, such as identity-based extreme right or neo-fascist associations. However, it also encompasses anti-racist or anti-fascist associations, those combating discrimination against Muslims, and even an environmentalist association. Despite the broad scope of the ‘separatism law’, the Council of State, on November 9 2023, overturned the dissolution of the national environmental movement ‘Les Soulèvements de la Terre’. The Council deemed that the dissolution was not “adapted, necessary, and proportionate to the seriousness of the disturbances likely to be brought to public order.”⁵⁸

56 <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-11-09/476384>

57 <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042635616/>

58 https://www.lemonde.fr/politique/article/2023/04/05/gerald-darmanin-menace-de-remettre-en-question-les-subsventions-publiques-accordees-a-la-ldh_6168412_823448.html

On the same day, the Council of State nevertheless validated the dissolution of three other associations requested by the government between 2021 and 2022. This legal case against the environmental movement, labelled ‘ecoterrorist’ by the Minister of the Interior, brought attention to the surveillance mechanisms implemented to monitor activists, involving methods to fight against terrorism.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens’ allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

In 2023, the Nouvelle-Aquitaine region in southwestern France became a focal point for protests against large-scale water reservoirs known as mega-basins. The demonstrations, opposing these projects designed for agricultural irrigation, escalated into clashes between law enforcement and protesters, resulting in numerous injuries. Following these events, the prefecture services in several regional departments initiated measures to cut subsidies for various associations linked, directly or indirectly, to the ecological movement.

Additionally, pressure was applied against elected officials who supported these associations. For example, the prefect of the department of Vienne initiated a procedure aiming at terminating subsidies for the non-profit organisation Alternatiba in Poitiers, a municipality governed by the ecological party.⁵⁹ The procedure had no reasonable cause and was against this association, known for its advocacy of civil disobedience. It is important to note that the administrative court has rejected the Prefect of Vienne’s request for the return of subsidies granted to the association.⁶⁰

Other

In April 2023, the Parliament passed a law related to the Olympic and Paralympic games, raising concerns primarily centred around Article 7. This article introduces a legal framework for algorithmic video surveillance (AVS) in France, marking it as the first EU Member State to do so. AVS entails the use of artificial intelligence to process images and audio from surveillance cameras, enabling the identification of individuals, objects, or specific situations.⁶¹

The contentious aspect of the law is its potential to normalize biometric mass surveillance. Critics, including Amnesty International, argue that this decision undermines the ongoing efforts within the EU to regulate artificial

59 <https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/vienne/poitiers/desobeissance-civile-suite-au-main-tien-des-subsventions-le-prefet-de-la-vienne-porte-l-affaire-devant-le-tribunal-administratif-2645188.html>

60 <https://www.ldh-france.org/alternatiba-poitiers-le-tribunal-administratif-rejette-la-demande-du-prefet-de-la-vienne-de-restitution-des-subsventions-accordees-a-lassociation/>

61 <https://verfassungsblog.de/big-brother-is-watching-the-olympic-games-and-everything-else-in-public-spaces/>

intelligence and protect fundamental rights through the AI Act. The allowance of mass surveillance measures during the 2024 Olympics in France is seen as a threat to privacy and a departure from the principles of responsible AI governance and human rights protection.⁶²

Criminalisation of activities, including humanitarian or human rights work

During the prohibited demonstration on March 25 2023, in Sainte-Soline (Deux-Sèvres), some demonstrators declared that the emergency medical services (SAMU) had difficulties reaching injured individuals. The League of Human Rights, a long-standing association dedicated to defending rights and liberties, raised concerns about potential obstruction of these services by the police.⁶³

As a response, the Minister of the Interior threatened to reconsider public subsidies allocated to the association during a Senate hearing. He suggested that these subsidies “merited scrutiny in light of the actions that the LDH [League of Human Rights] has undertaken.”⁶⁴ In response, the LDH emphasized the importance of these subsidies in a democracy, allowing for the contestation of abuses of power and arbitrariness. On April 6 2023, the association

declared, “Removing or reducing these subsidies is one of the traditional means used by authoritarian regimes to weaken the balance between power and counterpowers, without which a democracy is annihilated.”⁶⁵ As the Minister of the Interior’s statements sparked controversy, Prime Minister Elisabeth Borne joined the attack against the LDH by accusing it of proximity to radical Islam. This tactic represents a common method of damaging the reputation of associations advocating for individual rights and combating discrimination, especially those denouncing Islamophobia, as the LDH has done.⁶⁶

Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid

The anti-corruption association Anticor has had its accreditation revoked. The accreditation, granted on April 2 2021, allowed it to take legal action and to act as a civil party in cases, in particular cases concerning corruption and breaches of probity in criminal court proceedings. Currently, only two organisations have this accreditation in France: Transparency International, which does not pursue legal actions in France, and the Sherpa association,

62 <https://www.amnesty.org/en/latest/news/2023/03/france-allowing-mass-surveillance-at-olympics-undermines-eu-efforts-to-regulate-ai/>

63 https://www.lemonde.fr/planete/article/2023/03/28/sainte-soline-l-enregistrement-qui-prouve-que-le-samu-n-a-pas-eu-le-droit-d-intervenir_6167340_3244.html

64 <https://www.ldh-france.org/wp-content/uploads/2023/04/CP-LDH-subventions-Darmanin-6-04-2023-1.pdf>

65 [La Ligue des droits de l’Homme appelle au combat pour les libertés et la démocratie - LDH \(ldh-france.org\)](https://www.ldh-france.org/)

66 https://www.lemonde.fr/politique/article/2023/04/13/elisabeth-borne-s-en-prend-a-son-tour-a-la-ligue-des-droits-de-l-homme_6169279_823448.html

which focuses on cases of transnational corruption and money laundering in France.

Freedom of peaceful assembly

Bans on protests

After the October 7 2023 attacks carried out by Hamas against Israel, fearing tensions in France related to the conflict, Interior Minister Gérald Darmanin called for the prohibition of all pro-Palestinian demonstrations. However, the Council of State opposed a systematic ban, asserting that the decision should be within the purview of prefects, who must locally assess whether such demonstrations pose a risk of disturbances to public order.⁶⁷ The Ministry of the Interior's intent to ban demonstrations stirred strong reactions, and was perceived as an infringement on the freedom to demonstrate in a democratic nation, especially in the absence of confirmed instances of violence. None of the subsequent demonstrations led to public disorder.

Bans on the use of symbols/slogans in protests

The pro-Palestinian demonstrations were closely monitored for signs of anti-Semitic slogans; however, neither the police nor the media reported any such reprehensible slogans during these protests.

Policing practices, including dispersion of protests, use of force

During the social movement against the pension reform, there were extensive violations of the freedom to demonstrate, aimed at discouraging protesters: police violence, humiliations, preventive arrests, arbitrary detentions, identity checks, abusive searches or checkpoints, and more. Some of the violence and deprivation of rights were attributed to the motorized intervention units called BRAV-M in Paris, which are directly under the prefecture of police and have significant autonomy in the field. This unit was established during the yellow vests crisis to intensify law enforcement. Additionally, there has been a toughening of authorities' responses to civil disobedience actions, leading to disproportionate curtailment of freedoms, judicial prosecutions, physical violence by police officers, and the criminalization of environmental activists labelled 'ecoterrorists'. These hindrances are now under increased scrutiny by the Defender of Rights, who raises concerns about ethical breaches.⁶⁸

Criminalisation of protesters

Since the Yellow Vests protests in 2019, authorities have utilized the criminal offence of 'participation in a group with a view to preparing violence' as a basis to arrest and prosecute demonstrators, even without evidence of their

67 https://www.lemonde.fr/les-decodeurs/article/2023/10/18/les-questions-que-pose-l-interdiction-des-manifestations-propalestiniennes_6195198_4355770.html

68 <https://www.defenseurdesdroits.fr/manifestations-la-defenseure-des-droits-rappelle-ses-recommandations-sur-le-respect-des-regles-de>

direct involvement in violent acts. This provision allows mass arrests during kettling operations, which involve encircling and impeding the movement of protesters. The vague legal wording of this provision hampers the right to peacefully demonstrate, sometimes using the mere possession of suspicious objects (such as swimming goggles) or being ‘in the wrong place at the wrong time’ during protests as grounds for arrest.⁶⁹ It also enables arrests and prosecutions against protesters attending banned demonstrations.

Surveillance of protests

In April 2023, a decree authorised the use of drones by law enforcement agencies during law enforcement operations.⁷⁰ The text permits the use of drones by police officers, gendarmes, customs officers, or military personnel in certain cases, including “the prevention of threats to the security of persons and property in particularly exposed locations”, ensuring “the security of gatherings” in public spaces, and providing “support” to ground agents “to maintain or restore public order.”⁷¹ In May 2023, the Council of State, approached by civil liberties defence associations, affirmed the legality of

the decree allowing drones for monitoring protests.⁷²

Freedom of expression and of information

Restrictions on access to information

The tragic death of Nahel, a 17-year-old killed by a police officer during a routine traffic stop, sparked a wave of intense protests across France. In response, President Emmanuel Macron initially suggested the possibility of implementing measures to restrict social media access during potential future riots. However, the government later reconsidered, clarifying that the option of blocking social media was not actively being considered.⁷³

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

For several years now, associations advocating for the rights of displaced individuals have been consistently targeted with vehement criticism from certain political and media figures. This onslaught has developed into a fully fledged

69 <https://www.syndicat-magistrature.fr/qui-sommes-nous/nos-combats/2633-pour-lutter-contre-les-privations-de-liberte-arbitraires-de-manifestant-e-s-pacifiques-le-delit-de-groupement-doit-etre-abroge.html>

70 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047464659>

71 <https://miniurl.be/r-4z4c>

72 <https://www.conseil-etat.fr/actualites/emploi-de-drones-a-des-fins-de-maintien-de-l-ordre-le-conseil-d-etat-rejette-la-demande-de-suspension-du-decret-du-gouvernement>

73 https://www.lemonde.fr/pixels/article/2023/07/05/emmanuel-macron-suggere-de-bloquer-les-reseaux-sociaux-pendant-les-emeutes_6180622_4408996.html; https://www.lemonde.fr/politique/article/2023/10/13/marine-le-pen-condamnee-pour-diffamation-envers-la-cimade_6194210_823448.html

hate campaign involving intimidation, threats, and acts of vandalism. These organisations are unfairly labelled as ‘accomplices of smugglers’,⁷⁴ ‘accomplices of terrorists’,⁷⁵ and, as of October 2023, even deemed ‘co-responsible’⁷⁶ for a terrorist’s knife attack in Arras. The reason behind this baseless accusation is that some of these associations had mobilized, over a decade ago, against the expulsion of the family of the person who committed the terrorist attack. This exaggerated criticism poses a threat to the safety of thousands of volunteers and employees working in these associations, and the state’s response has been insufficient, if not a contributory factor, to this ongoing persecution.

Physical attacks on people and property

Volunteer activists dedicated to combating discrimination are grappling with a surge in far-right violence in France. Acts of vandalism, the proliferation of neo-Nazi graffiti, and instances of intimidation are directed at various associative sectors, including those championing the rights of Muslim, foreign, LGBTQIA+, and women, as well as organisations focused on culture and trade unions. These incidents of violence are at times exacerbated by media

campaigns and statements from elected officials or ministers.⁷⁷ In 2023, violence against mayors surged by 15%, reaching over 2,300 attacks since the beginning of the year, according to the Ministry of the Interior.⁷⁸ Certain mayors, like those in Callac, Saint-Brevin, and Grabels (three municipalities in the West and South of France), are facing violent intimidation campaigns orchestrated by far-right groups due to their progressive ideas or initiatives aimed at welcoming and integrating refugees. The targeted elected officials underscore the lack of support from the state and prefectures in addressing these cases, despite incidents such as arson, cyberbullying, threats and more.⁷⁹

Online civic space

Data protection and privacy issues

The bill concerning the security and regulation of the digital space (SREN) passed through its initial readings in both the Senate and the National Assembly in October. That same month, the bill was scheduled for examination by a CMP, a committee composed of deputies and senators of the two chambers of the Parliament. However, a specific date has not

74 <https://atlantico.fr/article/pepite/pascal-bruckner-juge-pour-avoir-qualifie-deux-associations-de-complices-ideologiques-des-terroristes>

75 <https://ccfd-teresolidaire.org/tribune-nous-assistons-a-des-attaques-repetees-contre-les-associations-qui-defendent-les-exiles/>

76 <https://www.voxpublic.org/Menaces-d-extreme-droite-un-guide-pour-anticiper-et-riposter.html>

77 https://www.lemonde.fr/politique/article/2023/11/19/les-violences-contre-les-maires-continuent-de-progresser-en-2023_6201049_823448.html

78 <https://www.voxpublic.org/Menaces-d-extreme-droite-un-guide-pour-anticiper-et-riposter.html>

79 https://www.lemonde.fr/politique/article/2023/10/17/regulation-de-l-espace-numerique-l-assemblee-nationale-adopte-le-projet-de-loi-promettant-de-lutter-contre-le-cyberharcèlement_6195068_823448.html

yet been determined and no progress has been observed at the beginning of the year 2024. Presently, the bill is expected to undergo further joint committee review, with a specific date yet to be determined. A contentious aspect of the proposed law is found in Article 6, which introduces a novel justification for potential administrative censorship. This article, aimed at countering online scams, makes it a requirement for Internet browser providers to actively engage in this censorship. Essentially, it would empower the police to request the censorship of sites deemed ‘scams’ without the need for judicial oversight. The term ‘scam’ here covers content that involves identity impersonation, unauthorized collection of personal data, exploitation of security vulnerabilities, or attempts to deceive users through fraudulent payment or login pages (phishing). Digital rights advocacy groups strongly oppose this article, expressing concerns that it could grant excessive power to the police and compromise the fundamental principle of online anonymity.^{80,81}

Public participation

Rules and practices on dialogue with civil society

Despite the strong opposition of more than 70% of the French population to the retirement reform and the increase of the legal retirement age to 64,⁸² the government pushed through the law by circumventing the vote of the

National Assembly, utilizing Article 49.3 of the Constitution.

Rules on access to and participation in consultations and decision-making processes

The functioning of the French political system revealed an increasingly top-down approach to executive power, consistently criticised by intermediary bodies such as trade unions and associations. This approach, known for undermining the formulation of compromises and the practice of negotiations between the government and trade unions, was notably evident during the recent conflict over the retirement reform in the spring of 2023, leading to the establishment of a cross-union coalition and a historic social mobilization.

Impact of civic space of emergency and crisis situations

In recent years, numerous social mobilization movements have unfolded in France, with the protest against the pension reform in spring 2023 standing out as one of the largest. This movement was propelled by an inter-union alliance, bringing together all trade unions. Civil society and various associations also actively joined forces to participate in the multitude of protests. Significant strikes in strategic sectors took place, disrupting the normal functioning of the country. The population widely engaged in solidarity with the strikers and participated

80 <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000047533100/>

81 <https://www.cncdh.fr/sites/default/files/2023-07/Les%20Essentiels%20Rapport%20Racisme%202022.pdf>

82 <https://www.publicsenat.fr/actualites/politique/7-francais-sur-10-sont-contre-la-part-des-francais-opposes-a-la-reforme-des>

in demonstrations across France. Despite these unified efforts and widespread momentum, the reform was ultimately adopted. The setback experienced by the social movement triggered an internal crisis within the French left-wing political parties, affecting all its components and fuelling a sense of powerlessness. This, in

turn, led to both a demobilization of activists and an increase in internal conflicts within organisations, notably political parties. Starting from October 2023, the Israel-Hamas conflict, inherently divisive, further fractured the left and various French organisations.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment



Key recommendations

- *Recommendations from the Defender of Rights and the National Consultative Commission on Human Rights on the action plan against racism and anti-Semitism (July 2023): a more in-depth training for police officers and magistrates in cases of racist offences.*⁸³
- *Respect the convictions and implement the decisions of the European Court of Human Rights that bind the French authorities.*
- *Implement measures recommended by independent agencies such as the Defender of Rights and the National Consultative Commission on Human Rights (CNCDH).*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

On October 11 2023, the Council of State issued a landmark decision in the first-ever class-action lawsuit addressing discrimination

related to the French state's negligent handling of discriminatory police checks, commonly known as 'racial profiling' or 'identity checks based on appearance'. The Council of State acknowledged the existence of "a practice of discriminatory identity checks constituting a blatant violation of the prohibition of discriminatory practices".⁸⁴ It also recognized "the existence of a practice of identity checks motivated

83 <https://maruemesdroits.org/communique-de-presse-des-associations/>

84 <https://www.legifrance.gouv.fr/ceta/>

by physical characteristics associated with the real or presumed origin of the individuals checked” and emphasized that this practice is not limited to “isolated cases”. According to the six associations involved in this unprecedented legal action against racial profiling in France, “The highest French administrative court however chose not to utilize its authority to compel the State to take necessary measures to halt this practice.”⁸⁵ Moreover, the associations lamented the Council of State’s decision to declare itself powerless in compelling the State to address this unlawful practice.⁸⁶ This decision is particularly disheartening for the numerous individuals subjected to unwarranted identity checks daily, often accompanied by violence and humiliation. Those affected had hoped for justice and the law to compel the State to fulfil its obligation under international human rights law, ensuring compliance with the principle of non-discrimination.

The French government, including Interior Minister Gérald Darmanin, has neither commented on nor acknowledged this decision of the Council of State, and no measures have been announced. In August 2023, Gabriel Attal, then Minister of National Education, implemented a ban on wearing religious attire, including abayas and kameez, in all public

educational institutions across France.⁸⁷ The Council of State, responding to a plea from an organisation advocating for the rights of Muslims in France, upheld the prohibition, reasoning that it does not constitute a severe and blatantly illegal infringement on a fundamental freedom.⁸⁸ Amnesty International strongly criticised this decision, contending that it not only reinforces but exacerbates racial and religious discrimination, particularly against Muslim women and young girls in France, within the broader context of rising racist rhetoric against these communities. Additionally, the NGO contrasts this decision with the principles of the right to education and the right to freedom of expression and religion.⁸⁹

Impunity and/or lack of accountability for human rights violations

France regularly faces criticism for its use of public force and instances of police violence in the context of maintaining public order. As declared by the Commissioner for Human Rights of the Council of Europe in March 2023, “The conditions under which freedom of expression and assembly are exercised in France, particularly during the social mobilization against pension reform, are troubling.”⁹⁰ During protests following the death of young

85 <https://www.coe.int/fr/web/commissioner/-/manifestations-en-france-les-libert%C3%A9s-d-expression-et-de-r%C3%A9union-doivent-%C3%AAtre-prot%C3%A9g%C3%A9es-contre-toute-forme-de-violence>

86 <https://www.hrw.org/news/2023/10/12/france-council-state-admits-racial-profiling-orders-no-action>

87 <https://www.politico.eu/article/france-emmanuel-macron-abaya-muslim-dress-ban-schools-secularism/>

88 <https://www.conseil-etat.fr/actualites/laicite-le-conseil-d-etat-rejette-le-refere-contre-l-interdiction-du-port-de-l-abaya-a-l-ecole>

89 <https://www.amnesty.org/fr/documents/eur21/7280/2023/fr/>

90 <https://news.un.org/fr/story/2023/06/1136572>

Nahel Merzouk (June 26 2023), two major police unions issued a press release, labelling the rioters as “nuisances” and calling for action “against these hordes of savages” using racist rhetoric.⁹¹ Simultaneously, an extreme-right figure initiated a support fund for the police officer indicted for the voluntary manslaughter of Nahel Merzouk, raising almost €2 million. On June 30 2023, the UN High Commissioner for Human Rights urged France to “seriously address the deep-seated problems of racism and discrimination among law enforcement”.⁹² Following the uprising in many working-class neighbourhoods (June 27 - July 4 2023), the government accused the parents of the rioters of lacking authority.

Minister of Solidarity and Families Aurore Bergé announced her intention to sanction “negligent parents”⁹³ by implementing community service and imposing fines on parents of children guilty of damages and parents who do not attend their children’s hearings. These statements shocked many political figures who

denounced an attempt to blame and hold parents responsible, particularly stigmatizing the poor populations living in the areas affected by the riots.

Follow-up to recommendations of international and regional human rights monitoring bodies

Interior Minister Gérald Darmanin announced his intention to expel nationals deemed “dangerous” to their home countries, such as Chechnya⁹⁴ or Uzbekistan.⁹⁵ This decision was implemented on November 15 with the expulsion of an Uzbek citizen, even though this person faces serious risks of persecution or torture in their home country.

While France has been repeatedly condemned by the European Court of Human Rights for prison overcrowding,⁹⁶ a new ECtHR judgment issued on July 6 2023⁹⁷ once again condemned the degrading conditions of detention. The government also ignores these decisions of

91 https://www.lemonde.fr/societe/article/2023/09/11/syndicats-de-police-les-signalements-denoncant-le-tract-d-alliance-et-de-unsapolice-apres-la-mort-de-nahel-m-classes-sans-suite_6188917_3224.html

92 <https://www.ouest-france.fr/politique/aurore-berge/parents-defaillants-ce-que-lon-sait-de-la-commission-controversee-lancee-par-aurore-berge-230d6ddc-9816-11ee-b5ab-4c9dbbc4ce19>

93 <https://www.mediapart.fr/journal/france/011223/expulsions-d-etrangers-dangereux-la-france-pietine-le-droit-europeen>

94 <https://www.mediapart.fr/journal/france/011223/expulsions-d-etrangers-dangereux-la-france-pietine-le-droit-europeen>

95 <https://oip.org/communiqué/surpopulation-carcerale-seul-contre-tous-le-gouvernement-soppose-a-une-solution-durgence/>

96 <https://oip.org/communiqué/surpopulation-carcerale-et-conditions-de-detention-indignes-la-france-condamnee-par-la-cedh-cour-europeenne-droits-de-homme/>

97 <https://www.egalite-femmes-hommes.gouv.fr/le-gouvernement-elargit-et-protege-laces-livg-constitutionnalisation-ouverture-aux-sages-femmes>

the European court and explicitly rejected the proposal of 34 associations, unions, and institutions to establish a binding mechanism for regulating the prison population to urgently relieve overcrowding. “France does not wish to establish a legislative mechanism for regulating prisons, linked to a critical threshold, which could undermine the principle of individualization of sentences and weaken public safety”, it stated in a document addressed on September 1 to the United Nations Human Rights Council.⁹⁸

Other systemic issues

In 2023, among the notable advances in human rights, it is noteworthy that President Emmanuel Macron presented a bill to include Voluntary Interruption of Pregnancy (VIP or abortion) in the Constitution.⁹⁹ While the symbolic act of constitutionalizing abortion was widely welcomed, the wording was deemed insufficient by some feminist organisations, regretting that the law refers to a ‘freedom’ rather than a ‘right’.

The new plan, ‘Fight against racism, anti-Semitism, and discrimination at its source 2023-2026’ was presented in January 2023 by Elisabeth Borne around five axes: naming the reality of racism, anti-Semitism, and discrimination, measuring this phenomenon, better

educating and training, punishing perpetrators, and supporting victims. It was criticised by NGO Human Rights Watch France: “While this new action plan against racism is welcome, it nevertheless has enormous gaps.”¹⁰⁰ The NGO emphasizes that Elisabeth Borne declared wanting to “better measure” discrimination in areas such as employment, but “the plan does not provide for collecting detailed data on equality, which is necessary for the implementation of targeted government measures to combat institutional racism”. The absence of such data had been raised by the UN Committee on the Elimination of Racial Discrimination in December 2022. Additionally, “the plan ignores the need to end well-documented systemic practices of ethnic profiling by the police, especially during identity checks.”¹⁰¹

In June 2022, the European Commission against Racism and Intolerance of the Council of Europe published its sixth report on France,¹⁰² highlighting the “little progress” made to end ethnic profiling or ‘racial profiling’ by law enforcement.

98 <https://www.ldh-france.org/surpopulation-carcerale-seul-contre-tous-le-gouvernement-soppose-a-une-solution-durgence/>

99 <https://www.hrw.org/fr/news/2020/06/18/france-des-enfants-subissent-des-contrôles-de-police-abusifs-et-racistes>

100 <https://www.hrw.org/news/2023/02/06/frances-anti-racism-action-plan-ignores-institutional-racism>

101 <https://rm.coe.int/sixieme-rapport-de-l-ecri-sur-la-france-adopte-le-28-juin-2022-publie-/1680a81884>

102 Institution Haute Autorité pour la transparence de la vie publique (hatvp.fr)

LIBERTIES

RULE OF LAW REPORT

2024

GERMANY

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About the authors

GFF (Gesellschaft für Freiheitsrechte /Society for Civil Rights)



GFF (Gesellschaft für Freiheitsrechte /Society for Civil Rights) is a donor-funded organisation that defends fundamental and human rights by legal means. The organisation promotes democracy and civil society, protects against disproportionate surveillance and advocates for equal rights and social participation for everyone. To that end, the GFF conducts strategic litigation, lodges constitutional complaints against laws that violate fundamental rights and contributes its legal expertise to social debates. The Berlin-based non-profit organisation was founded in 2015 and is funded primarily through individual donations and the contributions of its supporting members.

GFF was supported by the following organisations:



FragDenStaat: FragdenStaat is a project established by the Open Knowledge Foundation e.V. and is the central contact point for freedom of information in Germany. FragDenStaat brings information to the public that was previously gathering dust in filing cabinets. Whether it's an email by a lobbyist, an environmental report, meeting minutes or a calendar entry – FragDenStaat helps liberate and publish it by using the Freedom of Information Law (Informationsfreiheitsgesetz, IFG).



LobbyControl: LobbyControl is a non-profit association that educates about power structures and influence strategies in Germany and the EU. LobbyControl advocate for transparency, democratic control and clear limits on influencing politics and the public.

Key concerns

As a general assessment, the federal government has made progress on some reforms, amendments to the Judiciary Act and the reform of custodial sanctions. Considering the recommendations made by the European Commission in their annual rule of law report, the federal government and the *Länder* have not agreed on an approach to provide additional funding for judicial positions and the digital transformation of the judiciary.

As regards the anti-corruption framework, the German Parliament introduced new transparency requirements regarding the financing of political parties and election campaigns. The reform is a step in the right direction. The lobby register law (Lobbyregistergesetz, LobbyRG) was also reformed, its scope widened, and the transparency increased. Regarding the recommendations made by the European Commission in their annual rule of law report in this area, there were no steps taken to strengthen the rules for future employment after leaving office, neither for ministers of the federal government, parliamentary state secretaries nor for high-ranking public officials. A legislative footprint has still not been proposed by the federal government.

As far as the media environment and media freedom, freedom of the press is increasingly under pressure. Physical and legal attacks on journalists have increased. Germany

also dropped five places in the press freedom ranking of Reporters Without Borders ranking compared to last year.







In relation to the recommendations of the European Commission, Germany has still not taken forward the plan to create a legal basis for a right to information of the press as regards federal authorities. As for checks and balances, deadlines for stakeholder consultation in the legislative process are often unreasonably short. Draft legislation does not require a synopsis, which seriously hampers readability. There was no country specific recommendation in this area from the Commission to report on.

Regarding the civic space, the legal uncertainties with the tax-exempt status of CSOs have not been resolved. Excessive use of force, blanket bans of assemblies and criminal investigations of political movements have further restricted civic space. When considering the recommendations in the Commission's rule of law report, while the reform of the tax code is part of the coalition treaty of the current government and reforms were scheduled for 2023, no reforms to protect public participation and advocacy, work of civil society organisations were initiated.

As it relates to the disregard of human rights obligations and other systemic issues affecting the rule of law environment, the government has taken no action to address the known problems of documentation of police

violence, and systematic and disproportionate restrictions of the rights of refugees entering Germany. There was no country specific recommendation in this area from the Commission.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression No progress Progress



Justice system 

Key recommendations

- *The federal government must reform Sec. 353d of the Criminal Code. In its current form, Sec. 353d violates the freedom of the press by subjecting journalists to criminal liability for publishing court documents, regardless of the context.*
- *The federal government and the Länder need to reach an agreement on the extension and consolidation of the 'pact for the rule of law', or other avenues to increase funding for judicial positions and the digital transformation of the judiciary.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

In Germany, lay judges, known as *Schöff*innen*, often participate in criminal proceedings and have the same voting rights as professional judges. There are around 40,000 lay judges in Germany. In recent years, far-right parties such as the Alternative for Germany (Alternative für Deutschland, AfD) and the National Democratic Party of Germany

(Nationaldemokratische Partei Deutschland, NPD) have repeatedly called on their members and supporters to become lay judges.

The German Judiciary Act (Deutsches Richtergesetz, DRiG) is to be amended to prevent extremists from serving as lay judges. In future, lay judges should not be allowed to be appointed if there are doubts about their loyalty to the constitution. This is proposed in a government bill to amend the DRiG. The intention is to make more visible the obligation of lay judges to be loyal to the constitution,

which has already been confirmed by the Federal Constitutional Court and to explicitly emphasize its significance.¹

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

In November 2023, the German Bundestag passed an amendment to the Federal Disciplinary Act (Bundesdisziplinargesetz) that will make disciplinary proceedings against federal civil servants easier and quicker in the future. This aim is to make it easier to remove enemies of the constitution from the civil service. According to the bill, swift and effective punishment of misconduct is intended to strengthen the reputation of the civil service and confidence in the integrity of the administration. The amendment to the Bundesdisziplinargesetz will streamline the lengthy disciplinary complaint procedure. In the future, civil servants can be removed from the civil service by means of an administrative disciplinary order. Previously, the competent authorities had to bring disciplinary proceedings before the Administrative Court. This means that in future, for example, an extremist judge can be dismissed from the civil service more quickly. The law still provides sufficient

procedural safeguards against an abuse of the streamlined procedure. The disciplinary order is subject to full judicial review by the administrative courts. In future, an appeal procedure will also be provided as an additional remedy in the case of disciplinary orders for demotion, removal from civil servant status or withdrawal of pension.²

The case of former judge Jens Maier illustrates the challenge the dismissal of extremist judges posed under the previous legal framework. Maier served as a member of the Bundestag from 2017 to 2021 for right-wing party Alternative für Deutschland - AfD and is considered a right-wing extremist by the Saxon State Office for the Protection of the Constitution.³ After leaving the Bundestag, Maier applied to return to the judiciary and was subsequently reinstated as a judge.⁴ Disciplinary proceedings ended in 2023 with Jens Maier being permanently removed from his office.⁵

Promotion of judges and prosecutors

Decisions on the promotion of judges – in particular the selection of court presidents and judges in the federal courts – are still made by members of the state or federal government in

1 Deutscher Bundestag, Drucksache 20/8761; <https://www.lto.de/recht/justiz/j/schoeffen-richtergesetz-verfassungstreue-rechtsstaat-extremismus/>

2 Bundestag Ds. 20/6435; https://www.haufe.de/oeffentlicher-dienst/personal-tarifrecht/disziplinarverfahren-gegen-bundesbeamte-sollen-einfacher-werden_144_610244.html

3 https://de.wikipedia.org/wiki/Jens_Maier

4 <https://taz.de/AfD-Politiker-geht-zurueck-in-die-Justiz/!5826772/>

5 <https://rsw.beck.de/aktuell/daily/meldung/detail/bgh-afd-politiker-jens-maier-muss-in-vorzeitigen-ruhestand>

cooperation with parliamentary bodies, not by the judiciary itself.

In many cases, judges are only selected for top positions if they are associated with the major political parties. This is due to the fact that when new judges are appointed to the highest courts, e.g. the Federal Constitutional Court, half of the judges are elected by the German Federal parliament and half by the Federal Council (Bundesrat). The election committee is made up of the parliamentary groups represented in the Bundestag and is determined according to the rules of proportional representation.⁶ Although some organisations constantly call for greater independence or at least transparency, there have been no serious initiatives in 2023 to minimize or end government influence on the judiciary, or to establish firm procedural guarantees for judicial independence of the judiciary.

This could become particularly problematic in view of the 2024 state elections in Saxony, Thuringia and Brandenburg in 2024. AfD, which has been classified as right-wing extremist by the Thuringian Office for the Protection of the Constitution, is in first place in current polls for the 2024 state elections in Thuringia: with 34% of the vote.⁷ In Saxony,

an INSA poll puts the AfD at 37%, well ahead of the Christian Democratic Union of Germany (Christlich Demokratische Union Deutschlands, CDU) at 29%, and in Brandenburg at 32%.⁸ If far-right parties do win parliamentary majorities, there is a risk that top positions will no longer be filled by democratic judges.

Quality of justice

Resources of the judiciary (human/financial/material)

Although there were about 22,000 judges in Germany in 2020, there will not be enough personnel in the German courts to handle all the cases, leading to serious delays in the judicial process. This affects all branches of the judiciary.

In 2023, the Federal Constitutional Court ruled that an excessively long detention review procedure violates the fundamental right to effective legal protection. It ruled this in the case of a criminal defendant who had been in pre-trial detention for almost a year before the first review. “Effective legal protection also means legal protection within a reasonable period of time”, the Federal Constitutional

6 <https://www.bundestag.de/richterwahl#:~:text=text%3F%3F%3F&text=Die%2016%20Richter%20des%20Bundesverfassungsgerichts,Absatz%201%20Satz%201%20BVerfGG>

7 <https://www.rnd.de/politik/afd-in-thueringen-34-prozent-wuerden-rechtsextremistische-partei-laut-insa-umfrage-waehlen-Q5JD7NQPIZJAVCIEEK7QAU6B3E.html>

8 <https://www.fr.de/politik/afd-regierung-umfrage-ostdeutschland-sachsen-anhalt-thueringen-brandenburg-link-cdu-zr-92575784.html>; <https://www.sueddeutsche.de/politik/wahlen-erfurt-umfrage-afd-kommt-in-thueringen-auf-34-prozent-dpa.urn-newsml-dpa-com-20090101-231109-99-882552>

Court emphasized.⁹ Criminal proceedings were also delayed in many other cases in 2023. In North Rhine-Westphalia, for example, there were 226,000 open investigations at the end of March 2023.¹⁰

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

The practice of publishing court decisions remains totally inadequate (see below). Unfortunately, court decisions are not generally and centrally published. Only individual high courts, such as the Federal Constitutional Court or the Federal Court of Justice, publish their judgements. The free and publicly accessible case law database “OpenJur” has been sued because a published court decision was only partially anonymized. The mistake had been made by the court, not OpenJur. The core question is whether OpenJur is liable for decisions published by the courts, and whether OpenJur has a proactive duty to check for any anonymization errors. Should OpenJur be held liable for anonymization errors by third parties, this could mean the end for the non-profit

project, which is only financed by donations. After all, the case involves a financial risk of almost 13,000 € for OpenJur in the first instance alone.¹¹

Fairness and efficiency of the justice system

Length of proceedings

The denial of interim relief measures for access to information claims, even those of journalists and public watchdogs, remains a problem as it impairs the efficiency of the justice system and undermines the right of access to information.

In addition to the problem that journalists and the public are denied access at a time when the information is most relevant, the risk increases that relevant information is being deleted or goes missing in the course of the proceedings. This risk is especially high when it comes to digital communication, such as SMS, e-Mails or messenger communication. There have been numerous cases in which SMS or messenger communication of politicians and public officials has been deleted, despite its relevance in ongoing parliamentary investigation, or in one case, being the subject of a legal dispute.¹²

9 <https://www.lto.de/recht/nachrichten/n/bverfg-2bvr82523-haftpruefung-fortdauer-olg-frankfurt-untersuchungshaft/#:~:text=Befindet%20sich%20ein%20Beschuldigte%20länger, die%20Fortdauer%20der%20Haft%20rechtfertigen>

10 <https://www.lto.de/recht/justiz/j/staatsanwaltschaft-nrw-personalmangel-demografischer-wandel-arbeitsbelastung-unbesetzte-stellen/>

11 <https://www.faz.net/aktuell/feuilleton/medien/klage-gegen-openjur-bedroht-deren-existenz-19112613.html>; https://openjur.de/i/openjur_wird_verklagt.html

12 Vivian Kube and Hannah Vos, [Oops, we löscht it again!](#), 13 November 2023, Legal Tribunal Online.

Execution of judgements

In 2023, the German Bundestag decided to halve the length of alternative custodial sentences in future by reducing the conversion factor from fines to alternative custodial sentences to 2:1. The system of alternative custodial sentences has been the subject of much doctrinal debate in the past. Previously, if a person was unable to pay a fine, s/he had to spend one day in prison for every day of the fine. With the halving introduced by the reform, a person sentenced to 50 daily rates, for example, will only have to spend 25 days in prison. In the future, offenders must also be explicitly informed of the possibility of performing community service as an alternative to imprisonment.

However, the entry into force of the regulation has now been postponed from October 1 2023 to February 1 2024.¹³

Quality and accessibility of court decisions

The lack of transparency of Court decisions due to the fact that no legal obligation to publish such decisions is in place continues to be a problem for the quality of the justice system. It is highly likely that the current rates of public court decision is similar to the statistics summarized

in 2021, according to which only less than 1% of court decisions are being published.¹⁴ Even for the highest courts, an obligation to publish only arises if the decisions are deemed “worthy of publication” by the courts. However, this criterion is only assessed by the judges themselves, without any possibility of legal review. Many courts lack any systematic procedure for publications, so that judges are not even aware of how to initiate the publication of their own decisions.

Sec. 353d No. 3 of the Criminal Code (Strafgesetzbuch – StGB) prohibits, without exception, any publication of the text of documents relating to ongoing criminal proceedings. Therefore, the access to court decisions other than final judgments is almost completely excluded for the general public. Journalists face criminal prosecution if they publish such decisions or cite those in their reports, even if they make sure that the rights of privacy of the affected person and the right to fair trial are being respected, and an overriding public interest is clearly apparent. Several journalist unions, a lawyer association and other NGOs claim that the criminalization of publication of court decisions by Sec. 353d No.3 StGB is against the German Federal Constitution and the case law of the European Court of Human Rights.¹⁵

13 <https://www.lto.de/recht/nachrichten/n/beschluss-bundestag-halbierung-ersatzfreiheitsstrafe-reform-sanktionsrecht/>; <https://www.lto.de/recht/hintergruende/h/ersatzfreiheitsstrafe-haft-gefaengnis-geldstrafe-umrechnung-it-software-bund-laender-bayern-linke/>

14 Hanjo Hamann, “Der blinde Fleck der deutschen Rechtswissenschaft - Zur digitalen Verfügbarkeit instanzgerichtlicher Rechtsprechung“, JZ 2021, 656.

15 See joined press statement, 11 January 2024, <https://fragdenstaat.de/blog/2024/01/11/strafrechtsreform-zur-abschaffung-von-353d-nr-3-stgb-nutzen/>; ECtHR, 28 June 2011, Pinto Coelho v. Portugal, application no. 28439/08.

Anti-corruption framework

Key recommendations

- *Conflict of interest regulation needs to be strengthened especially for high-ranking public officials and members of parliament; regulation of post-employment activities should be improved substantially, and the scope widened to include high-ranking public officials of top-level government bodies.*
- *The recently reformed lobby register should be complemented by a comprehensive decision-making footprint/legislative footprint.*
- *The criminal law on bribery of parliamentarians should be strengthened.*

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

The rules governing post-office employment are still in need of a comprehensive reform. The cooling-off period for members of the federal government should be extended from the current maximum of 18 months, and sanctions should be introduced. For high-ranking officials, the weak rules for all civil servants are not sufficient. For this group, the mechanism for preventing conflicts of interest should be brought closer to the system for members of the government, where an advisory body makes a public recommendation on the need for a cooling-off period in each individual case.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Lobby transparency

The reform of the lobby register law (Lobbyregistergesetz – LobbyRG) addressed many of the shortcomings of the existing register. For example, lobby consultancies and other hired lobbyists must now declare precisely who they are working for to influence which decision and how much they earn per mandate. In addition, all registrants are required to provide information on which laws they are trying to influence and what their main interest is in the decision-making process. This includes an obligation to upload written statements. This applies to national laws and regulations, but also if the lobbying activities relate to a German government's position on EU legislation.

Another improvement is that it is no longer possible to refuse to provide information on lobbying expenses or sources of income. It is now mandatory for all registrants to provide an estimate of their expenditure, an overview of their main sources of income and to make transparent private contributions and public funding above a certain threshold.

The scope of the law has been moderately broadened to include lobbying activities directed at the lower levels of government ministries, but this is not enough, as non-leading officials are still outside its scope. Another shortcoming of the new law is that the exemptions for employers' associations, trade unions, churches and other religious organisations have not been reduced.

Political parties and campaign financing

The recent reform of the Political Parties Act (Parteiengesetz, PartG) included some measures to increase transparency in the financing of political parties and third-party election campaigns. The threshold for the immediate publication of individual donations to parties was moderately lowered from €50,000 to €35,000. The general threshold of €10,000, above which individual donations must be published in the annual accountability reports, was not lowered though. Both thresholds remain too high and should be lowered significantly.

A good improvement is that, for the first time, political parties will have to report in detail on income from sponsorship in their accountability reports. This has been a long-standing demand of transparency NGOs.

Another welcome step is the introduction of rules on third-party election campaigns. Parties are now required to either accept or reject third-party support in the form of campaign activities. If they accept, the financing of the third-party campaign must be made transparent according to the same rules that apply to political parties.

Rules on preventing conflicts of interest in the public sector

The rules for preventing conflicts of interest should be updated, as several cases involving high-ranking public officials in government ministries have shown this year. In 2023, several cases of conflicts of interest have been documented. For example, CDU politician Inge Gräßle, who is a shareholder of the Uniper Group, used her mandate to inquire information about public investment in Uniper.¹⁶ For the management of financial conflicts of interest, it is particularly important to introduce some form of asset disclosure, which currently does not exist at all for members of government and high-ranking public officials.

16 <https://www.abgeordnetenwatch.de/recherchen/nebentaetigkeiten/wie-abgeordnete-in-eigener-sache-politik-machen>

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

The criminal law on corruption and bribery of members of parliament still needs to be strengthened. This is clearly illustrated by several cases related to the public procurement of facial masks during the Covid-19 pandemic. Several parliamentarians used their position as members of parliament and their privileged access

to the Ministry of health (Bundesministerium für Gesundheit) and other relevant authorities to make deals in exchange for substantial provisions and personal gain. However, the criminal prosecution had to be dropped because the Criminal Code only criminalises corrupt conduct when and if it is related to the sphere of parliament.¹⁷ Thus, members of parliament who use their influence in government for private gain cannot be legally prosecuted. This is in stark contradiction to the public's perception of what should be legal and what should be illegal.

Media environment and media freedom

Key recommendations

- *The federal government needs to introduce legislation to create a right to information of the press as regards federal authorities; Bavaria and Lower-Saxony need to introduce freedom of information at the Länder level.*
- *The federal government needs to introduce effective safeguards against SLAPPs, by implementing the EU Commission's recommendation on strategic lawsuits against public participation, which is in force since April 2022.*

Online media

Competence and powers of bodies or authorities supervising the online ecosystem

In Germany, the regulation and supervision of the online ecosystem are

closely tied to the evolution and adoption of the Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG). The act has been designed to combat the spread of illegal content and hate speech on social media. The Federal Office of Justice (Bundesamt der Justiz, BfJ) monitors the compliance of

¹⁷ <https://www.sueddeutsche.de/politik/corona-maskenaffaere-nuesslein-sauter-1.5467427>; <https://de.wikipedia.org/wiki/Maskenaff%C3%A4re>.

online platforms with the rules outlined in the NetzDG and can further issue sanctioning proceedings.

However, the regulatory landscape has changed with the emergence and adoption of the Digital Services Act (DSA). The DSA, which aims to establish a comprehensive regulatory framework for digital services and providers across the EU, has arguably rendered the NetzDG somewhat irrelevant. As discussions unfold regarding the competence and powers of bodies overseeing the online ecosystem, it becomes apparent that the regulatory landscape is undergoing significant changes – at least in Germany. Since August 2023, the DSA applies to the very large online platforms (VLOPs) such as Meta, Amazon, Google, and TikTok. As a result, the NetzDG is no longer applicable. The VLOPs are required to report to the European Commission directly, which in turn renders the BfJ powerless when dealing with the major platforms. Furthermore, it is furthermore whether the ongoing proceedings initiated by the BfJ against large platforms such as X and Meta will be concluded.

By February 2024, the DSA will apply to all online services and providers. To ensure proper implementation of the new regulatory framework, the DSA requires that the EU member states appoint so-called digital services coordinators (DSCs) by the same deadline. The DSCs will serve as points of contact for civil society, researchers, and more. Moreover, the DSC is responsible for monitoring the compliance to

the DSA by providers and platforms based in Germany.

The federal government is currently in the process of adopting the Digital Services Law (Digitale-Dienste-Gesetz, DDG), which comprises the implementation of the DSA in Germany and further appoints the national DSC in Germany. The DDG draft law intends to appoint the Federal Network Agency (Bundesnetzagentur, BNetzA) as Germany's DSC, but does not foresee a role for the BfJ, which has been appointed under the NetzDG. The current draft further outlines the implementation of the DSA in Germany and touches upon the tasks and responsibilities of the DSC. It also discusses the future role of the media regulators.

In addition to these changes, it is also important to note that the federal government is already behind schedule. This means that the DDG will not be adopted by February 2024, and as a result, Germany will initially not have a DSC supervising the online ecosystem.

Public trust in media

According to a study commissioned by the German broadcaster WDR, most Germans consider media coverage to be credible.¹⁸ Particularly during periods of crises, public service providers and daily newspapers are regarded as valuable and essential sources of information. Yet, the study also reveals that fewer institutions

18 <https://www.tagesschau.de/inland/gesellschaft/vertrauen-glaubwuerdigkeit-medien-100.html#:~:text=Öffentlich%20Rechtlichen%20Radiosendern%20wird%20mit,Angeboten%20sind%20es%2052%20Prozent>

today enjoy the same level of trust as they did during the COVID-19 pandemic, as shown in the comprehensive study commissioned by WDR in the fall of 2020. Since then, trust in the federal government, the Bundestag and the Federal Constitutional Court has significantly declined. Similarly, trust in entities such as the police, Stiftung Warentest (a German consumer organisation), and consumer protection agencies has also decreased from previously high levels. However, public-service broadcasters maintain a higher level compared to other media, including newspapers and private radio broadcasters, even though they are also experiencing a decrease in trust. Despite this decrease, most Germans still find public-service broadcasters to be indispensable.

A 2023 study by the Konrad Adenauer Foundation (Konrad Adenauer Stiftung - KAS) found that 58 % of East Germans trust political news reported by public media, while 73 % of West Germans do the same. This growing gap in trust between East and West suggests a growing scepticism among East Germans regarding public media. Despite this divergence, the overall trust in public media remains high.¹⁹

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

Germany has slipped five places to 21st place in the press freedom ranking of Reporters Without Borders (Reporter ohne Grenzen - ROG). The reason is, among other things, the increasing number of attacks on journalists: with 103 physical attacks on media professionals, ROG documents the highest level since the counting began in 2015. In the calendar year 2021 there were 80 attacks, in 2020 there were 65. “Many governments and social groups are trying to prevent critical reporting,” said ROG board spokesman Michael Rediske. This means that the number of attacks in Germany has risen to a record high.²⁰

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Legal safeguards against SLAPPs (strategic lawsuits against public participation) are still almost completely lacking; similarly, there are no government-funded information or support structures for affected journalists.

There have been a number of lawsuits against journalists and media outlets in Germany in 2023 that can be qualified as SLAPPs. Among

19 <https://www.tagesspiegel.de/gesellschaft/glaubwuerdigkeit-der-offentlich-rechtlichen-medien-vertrauen-der-ost-deutschen-sinkt-auf-58-prozent-9952497.html>

20 <https://taz.de/Pressefreiheit-in-Deutschland/!5931475/>

them are intimidation attempts by the law firm of the band “Rammstein”, which has threatened potential victims of abuse with legal proceedings if they testify against the lead singer of the band, Till Lindemann.²¹

Confidentiality and protection of journalistic sources (including whistleblower protection)

In 2023, a regional court decision weakened the protection of journalistic sources in Germany. The Berlin Regional Court found that a specific non-disclosure agreement between the journalist and the source is required for a duty of confidentiality (decision of July 6 2023). The Press Code, which regulates confidentiality and whistleblower protection in journalism, is not legally binding; without a separate agreement, there is no protection of sources.

Equally critical is a decision by the Stuttgart Higher Regional Court (November 7 2023), which ruled that the search and confiscation of storage media from a radio-journalist was lawful. The reason for the measures was an article by the radio station that linked to an archive of a banned association. The public prosecutor deemed this to be a criminal offence of supporting a banned association. The journalist concerned filed a constitutional complaint against the decision, claiming that it constituted a serious violation of the freedom of the press.

The Whistleblower Protection Act (Hinweisgeberschutzgesetz, HinSchG), which came into force in 2023, does not strengthen the protection of whistleblowers who contact the press either: in principle it is not possible to inform the press directly about misconducts, even if the public interest would prevail. The strict requirements are likely to further discourage disclosures.

Access to information and public documents

In contrast to the recommendation of the EU Commission in its 2023 Rule of Law Report, Germany has still not taken forward the plan to create a legal basis for a right to information of the press as regards federal authorities, even though it is included in the coalition agreement. However, even regarding the authorities of the *Länder*, journalists do not have the right to access documents but only to have their questions answered. To gain access to public documents, they need to base their claims on the freedom of information acts of the *Länder*, which still do not exist in Bavaria and Lower-Saxony.²² Furthermore, there are considerable differences among the *Länder* as some include broad exceptions, such as the transparency legislation of Saxony. Many *Länder* such as Berlin have not updated their legislation, even though this has been on the agenda and in the coalition contracts for many years.²³

21 https://www.t-online.de/unterhaltung/stars/id_100188992/rammstein-skandal-lindemann-schaltet-anwaelte-ein-geht-in-die-offensive.html

22 <https://netzpolitik.org/2022/neues-transparenzgesetz-fuer-sachsen-wir-hinken-teilweise-weit-hinterher/>

23 <https://netzpolitik.org/2022/sachverstaendiger-heimgeschickt-spd-blockiert-erneut-berliner-transparenzgesetz/>

The lack of systematic digitalization and proper filing of documents increases to hamper the rights to access information. Even though the Federal Constitution obliges state authorities to document their actions truthfully and completely, there is almost no legislation in place that concretizes this constitutional principle. The large part of handling of official information is only regulated by internal directives or data security measures. At federal level, the so-called Registry Directive (Registraturrichtlinie) was issued within the framework of Sec.12(2) of the Joint Rules of Procedure of the Federal

Ministries. In addition, various ministries have issued their own records directives. These directives, however, remain very vague and lack concrete guidelines on how to handle digital communication. In addition, they do not include any concepts of how to implement the filing of such data in practice, any enforcement mechanism or any sanctions. Therefore, it is up to each public official how to file their own documents, and there is little possibility for the public to control or to enforce that documents are being archived correctly.²⁴

Checks and balances

Key recommendations

- *The federal government needs to end the practice of excessively short deadlines for public participation in stakeholder consultations in the legislative process, which de facto prevented public participation in several complex legislative projects in 2023.*
- *The readability of draft legislation needs to be improved, e.g. an obligatory use of synopsis for draft bills.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Improving the readability of draft legislation is a pressing concern in an era of growing political disenchantment and the proliferation of false claims and conspiracy theories. One reason for the poor readability of many draft laws is the technique of amending laws by means of amendment orders. As a result of this technique, proposed amendments only make sense when viewed in conjunction with the standards being amended. The often complex

24 <https://www.lto.de/recht/meinung/m/fragdenstaat-akteneinsicht-behoerden-loeschen-sms/>

amendments to already complex legislation are therefore difficult to understand. This problem could be solved by introducing an obligation to provide a synopsis, which would allow a direct comparison between the current and future wording of the norms. Despite criticism from civil society and the parliamentary opposition, a synopsis requirement has still not been introduced.²⁵

According to Sec. 47 (3) of the Joint Rules of Procedure of the Ministries, interest representatives and associations must be given the opportunity to submit statements on draft laws ‘in a timely manner.’ The internal guideline for this is a deadline of 4 weeks.

In practice, ministries are increasingly setting shorter deadlines for the involvement of associations in legislative processes, sometimes just a few days or even hours. Reasons that could justify such short deadlines are not apparent.

Examples of this in 2023 include:

- Amendment to the Climate Protection Act 2023: Deadline of less than 2 working days

- Amendment to the Federal Intelligence Service Act 2023: Deadline of 24 hours²⁶
- Amendment to the Clean Vehicle Procurement Act: 2 working days²⁷
- Amendment to the Sanctions Enforcement Act II: less than 2 working days
- Electricity Price Brake Act (Strompreisbremsegesetz): 20 hours.²⁸

Civil society actors have repeatedly expressed criticism of this practice,²⁹ without any changes having been made so far. Effective participation of associations is not possible without sufficient time for statements.

Independent authorities

Germany has established a Commissioner for Data Protection and Freedom of Information at the federal level and in the 14 Länder that have adopted freedom of information legislation. While these institutions have in some cases made a significant contribution to strengthening the right to access information and supporting individuals and civil society, there remain several shortcomings. First, the election of such

25 Bundestag Ds. 19/26315; <https://verfassungsblog.de/die-lesbarkeit-von-gesetzentwurfen/#commentform>

26 <https://netzpolitik.org/2023/bnd-gesetz-bundeskanzleramt-simuliert-verbaendebeteiligung-mit-24-stunden-frist/>

27 <https://twitter.com/JensHilgenberg/status/1663437302113157120>

28 <https://anwaltverein.de/de/newsroom/verbaeandeanhoerung-kurze-fristen-fuehren-prozess-ad-absurdum>; <https://netzpolitik.org/2023/bnd-gesetz-bundeskanzleramt-simuliert-verbaendebeteiligung-mit-24-stunden-frist/>

29 <https://gi.de/meldung/offener-brief-ausreichende-fristen-fuer-verbaendebeteiligung>

commissioners is highly non-transparent and therefore not in line with the EU General Data Protection Regulation.³⁰ Second, while these commissioners have far-reaching powers in the area of data protection, such as the right to issue orders, their room for manoeuvre in relation to freedom of information is limited to the function of an Ombudsperson. They advise citizens who make requests under freedom of information laws, mediate between the person making the request and the authority in the event of a dispute, can draw attention to shortcomings and call for legal reforms through activity reports to parliaments and recommendations. In addition, they can also visit authorities and issue complaints if they disregard the provisions of freedom of information legislation. However, they lack any means to enforce their legal opinion against the authorities. In addition, the Commissions have much less financial resources and personnel at their disposal when it comes to freedom of information.³¹

Electoral framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidati

The German federal parliament (Bundestag) and the Berlin House of Representatives (Abgeordnetenhaus Berlin) elections on September 26 2021, in Berlin were seriously

flawed: long queues formed outside polling stations, ballot papers were missing or incorrect, there were too few polling booths and some polling stations had to be temporarily closed or stayed open much longer than planned. As a result, the House of Representatives and district elections had to be completely repeated in February 2023.

In December 2023, the Federal Constitutional Court annulled the election to the Bundestag in a further 31 constituencies in the state of Berlin and the associated postal voting districts. Instead of 431 - as decided by the review committee of the Bundestag - a new election must be held in 455 constituencies. A date for the partial re-run of the Bundestag election has already been set for February 11 2024.³²

30 <https://fragenstaat.de/blog/2023/06/27/wir-unterstuetzen-bewerbung-von-malte-engeler-in-sachsen-anhalt/>

31 <https://www.lto.de/recht/meinung/m/akteneinsicht-fragenstaat-informationsfreiheit-beauftragte-machtlos.>

32 <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2023/bvg23-119.html>; <https://www.tagesschau.de/inland/berlin-wahl-wiederholung-106.html>

Civic space

Key recommendations

- *The tax law that is de facto regulating most civil society organisations in Germany must be reformed to allow and protect public participation and advocacy work of civil society organisations.*
- *Section 129 of the Criminal Code must be reformed to ensure it is not used to criminalize political movements.*

Freedom of association

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

After the Federal Fiscal Court (Bundesfinanzhof, BFH) revoked the non-profit status of the campaign organisation Campact and the anti-globalisation network Attac for excessive political involvement, Campact is now calling on the tax authorities to review the non-profit status of the Taxpayers' Association (Bund der Steuerzahler, BdSt) and its associations in the *Länder*. Backed by a legal report, Campact claims that the BdSt is not politically neutral and therefore does not meet the criteria for non-profit status. This action reflects a wider conflict over the equal treatment of civil society organisations, in particular the extent to which political activities by left- and right-wing organisations are compatible with non-profit

status. The funding framework for civil society organisations, including the availability of and access to public funding, rules on fundraising, rules on foreign funding, tax rules (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations through the allocation of citizens' income tax for charitable purposes, eligibility to use public facilities at low or no cost etc.).

Other

The legal uncertainties concerning public participation and political activity of civil society organisations with tax-exempt status (public benefit organisations) have not been resolved,³³ albeit the coalition treaty stipulating a reform that would improve the situation of civil society organisations. While in the middle of the year a reform plan with the intended improvements was announced for 2023, no further legislative reforms have been initiated – we expect the reform in 2024.

33 Liberties Rule of Law Report 2020, Germany, p. 12.; Liberties Rule of Law Report 2021, Germany, p. 17.

At the same time, *Bund* and *Länder* finance ministers implemented an administrative decree from 2022 (*Anwendungserlass der Abgabenordnung*)³⁴ that increases the legal uncertainty of civil society organisations tax exemption status in case of significant political activity.

The pressure on civil society organisations that maintain political activities remains. Some have increasingly faced legal action and threats by political opponents aiming to prevent them from publicly expressing criticism and generally from continuing their advocacy work. Anti-democratic actors, mostly right-wing extremists and the AfD, use the legal situation to intimidate organisations whose work is contrary to the party's ideology.³⁵ They continue to publicly discredit non-profit organisations that work against right-wing extremism and demand that their tax-exempt status be revoked. They argue that tax-exempt civil society organisations are not allowed to publicly criticize a political party or to identify right-wing extremist positions or antisemitism within the party, basing their arguments on the Attac case law of the Federal Fiscal Court. Many civil society organisations

withdraw from public debates because of the legal uncertainties, and because of a case law by the Federal Fiscal Code³⁶ that only allows tax-exempt civil society organisations to engage in political matters if strictly necessary to pursue the activities included in the Fiscal Code. A survey from 2023 by Civil Society in Numbers (*Zivilgesellschaft in Zahlen, ZiviZ*) showed that 5% of all NGOs reduced their political activities, due to this provision.³⁷

The legal uncertainties also seem to have influenced administrative proceedings, which take unreasonably long and thus become an additional burden for some organisations. For instance, in the case of the Democratic Center in Ludwigsburg (*Demokratisches Zentrum Ludwigsburg*), the civil society organisation waited almost three years for a decision by the financial authorities on whether their tax status remains withdrawn, inter alia, on grounds of breaching the principle of neutrality by taking a clear stance against right-wing extremism, after the first announcement of withdrawal in June 2019.³⁸ The resulting financial insecurity threatens the very existence of such donation-based local civil society organisations.³⁹

34 Administrative decree on tax code application, published by the Ministry of Finance, 12 January 2022, 2022/0001873, p. 5f.

35 See for example the case of "Fulda stellt sich quer".

36 Judgment of the Federal Financial Court of 10 January 2019, V R 60/17; Judgment of the Federal Finance Court of 10 December 2020, V R 14/20.

37 Schubert, Peter; Tahmaz, Birthe; Krimmer, Holger. *Erste Befunde des ZiviZ-Survey 2023: Zivilgesellschaft in Krisenzeiten: Politisch aktiv mit geschwächten Fundamenten*, 2023, p. 25.

38 For further information, see: <https://freiheitsrechte.org/themen/demokratie/demoz>

39 For another case, in which the decision of the financial authorities took more than two years after the tax declarations were submitted, see <https://freiheitsrechte.org/pm-stellungnahme-changeorg/>.

Furthermore, the loss of the tax exemption status excludes civil society organisations from many sources of public funding – as one of the most common requirements of state sponsored programs or direct government grants is the status as a tax-exempt organisation, especially in the field of civil society subsidies programs.⁴⁰

Public participation and political activity for civil society organisations are further restricted because, according to the current legal situation, any organisation that is mentioned in the public reports of the internal intelligence services (Landesämter or Bundesamt für Verfassungsschutz) is practically automatically deprived of its tax-exempt status. This is due to a reversal of proof in the fiscal code (section 51, paragraph 3, sentence 2 of the tax code Abgabenordnung, AO), according to which organisations – once mentioned in such a report – must prove that they are not extremist in order to uphold the tax-exempt status.⁴¹ In addition, as the sources of the intelligence services are often confidential, the civil society organisations do not have access to the information on which the claims are being made and can hardly rebut it. The possibilities of legal protection are therefore extremely narrowed. This restrictive financing framework creates chilling effects on civil society organisations that might prevent financially less stable local organisations from engaging in public debates.

Such chilling effects, as well as the generally sanction-like character of the tax law, may amount to an infringement on the right of civil society organisations to pursue political goals (provided that they do so by using lawful and democratic means and provided that the aims advocated for are compatible with the fundamental principles of democracy) that is guaranteed to them as freedom of expression and freedom of association under Articles 10 and 11 of the European Convention on Human Rights (ECHR).⁴²

Criminalisation of activities, including humanitarian or human rights work

Climate activists in Germany have increasingly resorted to actions of peaceful civil disobedience to express their criticism of the German government's failure to reduce carbon emissions. Activist group Last Generation has repeatedly used sit-in protests to block road traffic in German cities, which can be punishable as coercion.

However, public prosecutors and courts have increased pressure on the activists. In December 2022 and May 2023, raids were carried out across Germany, and bank accounts and a website were confiscated on the grounds that Last Generation is a criminal organisation according to Sec. 129 of the German Criminal Code (Strafgesetzbuch – StGB). The

40 The latest example of this is [the draft of the democracy support act](#).

41 See for instance, the case of Vereinigung der Verfolgten des Naziregimes – Bund der Antifaschistinnen und Antifaschisten VVN-BdA, an association founded by Holocaust survivors.

42 See legal analysis by Prof. Dr. Wiater, <https://freiheitsrechte.org/pm-rechtsgutachten-gemeinnuetzigkeit/>

application of this norm to peaceful climate protest has far-reaching consequences for the entire climate movement that cannot yet be fully assessed. Section 129 StGB is usually applied in the milieu of organized crime, not against a political movement that is accused of petty offences. The investigations based on Section 129 StGB allow the use of investigative measures that deeply interfere with the fundamental rights and lead to a chilling effect far beyond the Last Generation.⁴³

Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid

Germany implemented the Directive on Collective Redress (Verbandsklagenrichtlinienumsetzungsgesetz, VRUG) on July 7 2023. The implementation of the Directive strengthens collective redress for consumers significantly. The adoption of the implementation law was preceded by a process of lengthy negotiations between the policy officers of the Federal Ministry of Justice (Bundesministerium der Justiz) and the Federal Ministry for the Environment (Bundesministerium für Umwelt). The latter had repeatedly pressed for greater consideration of consumer law issues in the draft. There was a threat of EU infringement proceedings over the project, as the implementation deadline had already expired on December 25 2022.

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation in assemblies

In 2023, a travel ban was imposed on activist and chairman of the Association of Persecutees of the Nazi Regime - League of Anti-Fascists (Vereinigung der Verfolgten des Naziregimes - Bund der Antifaschistinnen und Antifaschisten, VVN-BdA), prohibiting him from participating in an anti-fascist protest in Bulgaria. The Federal Police thus massively interfered with the plaintiff's freedom of assembly on the basis of a provision in the Passport Act, allegedly to protect the "reputation of the Federal Republic of Germany". With the support of GFF and the VVN-BdA, the activist is taking legal action against the travel ban, arguing that the possibility of imposing travel bans must not be misused to undermine freedom of assembly.⁴⁴

Bans on protests

Germany has seen an increasing use of general rulings to ban peaceful assemblies in 2023. Since the end of 2022, several cities, including Munich, Aschaffenburg, Nuremberg, and Braunschweig, have imposed extensive bans on climate protests, leading to fines of up to €3,000 for violations. Munich, for example, banned climate-related protests on over 300 streets for almost a month in December 2022, as well

43 <https://freiheitsrechte.org/uploads/documents/Demokratie/Green-Legal-Spaces-Report-2023.pdf>

44 <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/gff-und-bund-der-antifaschistinnen-klagen-gegen-ausreiseverbot-fuer-aktivisten-hinderung-an-protestteilnahme-im-ausland-verletzt-die-versammlungsfreiheit>; <https://taz.de/Klage-gegen-Ausreiseverbot/!5942055/>

as for the entire duration of the International Motor Show in August 2023. However, the Administrative Court in Munich overturned a ban issued by Aschaffenburg due to its failure to meet legal requirements. The city of Stuttgart issued the most severe restrictions, imposing a general ruling that banned all unannounced sit-ins by climate activists from July 2023 until the end of the year. The duration of this ban, which lasted almost six months, raises doubts about its proportionality. The Federal Administrative Court has previously deemed blanket bans on assemblies unconstitutional, even for periods as short as 13 days. Furthermore, general orders have been used to ban assemblies and prevent large-scale protests in the context of the evacuation of the protest camp in Lützerath. The district of Heinsberg initially issued a comprehensive ban on entering and staying in the area, while the assembly authority imposed a ban on assembly in the vicinity of Lützerath for the same period. It is worth noting that the practice of banning protests through general orders is not limited to climate activism. Demonstrations on various topics are increasingly being prevented in this manner.⁴⁵

In the aftermath of the terrorist attacks by Hamas on Israel on October 7th, several cities issued general ruling prohibiting pro-Palestinian assemblies. Several courts have declared the blanket bans unlawful in this context, while other courts upheld the general rulings.⁴⁶

Bans on the use of symbols/slogans in protests

In early November, Federal Minister of the Interior Nancy Faeser of the Social Democratic Party of Germany (Sozialdemokratische Partei Deutschland, SPD) banned the Palestinian slogan, “From the River to the Sea, Palestine will be free.” The reason given: The slogan is an emblem of the banned organisations Hamas and Samidoun. Anyone who violates the ban can now be prosecuted under Section 20 of the Associations Act (Vereinsgesetz) and Section 86a of the Criminal Code. Fines and prison sentences of up to three years are possible.⁴⁷ Previously, the slogan had not been considered punishable in itself. This is due to the fact that the meaning of the slogan is disputed and, according to the case law of the Federal Constitutional Court, the criminal courts are obliged to apply the non-punishable interpretation to ambiguous statements if they cannot rule them out for other reasons in the individual case.

Attacks and harassment

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

In 2023, an increasing number of right-wing networks have issued warning letters and

45 <https://freiheitsrechte.org/uploads/documents/Demokratie/Green-Legal-Spaces-Report-2023.pdf>

46 <https://verfassungsblog.de/pro-palastina-als-unmittelbare-gefahr/>

47 <https://taz.de/Umstrittene-Palaestinenserparole/!5969471/>

filed lawsuits to exert pressure on people in activism, politics, science, art and journalism. Interventions frequently affect people who publicly express criticism of right-wing extremist structures and content. In the past, people or institutions that speak out publicly against right-wing extremist structures, parties and actors have repeatedly been the target of intimidation, threats or physical assaults. For example, Sahak Ibrahimkhil received a SLAPP in 2023 after he reposted and commented on a photo that had been circulating on the internet for several years. The picture shows, among others, the former President of the Federal Office for the Protection of the Constitution Hans-Georg Maaßen and the right-wing populist journalist Roland Tichy. A few weeks later, Ibrahimkhil received two warning letters in the post. He was told to delete the post and to undertake under penalty of law never to distribute the image and his comments again. The lawyers also demanded that Ibrahimkhil reimburse the costs incurred for the two letters.

This strategic use of legal proceedings to silence criticism threatens freedom of expression. The victims of a SLAPP are often unable to defend themselves because there is no meaningful protection. More than three quarters of those affected by SLAPPs from right-wing activists who have not taken legal action against a warning cite financial reasons.⁴⁸

Digital surveillance

GFF, together with a Facebook user, is taking legal action against Meta to prevent the company from conducting automated scans of messenger messages. GFF seeks, through this lawsuit, to establish the illegality of broad chat controls. Meta justifies its actions by citing a temporary exemption for scans related to child abuse material.⁴⁹

Attacks, threats and hate speech online

In April 2023, the Federal Ministry for Justice (Bundesministerium der Justiz, BMJ) published key points of its planned law against digital violence, as has been announced in the coalition agreement in 2021. According to the BMJ's initial ideas, the law will make it easier to request information for those targeted by digital violence and will also introduce court-ordered account suspensions to efficiently combat digital violence. Feedback on the published key points has been mixed, with some civil society organisations worried that the reform of information claims will be too far-reaching. The law is expected to be adopted in 2024.

In 2023, the Frankfurt Regional Court reached a landmark decision on content liability on social media: In the event of the posting of illegal content, such as hate comments, the individual associated with the account from which it was posted is obligated to ensure its removal.

48 <https://fragdenstaat.de/blog/2023/06/20/im-ersten-moment-war-ich-einfach-nur-uberfordert/>; <https://fragdenstaat.de/aktionen/gegenrechtsschutz/>

49 https://freiheitsrechte.org/themen/freiheit-im-digitalen/chatkontrolle_facebook

This obligation persists even if the individual becomes aware of the content, receives a request to delete it, and denies personal responsibility for the post, citing potential unauthorized access to the account by someone else.⁵⁰

Law enforcement capacity to investigate online threats and attacks

The number of officers in the Federal Police Office (Bundeskriminalamt, BKA) is set to be increased in 2024 as part of the implementation of the DSA in Germany, however, the necessity to sensitize law enforcement to digital threats and violence has not been recognized. The needed training for law enforcement is also not touched upon in the key points of the planned law against digital violence.

Other

Measures to facilitate access to law enforcement or to file legal proceedings against digital violence are put on the back burner; neither the planned law against digital violence nor the law implementing the DSA in Germany address this issue.

The planned act on the promotion of democracy (Demokratiefördergesetz) addresses support structures for those affected by discrimination and extremism; while digital violence is not mentioned specifically, this is already a significant development and a step in the right

direction. However, no progress has been made in the adoption of the law as the coalition parties cannot find an agreement.

Public participation

Rules and practices on dialogue with civil society

In Germany, there is little regulated citizen participation and it is practised mainly at municipal level (in the area of building and planning law). It is used less frequently at state and federal level, where participation takes place via written statements. Individuals can submit their comments directly to the authority, which must also respond in writing. These procedures tend to have a very low deliberative quality, as there can be little real exchange of ideas with mutual influence on the point of view. The current forms of legally regulated citizen participation are therefore often perceived as inflexible and outdated, and proposals to modernize the procedures have not yet been legally implemented.⁵¹

Impact of civic space of emergency and crisis situations

On May 8 and 9, 2023, the end of the Second World War and the liberation from National Socialism were once again commemorated in Berlin. As in the previous year, the Berlin police had issued a general order banning the display

50 <https://hateaid.org/luecke-geschlossen-hateaid-und-claudia-roth-schaffen-praezedenzfall/>

51 https://kommunalwiki.boell.de/index.php/Formelle_Buergerbeteiligung; <https://www.buergergesellschaft.de/mitentscheiden/grundlagen-leitlinien/grundlagen/herausforderungen-der-buergerbeteiligung>

of Russian and Ukrainian flags at assemblies at Soviet memorials in three districts in Berlin on these days. The police had stated that this was to prevent conflicts and clashes against the backdrop of the Russian war of aggression. A German-Ukrainian woman took legal action against the general order - with success: the court lifted the ban on the display of “flags and banners with Ukrainian references and images

of the Ukrainian head of state as well as the playing and singing of Ukrainian marching and military songs”. The ban on Ukrainian flags is - in the words of the court - “obviously unlawful”. Those who exercise their fundamental rights to publicly declare their support for the Ukrainian nation and its historical victims in the defeat of National Socialism are not a threat to public safety.⁵²

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *The federal government must phase out border controls at the German borders to Austria, Poland and the Czech Republic, which are contrary to European law.*
- *The federal government needs to reform Section 201 of the Criminal Code to decriminalize the recording of police operations in public.*
- *The police must restrict the use of so called “pain-grips” against peaceful protesters.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Part of the authorities’ crackdown on climate activists in Germany has been the frequent use of so-called pain grips to break up non-violent

protests such as sit-ins and road blockades. Police use nerve pressure and leverage techniques to inflict severe pain in order to force participants of the sit-in to leave the road. Pain grips can have long-term physical and psychological consequences for those affected. The use of pain grips represents a massive violation of fundamental rights that cannot be justified in the context of the dissolution of peaceful

52 <https://www.rnd.de/politik/tag-der-befreiung-am-8-mai-berlin-erlaesst-flaggenverbot-rund-um-sow-jetische-denkmaeler-5KGVKFA4NBHYLBNOMSLQJDC3SI.html>

assemblies. Because the infliction of pain is not a by-product of the use of force, but the purpose of the measure itself, its use may even constitute a violation of the prohibition against torture. In any case, in many situations it is disproportionate and therefore unlawful because milder means are available to achieve the purpose. For example, carrying away is equally effective in breaking up sit-in blockades. In order to have the legality of the use of pain grips reviewed by the courts, an activist, supported by the Society for Civil Rights (Gesellschaft für Freiheitsrechte, GFF), has filed a lawsuit with the Berlin Administrative Court.⁵³

Central Register of Foreigners

All people living in Germany without German citizenship are registered in the Central Register of Foreigners (Ausländerzentralregister, AZR). In total, around 16,000 public authorities and more than 150,000 government employees can access the register, including the immigration authorities, job centre, youth welfare offices, federal and state police, the Office for the Protection of the Constitution and the Federal Intelligence Service. Eleven refugees, supported by a civil society coalition, have lodged a constitutional complaint against the amended law on the AZR. The constitutional complaint is directed against the fact that

asylum decisions and court rulings are stored in full text in the AZR. These documents often contain highly sensitive information such as individual persecution, political convictions or sexual orientation. The complainants oppose unrestricted access to the data in the AZR by the police and intelligence services. Parallel to the constitutional complaint, the coalition and two refugees have filed a lawsuit with the Ansbach Administrative Court to stop the transfer of their data to the police and intelligence services. The expanded AZR violates fundamental rights and puts asylum seekers at risk.⁵⁴

Impunity and/or lack of accountability for human rights violations

In 2023, the state of evidence to document police violence remains difficult. Using video material as evidence involves significant legal risks. According to the case law of several district courts, it constitutes a criminal offence to record police operations in picture and sound.⁵⁵ In many cases, police confiscate the smartphone or camera or immediately file criminal charges because the recording of film with the accompanying audio is supposedly prohibited under Section 201 of the German Criminal Code. This is one of the reasons why it is difficult to document unlawful police actions which

53 <https://freiheitsrechte.org/uploads/documents/Demokratie/Green-Legal-Spaces-Report-2023.pdf>

54 <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/verfassungsbeschwerde-gegen-erweitertes-azr>

55 OLG Zweibrücken, Beschluss vom 30. Juni 2022, Az. 1 OLG 2 Ss 62/21; for a summary of the decision see <https://www.lto.de/recht/hintergruende/h/olg-zweibruecken-1olg2ss-smartphone-aufnahme-polizei-einsatz-film-ton-201-stgb-straftbar/>.

often amount to human rights violations, e.g. in cases of racial profiling. In 2023, the Hanau Regional Court has now ruled that if a police officer's body cam is switched on during a police operation, the person filming on the other side with filming and recording the sound is not liable to prosecution. According to the court, the recording with the body cam ensures that statements made by police officers can no longer be considered "non-public" within the meaning of the criminal provision §201 of the German Criminal Code (violation of the confidentiality of the spoken word). However, the legal situation remains uncertain. In order to provide clarity for both those affected and the police, it would be helpful, for example, for the legislator to intervene or for the Federal Court of Justice to issue a ruling.⁵⁶

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In April 2022, the Court of Justice of the European Union found that there should be – in principle – no border controls in the European Union. In a case concerning Austria, the CJEU ruled that border controls may only

be reintroduced in the event of a serious threat to public order or internal security and may only be limited to a period of six months and not extended at will.⁵⁷ Despite this clear ruling by the CJEU, Germany has continued its border controls at the German-Austrian border in 2023,⁵⁸ clearly violating the requirements set out by the CJEU.⁵⁹

In mid-October 2023, Germany introduced border controls at the borders with Poland, the Czech Republic and Switzerland. Against the backdrop of the continued and unlawful controls at the border with Austria, this gives rise to concerns that the recently introduced border controls could also be extended over a long time. The tightened controls have the potential to be fatal for asylum seekers, despite the clear legal situation. Whether at the borders with Poland, the Czech Republic, Austria or Switzerland, practitioners have long been aware that people who have tried to apply for asylum have nevertheless been turned away. Moreover, available statistics support the suspicion that individual border sections are systematically turning people away illegally.⁶⁰

56 <https://www.lto.de/recht/hintergruende/h/lg-hanau-1qs2322-polizei-einsatz-filmen-smartphone-straftbar-201-stgb-strafrecht-bodycam/>

57 ECJ, Judgement Cases C-368/20 and C-369/20, 26 April 2022.

58 <https://www.tagesschau.de/inland/innenpolitik/grenzkontrollen-verlaengert-100.html>; <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2023/12/grenzkontrollen-binnengrenzen.html>

59 <https://www.investigate-europe.eu/de/2022/schengen-abkommen-eu-grenzkontrollen-illegal-eugh/>

60 <https://www.proasyl.de/news/rechtswidrige-abweisungen-auch-an-deutschen-grenzen/>; <https://www.lto.de/recht/nachrichten/n/eugh-c14322-zurueckweisung-binnengrenze-drittstaatenangehoeriger-rueckfuehrungsricht-line/>

LIBERTIES

RULE OF LAW REPORT

2024

GREECE

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About the authors

Eleni Takou is a Senior Policy and Research Officer at the Mediterranean Migration and Asylum Policy Hub. Eleni is an expert on migration and hate crime, anti-racism advocacy and strategic communications. She was co-founder and Deputy Director of HumanRights360; she has also worked in the advocacy and programs sector of several NGOs, including the Hellenic League for Human Rights and SolidarityNow. During 2015, she served as Chief of Staff of the Minister for Migration Policy. Prior to this, she was coordinating the Racist Violence Recording Network, a coalition of CSOs under the auspices of the UNHCR office in Greece and the Greek National Commission for Human Rights; she has also been a consultant on issues of statelessness for the UNHCR in Greece. She is co-author of the book *Immigration in Greece - Eleven Myths and More Facts*, published by the Rosa Luxemburg Foundation, and co-editor of *XthemOut: The Black Map of Racist Violence* (Topos editions).

Key concerns

Regarding the justice system, there have been no improvements over the last year. The appointment procedures for the highest senior positions of judges and prosecutors continue to raise concerns. Despite the ongoing efforts for reform, the public have little faith in the judiciary because they believe it is politicised and influenced by commercial interests. The legislature's de facto ability to scrutinise the actions of the executive is further eroded while judicial investigations and investigations by parliamentary committees and independent authorities have been delayed for months and have not yet presented their findings. There is a lack of transparency, as well as incomplete statistics and legal fragmentation. The lack of

trust to independent authorities and the lengthy and expensive procedures in the judicial system serve as a deterrent to proceed. Meanwhile, last-minute amendments in law provisions create confusion regarding the implementation and enforcement of legislation.

With regard to the anti-corruption framework, no progress has been made from the previous year. The perception among experts and the public is that the level of corruption in the public sector continues to be relatively high. Politicians' and public officials' asset declarations do not undergo the necessary scrutiny. Meanwhile, reports on direct procurement underline a discouraging situation: lack of transparency, no timely planning, insufficient evaluation, no system of control, and a waste

of public money. Developments based on the Commission’s 2023 recommendations were also not satisfactory.

In the area of the media environment and media freedom, there has been no progress. Trust in the media in Greece is in constant decline, partly due to perceptions of undue political and business influence on journalism. Freedom of the press is also in decline, and SLAPPs and other methods of harassment are widespread. New legislation includes the formation of a new registry, following the law regulating compliance of online media to journalistic ethics and state advertising funds. Also, in November 2023, the Greek Ministry of Justice presented draft amendments to the penal code which media unions warned could leave journalists at greater risk of serving prison sentences for criminal defamation.







There has been regression in the field of checks and balances. The practice of adopting omnibus legislation and last-minute amendments remains a major concern with regard to the rules of good legislation. The recent changes to the composition and to the way that new members of the independent authorities of the Hellenic Authority for Communication Security and Privacy and the Greek National Council for Radio and Television are selected, has been a major setback in their independence.

There have been no improvements in the civic space since last year. The shrinking of civic space has become a worrying trend in the country in recent years. The criminalisation of solidarity has continued, with several human rights defenders on trial, while excessive use of




violence by the police remained frequent – and frequently unpunished. The mass surveillance scandal commonly known as Predatorgate is still tormenting the Greek public sphere.

Regarding the disregard of human rights obligations and other systemic issues affecting the rule of law environment, there was no progress from 2023. Unlawful pushbacks of refugees and migrants to Turkey constitute a “de facto general policy” of the Greek government.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system

Key recommendations

- *Taking into account European standards on judicial appointments, enhance the independence of the Council of State, the Supreme Court and the Court of Audit through the involvement of the judiciary in the appointment of President and Vice-President.*
- *Conclude the operation of the Office for the Collection and Processing of Judicial Statistics, and provide statistics accordingly.*
- *Expedite the process of digitalisation and reconsider the judicial map to accelerate the processing of court cases in collaboration with civil society and Bar Associations.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The appointment procedures for the highest senior positions of judges and prosecutors continue to raise concerns. In particular, appointments to the most senior positions – such as the President and Vice-President of the Council of State, the Supreme Court, or the Court of Audit – are affected by presidential decree. This process followed a recommendation by the Council of Ministers based on a proposal by the Minister of Justice and an opinion of a parliamentary body. There is no involvement of the judiciary in the appointment procedure and the Constitution excludes unsuccessful candidates from contesting the decision before an

independent court. Although a new law¹ was introduced in 2023, the specific issue was not addressed.

Article 33 of the Law 5028/2023 provides for the increase of organisational positions of political and criminal justice officials. In particular, the organic positions of political and criminal justice judicial officials are increased as follows: a) The Vice-Presidents of the Supreme Court by one, bringing the total number to 11; and b) Areopagites by two, setting their total number to 76. Moreover, article 37 of Law 5028/2023 amends the Code of Judicial Officers (Law 4798/2021) and stipulates the arrangements for the five-member judicial council of judicial officers of the court of appeal and the administrative court of appeal.²

1 et.gr/api/Download_Small/?fek_pdf=20230100054

2 [Άρθρο 37 - Νόμος 5028/2023 - Ρυθμίσεις για το πενταμελές δικαστικό συμβούλιο των δικαστικών υπαλλήλων του εφετείου και του διοικητικού εφετείου - Τροποποίηση παρ. 1 άρθρου 84, παρ. 1 άρθρου 85, παρ. 2 και 7 άρθρου 86, τροποποίηση παρ. 1, 2 | Νομοθεσία | Lawspot](#)

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Despite the ongoing efforts for reform, the public have little faith in the judiciary because they believe it is politicized and influenced by commercial interests. The independence of the judiciary is generally perceived as compromised.³ In April 2023, and only a few weeks before the dissolution of Parliament, a legislative amendment was adopted through art. 35 of Law 5043/2023.⁴ According to this amendment, the fulfilment of the democratic conditions by political parties in upcoming elections is verified by the Plenum. The Plenum consists of the president and all judicial officer members of the A1 Chamber of the Supreme Court, and not its five-member composition, which deals, historically and without exception, with any electoral issue within its competence. This amendment raised serious concerns regarding the principle of the rule of law. Although this amendment was introduced following the experience of Golden Dawn's criminal activity under the cloak of a political party and under the pressure of the establishment of a new far-right political party headed by Ilias Kasidiaris, it introduces a specified provision contrary to

the obligation of general provisions of law and jeopardises the quality of the rule of law.

The Vice-President of the Supreme Court and President of the Court's First Chamber, Mr. Tzanerikos, stated that the amendment in question constitutes a direct interference in the functioning of the Supreme Court. He further stated that it reflects a distrust and lack of confidence in himself, as he led the legislative initiative in this matter, especially with regard to the exercise of his discretionary power to determine the (five-member) composition of the Chamber of which he is President.⁵ However, given that it took a position on a provision that he would have to implement in the near future, this public statement on the content of the amendment was widely considered inappropriate. According to media reports, on 10 April 2023, Mr. Tzanerikos submitted his resignation from the judiciary for reasons of professional conscience.⁶

Remuneration/bonuses for judges and prosecutors

According to the EU Justice Scoreboard 2023,⁷ Greece is third in the EU in terms of the number of judges per 100,000 inhabitants, with around 37 judges. Greece spends 0.35% of its budget on the judicial system, which is significant in relation to its gross national income and

3 <https://europa.eu/eurobarometer/surveys/detail/2667>

4 [et.gr/api/Download_Small/?fek_pdf=20230100091](https://www.et.gr/api/Download_Small/?fek_pdf=20230100091)

5 [Allegations of an attempt to interfere with the justice system - govwatch](#)

6 [Παραιτήθηκε ο Αεροπαιγίτης Χρήστος Τζανερικός - «Για λόγους προσωπικής αξιοπρέπειας...» - The Press Project - Ειδήσεις, Αναλύσεις, Ραδιόφωνο, Τηλεόραση](#)

7 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3127

above the EU average. The recently passed Law 5079/2023 provisions (art. 39)⁸ an important increase in the allowances, benefits and compensation of judges and the staff of the State Legal Council (by 30% for the allowances, benefits and compensations provided for in c. 3 of paragraph A of Law n. 3205/2003 (A' 297) and by 10% for the allowances, benefits and compensations of c. 5 and 6 of par. A of the same law). The provision has been widely criticised for exercising preferential treatment.⁹

Independence/autonomy of the prosecution service

On 7 March 2023,¹⁰ six members of the Board of Directors of the Athens Bar Association¹¹ issued a statement about Prime Minister Kyriakos Mitsotakis' letter to the Prosecutor of the Supreme Court, Isidoros Doyakos, regarding the judicial investigation of the deadly railway accident in Tempi. These members claimed the letter is a “direct violation” of the constitutionally enshrined principle of separation of powers.

According to the specific letter, the Prime Minister asks the Greek justice system to “prioritise the relevant cases” and “assign them, if you consider it appropriate, to the highest

possible investigative level”. Furthermore, Prime Minister Mitsotakis asked Mr. Doyakos to proceed with the judicial investigation of the accident regardless of the progress of the work of the committee of experts. These experts were appointed to carry out an assessment of the incident from an administrative and technical point of view. Upon completion of the committee's work, its findings will be communicated to the prosecuting authorities conducting the investigation, and become part of the case file. According to the six members of the Bar Association, this letter directly violates the separation of powers, which is guaranteed by Article 26 of the Constitution.¹²

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

The effectiveness of the legal aid system could be jeopardised by the long delays in settling the lawyers' fees. In Greece, there is a system of legal aid for persons lacking the financial means and each bar association creates a list of lawyers on duty to provide legal aid services. Compensation is paid through the Ministry of Justice. Following continuous interventions by the bar associations and movements requesting

8 et.gr/api/Download_Small/?fek_pdf=20230100215

9 <https://www.kathimerini.gr/economy/562653718/ayxiseis-syntaxeon-se-dikastikoys/>

10 [A letter from the Prime Minister to the Prosecutor of the Supreme Court is accused of violating the separation of powers - govwatch](#)

11 [Ευθεία παραβίαση της αρχής της διάκρισης των εξουσιών η επιστολή Μητσοτάκη σε Ντογιάκο, σύμφωνα με μέλη της Ένωσης Δικαστών & Εισαγγελέων \(legalnews24.gr\)](#)

12 [Σύνταγμα \(hellenicparliament.gr\)](#)

the immediate allocation of the legal aid compensations, the Parliament voted a new law (Government Gazette A 91/13.04.2023, article 88) that provides for the reimbursement of compensation due.

Resources of the judiciary (human/financial/material)

Although the Joint Ministerial Decision¹³ has been published on the service of electronic documents by bailiffs (Government Gazette B' 2318/12.05.2022), the procedure is still pending.¹⁴

In September 2023, Law 5049/2023 introduced the acceleration of judicial police staffing and operation procedures, amendments to Law 4963/2022, and other regulations of the Ministry of Justice. Following the issuing of the law in October 2023,¹⁵ an announcement was published for 500 permanent organic positions in the Department of the Police Sector of the Directorate of Judicial Police and the regional services of the Judicial Police. The announcement was issued by the Minister of Justice, upon approval by the Supreme Personnel Selection Council (ASEP). On 6 December 2023, the Ministry of Justice announced the provisional

results of the vacancy notice. The final results will emerge after any objections have been adjudicated.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

Project “SUB 5. Continuing Training of Judicial Officers”,¹⁶ funded by the Recovery and Resilience Fund, includes the provision of lifelong training to active judicial officers. It aims to enrich their knowledge and keep them informed in matters related to the exercise of their work.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

According to the EU Justice Scoreboard 2023, Greece lags behind most notably in the length of time required to administer justice, but also in the manner the courts operate, as it appears that neither judges nor attorneys make adequate use of modern technologies.¹⁷ Several important projects are ongoing:

13 et.gr/api/Download_Small/?fek_pdf=20220202318

14 [Επίδοση εγγράφων από τους δικαστικούς επιμελητές με ηλεκτρονικά μέσα – Υπουργείο Δικαιοσύνης \(ministry-ofjustice.gr\)](https://www.ministryofjustice.gr/epidoση-εγγράφων-από-τους-δικαστικούς-επιμελητές-με-ηλεκτρονικά-μέσα-Υπουργείο-Δικαιοσύνης)

15 [ΨΣΑΛΩ-2ΧΛ.pdf \(ministryofjustice.gr\)](https://www.ministryofjustice.gr/ψσαλω-2χλ.pdf)

16 [895.Sinexizomeni_Katartisi_Dikastikwn_Ypallilwn_5215672.pdf \(greece20.gov.gr\)](https://www.greece20.gov.gr/895.Sinexizomeni_Katartisi_Dikastikwn_Ypallilwn_5215672.pdf)

17 <https://www.ekathimerini.com/news/1212889/justice-system-scores-poorly-in-eu-rankings/>

1. National Coding Portal:¹⁸ citizens, businesses and public bodies will have direct and free online access to the updated and codified national, legislative and regulatory texts that will be collected and produced in the framework of the project.

2. Memorandum of cooperation between the Ministry of Justice and the Ministry of Digitalisation on the following actions:¹⁹ Issuance of Digital Signatures to Judicial Officers and Judicial Employees and employees of other supervised bodies of the Ministry of Justice. The memorandum further includes Electronic Court Certificates, Electronic Court Decisions, creation of a unified system for the electronic publication of a will, etc.

3. Digitization of Court Records and Data, online application and download of copy of Criminal Record, Criminal Case Monitoring (Complaint Flow), Electronic Copies of Criminal Excerpts etc. Several of these projects are expected to be expedited in 2024,²⁰ including an important interoperability project with the Athens Bar Association.²¹

The Law 5028/2023 contains the following provisions: a) the transformation of transitional seats into telematics judicial offices and the establishment of new such judicial offices; b) the determination of the institutional framework for conducting the telematic meeting, foreseeing that, following the successful trial period, for two full judicial years, the telematic court offices will be converted to telematic court offices, starting from the 2026-2027 court year;²² c) the implementation of the digital strategy of the Ministry of Justice and the acceleration of the processing of court cases, as well as for the efficiency and functionality of judicial services at the level of appellate districts and judicial formations; and d) the redistribution and decentralization of responsibilities between the regular administrative courts and the redesigning their districts.²³

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

Delays are observed in the operation of the Office for the Collection and Processing of Judicial

18 [Εθνική Πύλη Κωδικοποίησης - Γενική Γραμματεία Ψηφιακής Διακυβέρνησης & Απλούστευσης Διαδικασιών \(secdigital.gov.gr\)](https://secdigital.gov.gr)

19 [Γενική Γραμματεία Ψηφιακής Διακυβέρνησης | Υπουργείο Δικαιοσύνης \(secdigital.gov.gr\)](https://secdigital.gov.gr)

20 [Δικαιοσύνη: Προς ψηφιακή πορεία μετά τη συνάντηση Φλωρίδη και Παπαστεργίου - Όλες οι παρεμβάσεις | in.gr](https://in.gr)

21 [737.YPSHD_ISOKRATHS_5202714.pdf \(greece20.gov.gr\)](https://greece20.gov.gr)

22 <https://mindigital.gr/archives/4856>

23 [Άρθρο 37 - Νόμος 5028/2023 - Ρυθμίσεις για το πενταμελές δικαστικό συμβούλιο των δικαστικών υπαλλήλων του εφετείου και του διοικητικού εφετείου - Τροποποίηση παρ. 1 άρθρου 84, παρ. 1 άρθρου 85, παρ. 2 και 7 άρθρου 86, τροποποίηση παρ. 1, 2 | Νομοθεσία | Lawspot](https://lawsport.com)

Statistics, which is not yet fully functioning. The Office for the Collection and Processing of Judicial Statistics was established at the end of 2020 with the objective of systematic collection of qualitative and quantitative data.²⁴ However, no statistical data have been produced yet under the new mechanism and there has been no visible improvement in the quantity of the publicly available statistical data.²⁵ In particular, the only statistical data currently accessible on the website of the Ministry of Justice are “statistics by jurisdiction” for civil proceedings in 2023 and civil, criminal and administrative proceedings in 2022. The data available appear to be patchy, inconsistent and incomplete. The registration of the supervised institution’s statistical data is allowed on the website.²⁶

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation

In July 2023, the Ministry established a working group on the reform of the Judicial Charter of civil and criminal justice. The working group published its report in November 2023.²⁷ A few

days later, the Plenary of Bar Associations issued a statement that unequivocally denounced the procedure of the working group and expressed its complete opposition to the content of the findings.²⁸ In particular, the Plenary opposed the abolition of any Court of Appeal or Court of First Instance of the Country. The merger of Magistrates’ Courts requires a substantial dialogue between the competent bodies in order to deal with the problems that will arise. The dialogue considers the peculiarities of each region in combination with citizens’ need for unfettered access to justice and the meaningful exercise of their right to judicial protection.

Fairness and efficiency of the justice system

On 28 December 2023,²⁹ the public electronic consultation on the draft law of the Ministry of Justice entitled “Interventions in the Criminal Code and the Code of Criminal Procedure to speed up and improve the quality of criminal proceedings – Modernization of the legislative framework for the prevention and combating of domestic violence” was concluded amidst huge

24 Code of Procedure of the Court of Audit, provisions on the effective administration of justice and other provisions, Law 4700/2020, Article 358. The Greek Recovery and Resilience Plan, under Component 4.3 Improve the efficiency of the justice system reform, contains subproject 3 ‘Implementing the provision of Law 4700/2020 for the establishing of an independent office for the systematic collection and processing of judicial statistics.

25 ΣΤΑΤΙΣΤΙΚΑ ΣΤΟΙΧΕΙΑ ΑΠΟ 2016 ΕΩΣ ΣΗΜΕΡΑ – Υπουργείο Δικαιοσύνης (ministryofjustice.gr)

26 <https://moj.gov.gr/juststat/welcome>.

27 ΔΙΚΑΣΤΗΣ: ΠΟΡΙΣΜΑ ΤΗΣ ΟΜΑΔΑΣ ΕΡΓΑΣΙΑΣ ΓΙΑ ΤΗΝ ΑΝΑΜΟΡΦΩΣΗ ΤΟΥ ΔΙΚΑΣΤΙΚΟΥ ΧΑΡΤΗ (dikastis.blogspot.com)

28 Δυναμική συνέχεια κινητοποιήσεων των δικηγόρων | Ολομέλεια Δικηγορικών Συλλόγων Ελλάδας (olomeleia.gr)

29 <http://www.opengov.gr/ministryofjustice/?p=17064>

reactions and a wave of strikes throughout the Bar Associations.³⁰ The Ministry of Justice's bill on certain reforms in the Criminal Codes would amend, without the contribution of a legislative committee, two key pieces of legislation (Penal Code and Civil Procedure Code) in a punitive manner, without taking into consideration prior experience and without justifying such a conversion just four years after the adoption of the latest Codes in 2019.³¹ Although the amendments on domestic violence are positive, criminalisation is not enough of a solution. Social services for the victims are required, i.e. accommodation structures, psychological support and extensive legal assistance, in particular financial assistance. These services are not provided and are not foreseen in the legislation. Moreover, the conception of this bill's regulations stems from the belief that the increase in crime is the result of an inconsistency between the current sentences and the criminal regulations in favour of the perpetrators. This rhetoric is reproduced in all the media ignoring the fundamental principle of individual responsibility in criminal law.

Length of proceedings

Greece has a very slow justice system, as delays in the judicial system continue to be a systemic problem.³² The European Commission's 2023 EU Justice Scoreboard reports (using 2021 data of first instance courts) huge delays in the adjudication of cases, with new cases constantly piling up. In Greece, it typically takes about 664 days to conclude a civil, administrative or commercial issue in the first instance, way more than the EU average. In general, and notwithstanding efforts made, the country has a very lengthy justice system with delays significant enough to jeopardise the rule of law.³³

More than half of ECtHR judgments delivered against Greece concern the length of judicial proceedings (ECtHR, *Violations by Article and by State 1959-2022*).³⁴ Cases lodged in civil courts in 2023 in some jurisdictions are scheduled for hearing in 2032, and judgments are often issued many years after the hearing.³⁵

In December 2023, the Plenary of Bar Associations decided on the abstention of its members from their duties as a result of

30 link.liberties.eu/2b3b58

31 <https://bit.ly/3wxAJpN>, https://www.efsyn.gr/ellada/dikaiosyni/416011_i-oloklirotiki-antimetarrythmisi-ton-poinikon-kodikon, <https://www.lawspot.gr/nomika-nea/neos-poinikos-kodikas-dikastikos-hartis-dieyrynsi-nomikis-ylis-kai-ypohreotiki-paroysia>

32 <https://lawnet.gr/law-news/to-provlima-tis-kathysterisis-tis-dikaiosynis-kai-i-anagki-trichotomisis-tis-politikis-poinikis-dikaiosynis/>

33 https://commission.europa.eu/system/files/2023-06/scoreboard_factsheet-quantitative-v4.pdf

34 stats.violation_1959_2022_eng (coe.int)

35 [Καθυστέρηση στην απονομή δικαιοσύνης: Θέλουμε ταχύτητα, αλλά πώς και με τι κόστος](https://www.reporter.gr) (reporter.gr)

malfunctions of the judicial system.³⁶ This mainly concerns: the adoption of the above-analysed bill, ignoring the objections of the lawyers who are now directly facing the risk of forced exit from their professional activity as well as their demands for the immediate payment of all due legal aid compensation. The new proposed provisions have created a heated dispute with legal practitioners in Greece and further jeopardise the function of the legal system.

Execution of judgments

In the field of migration, Greece has demonstrated unprecedented contempt for interim measures indicated by the ECtHR under Rule 39 of the Rules of Court particularly as regards assistance and rescue of persons in distress in border areas.³⁷

Respect for fair trial standards including in the context of pre-trial detention

In *Savvaïdou v. Greece*,³⁸ the ECtHR found that Greece was in violation of Article 6 of the ECHR as it considered that the statements made by the government representative in national court proceedings prejudged the outcome of the criminal proceedings. They therefore violated the presumption of innocence of the applicant, as laid down in paragraph 2 of Article 6 of the ECHR. Greece was also found to have breached Article 13 of the ECHR for failing to provide a legal remedy by which the

applicant could seek redress before the national courts.

The case concerns statements made by a government representative immediately after the applicant was dismissed from her position as Secretary General of Public Finance, while criminal proceedings were pending against Ms. Savvaïdou for embezzlement of funds. On leaving the Council of Ministers, the government spokeswoman made a statement implying that the defendant was guilty of the charges. It is noted that, as stated in the 2023 ECtHR judgement, the applicant was not found guilty of any criminal offence.

³⁶ [Δυναμική συνέχεια κινητοποιήσεων των δικηγόρων | Δικηγορικός Σύλλογος Αθηνών \(dsa.gr\)](#)

³⁷ [GCR - Ενημερωτικό Σημείωμα του ΕΣΠ](#)

³⁸ [Savvaïdou v. Greece - Greece found to have violated Articles 6 and 13 of the ECHR - govwatch](#)

Anti-corruption framework —

Key recommendations

- *Strengthen and consolidate the legal framework for whistleblowing.*
- *Implement targeted training and capacity enhancement actions for public officials.*
- *Show zero tolerance for corruption and utilise effective tools to detect it, including efficiency incentives to public officials.*

Levels of corruption

According to a recurring survey by Public Issue,³⁹ which estimates the extent of corruption in various business areas, 71% of the public believes that there are “too many” corrupt politicians. The completely discredited image of politicians is complemented by the highly discredited image of journalists, for whom the corresponding percentage (“too many”) is recorded at 64%, a dramatic increase from just 19% in 2005. Compared to 2005, all categories show a worsening image of corruption. However, a greater increase in the amount of socially accepted corruption is recorded by trade unionists, police officers, lawyers and judges.

In September 2023, *The New York Times* reported on hundreds of leaked internal messages that shed light on a lobbying campaign carried out by Huawei, the Chinese telecom-equipment maker, in an attempt to court Greek officials. The messages, which surfaced in November

2020, reveal that the contacts, identified as Greek government advisers, were set to provide Huawei with something valuable: a document outlining government contracts and “first priority projects” that the company might want to work on in the country. Huawei managers discussed giving the advisers Huawei Mate XS smartphones, the company’s GT 2 smartwatch and wine, according to internal text messages and other documents reviewed by *The New York Times*. The plans are “strictly confidential among us,” a Huawei manager wrote in a group chat named after Greece’s digital ministry. The exchange was part of more than 120 messages and summaries of internal Huawei communications provided to *The New York Times* by a person working for a European government that investigated the company. The materials, which identified the contacts as government officials, offer a rare look at how Huawei tried to cultivate relationships with high-ranking figures in Greece, and pushed the limits of Greek rules that restrict gifts to civil servants

39 Έρευνα για τη διαφθορά στην Ελλάδα, 2023 - Public Issue

and government ministers.⁴⁰ The spokesman of the government has denied any wrongdoing in the case.

The NGO Vouliwatch's director, Stefanos Loukopoulos, who worked with The New York Times on the investigation, said: "Under Greek law, it is illegal for someone in the private sector to offer gifts to government officials expecting something in return. Members of the government (Ministers, Deputy Ministers & Ministers) cannot accept gifts related to their official responsibilities. Senior officials may accept certain customary gifts of less than €200, but those worth more must be handed over to the government. Declaring and disclosing all gifts is mandatory for Greek government officials under a law passed in 2021, but the Prime Minister's Secretariat has not yet published anything and we have no idea if such a register is kept and updated. [...] Greece has a robust legal framework against corruption and bribery, but transparency is almost non-existent and the implementation of the laws is very problematic."⁴¹

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

Since the National Transparency Authority (NTA) is not included in the authorities

expressly mentioned in the Constitution, the supermajority vote guarantees of Article 101A(2) of the Constitution are not applied. The legal basis of the NTA in the Executive State Act foresees that candidates for the positions of Director and Management Board members of NTA are proposed by the Council of Ministers and are approved by simple majority vote of the Institutions and Transparency Committee of the Parliament. This means that a party holding a majority of seats in Parliament may approve a candidate solely through its own votes in the Committee. Accordingly, the selection procedure not only falls short of the institutional requirements set by the Constitution for independent authorities but also raises risks of political dependency of the NTA on the government.

There has been a notable recent case on revolving doors. In the summer of 2019, Akis Skertsos was appointed Deputy Minister to the Prime Minister responsible for the Coordination of Governmental Work.⁴² However, just before his appointment to the government, Mr. Skertsos was General Manager of the Hellenic Federation of Enterprises (SEV) for five years. Mr. Skertsos is currently serving as Minister of State and Spokesperson of the government.

Articles 68-76 of Law 4622/2019 regulates incompatibilities for governmental appointments. The law stipulates that "the exercise of any professional or business activity" results in

40 <https://www.nytimes.com/2023/09/28/technology/huawei-greece-lobbying-campaign.html?ref=oembed>

41 <https://vouliwatch.gr/actions/article/dora-kyvernisis-nyt>

42 [Revolving Doors: The case of Akis Skertsos - govwatch](#)

automatic suspension for all persons appointed as members of the government and deputy ministers. Moreover, to avoid conflict of interest, members of the government are required to obtain a permit from the Ethics Committee of the National Transparency Authority if they wish to undertake any professional activity related to the area of their work within government within one year of their departure from their post. This means that a person can effectively immediately move from the private sector to a public office.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The obligation to submit asset declarations (Πόθεν Έσχες) aims to enhance transparency and democracy and is a key tool in preventing corruption. Submission of these declarations by those obliged (governments, MPs, MEPs and other public officials)⁴³ and their scrutiny by the appropriate bodies allows for determining the assets held by those in positions of power and their origins.

In February 2023, a new law on asset disclosures entered into force (Law 5026/2023). The new law aims to systematise the current rules and streamline the asset declaration process through the following tools: digitalisation;

simplification of the list of filers; higher percentage of verifications (to a target of minimum 7% that will be achieved over a three-year period which is almost a doubling of the current 4%); a uniform methodology for all types of audits; and uniformity on violations and appropriate sanctions. However, there are persistent concerns about the effectiveness of the audit bodies charged with this scrutiny. The Parliamentary Committee for the Investigation of Declarations of Assets (CIDA), which is assigned with auditing the declaration, falls short of its mandate, both in terms of timing and in terms of data published. Also, throughout this legislative procedure, the government failed to adhere to a number of the rules of good legislative practice, highlighting systemic and long-standing failures to follow the rules of good legislative practice in Greece.⁴⁴

Measures in place to ensure whistleblower protection and encourage reporting of corruption

There was a partial transposition of the Whistleblower Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (Whistleblower Directive) into Law 4990/2022 in November 2022. Recital 42 of the Directive,⁴⁵ which states that “Effective detection and prevention of serious harm to the public interest requires that the notion of breach also includes abusive practices, as defined by the case law of the Court, namely acts or omissions which do not appear to be unlawful in formal

43 et.gr/api/Download_Small/?fek_pdf=20230100045

44 <https://govwatch.gr/en/finds/o-nomos-5026-2023-kai-oi-provlimatismoi-se-epipedo-kalis-nomothetisis/>

45 Σχέδιο νόμου για την προστασία των whistleblowers: το Vouliwatch στη Βουλή | [vouliwatch](https://vouliwatch.gr)

terms but defeat the object or the purpose of the law”, was omitted. Despite the above provision, Article 4 L 4990/2022 fails to clearly include in the notion of “breach” the term “abusive practices” in the concept of “breach”. Transparency International also highlights the narrow scope of lobbying and whistleblowing legislation that significantly limits its effectiveness.⁴⁶

The National Strategic Plan for Combating Corruption (NSSKD) constitutes the national strategy for comprehensively dealing with the phenomenon of corruption for the reference period 2022-2025.⁴⁷ The implementation of the National Strategic Plan for Combating Corruption for the years 2022-2025 is generally moving within the established timetables.⁴⁸

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, health-care, other)

According to data retrieved from the Hellenic Single Public Procurement Authority (Ενιαία Αρχή Δημοσίων Συμβάσεων), a total of 95,910 public contracts were awarded in the first six months of 2022, corresponding to a

total amount of €5.243 billion spent on public procurement awards for this same period. In total, 66,219 out of 95,910 public contracts (69%) were awarded via direct contracting.⁴⁹ The fact that over two thirds of the awarded public contracts were carried forward through the direct award process raises significant concerns.

The 2023 data have not yet been made available by the Hellenic Single Public Procurement Authority. The MEP Dimitris Papadimopoulos has filed a question to the Commission on the “Continued departures from EU public procurement legislation in Greece, despite warnings from the Commission and the Hellenic Single Public Procurement Authority”.⁵⁰ In its reply, in February 2023, the Commission noted that: “As guardian of the Treaties, the Commission is closely monitoring how the EU rules on public procurement are applied and implemented in Greece. It does so through an array of tools ranging from preventive measures, including informal contacts with the national authorities, which will be further intensified by Greek authorities to targeted enforcement actions. On the latter, the Commission launched on 26 January 2023 an infringement case against Greece concerning the non-conformity of its national legislation with the EU

46 <https://transparency.gr/%ce%b7-%ce%b4%ce%b7%ce%bc%ce%bf%ce%ba%cf%81%ce%b1%cf%84%ce%b9%ce%b1-%cf%84%ce%bf-%ce%ba%cf%81%ce%b1%cf%84%ce%bf%cf%83-%ce%b4%ce%b9%ce%ba%ce%b1-%ce%b9%ce%bf%cf%85-%ce%ba%ce%b1%ce%b9-%cf%84%ce%b1-%ce%b1/>

47 [Εθνική Αρχή Διαφάνειας - 2022-2025 \(aead.gr\)](https://www.aead.gr/)

48 <https://aead.gr/images/essays/2021-NTA-ANNUAL-REPORT-2021-eng.pdf>

49 https://hias.org/wp-content/uploads/Greece-RoL2023_JointSubmission_CSO.pdf

50 https://www.europarl.europa.eu/doceo/document/E-9-2022-003102_EN.pdf

public procurement rules with respect to the award of contracts for the temporary installation and operation of desalination plants of certain capacity on islands.”⁵¹

In its 2023 report (based on 2022 data),⁵² the Court of Auditors on direct procurement underlined a discouraging situation: lack of transparency, no-timely planning, exhaustion of ceilings, insufficient evaluation, no system of control, waste of public money. The highest percentage of direct assignments was observed in hospitals, followed by municipalities.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

The criminalisation of certain forms of corruption is codified by the following laws: bribery of public officials (artic. 236 Penal Code); money laundering, protection from prosecution of persons involved in illegal activities (Law 4557/2018 as amended by Law 4816/2021 which transported the EC Directive 1673/2018); exploitation of public wealth or power for personal gain (artic. 264 Penal Code).

Positive developments in this area include the establishment of the National Transparency Authority (NAA) in 2014, which is responsible

for coordinating efforts to prevent and fight corruption, and the passage of Law 4254/2014, which provides for the protection of public interest witnesses who denounce cases of corruption.

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available

Bodies receiving complaints are various authorities such as the prosecution authorities, the General Secretariat for the Fight against Corruption, the Ombudsman, the Court of Audit, the Directorate of the Economic Police, the General Accounting Office of the State, the Independent Authority for Public Revenue, the Health and Welfare Services Inspection Body, the Public Administration Inspectors - Auditors Body, the Corps of Inspectors of Public Works, the General Inspector of Public Administration, the Directorate of Internal Affairs of the Hellenic Police and the Department of Internal Affairs of the Coast Guard. Measures are fragmentary and, in some cases, following a political intervention. For example, the regular inspector of ELGO - DIMITRA H.P.,⁵³ was removed from his duties after the criminal prosecution against

51 https://www.europarl.europa.eu/doceo/document/E-9-2022-003102-ASW_EN.html

52 [ΕΚΘΕΣΗ ΕΛΕΓΧΟΥ 4 ΑΠΕΥΘΕΙΑΣ ΑΝΑΘΕΣΕΙΣ.pdf \(elsyn.gr\)](#)

53 [Α. Αυγενάκης: Καμία ανοχή σε φαινόμενα διαφθοράς και ατιμωρησίας- Όλα στο φως, τίποτα δεν θα μείνει στο σκοτάδι | Ανατολή \(anatolh.com\)](#)

him by the Prosecutor's Office of First Instance with the charge of "bribing for actions contrary to his duties repeatedly". At the same time, by order of the Minister of Rural Development and Food, ELGO's management referred the case to the organisation's Board of Directors as a matter of priority, with the question of the suspension. In addition, by order of the Minister of Anti-Corruption, Lefteris Avgenakis, the process of checking all the cases pending both in the primary and the secondary Irregularities & Violations Investigation Committee (IIP&P) is being accelerated.

In another example, First Instance Prosecutor Konstantinos Spyropoulos⁵⁴ was assigned to investigate corruption in Greek football. The investigation was ordered by the deputy prosecutor of the Supreme Court, Georgios Oikonomou, who is responsible for supervising national sports. The investigation was launched following the statements of the president of PAE Panathinaikos, Mr. Yiannis Alafouzos, in an interview with the BBC.⁵⁵

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

On 4 January 2023, the New Democracy MP of Fthiotida, Themis Himaras, submitted his resignation in the wake of revelations that a private company that he was involved in had undertaken public procurement contracts during his parliamentary term.⁵⁶ The case has raised a heated political debate.⁵⁷

Other

The Ministry of Migration and Asylum has introduced a registry to address alleged irregularities and suspected fraud and mismanagement. However, Council of Europe in its opinion found that "onerous registration and certification requirements, coupled with the wide discretions on the competent authorities to refuse to register or certify applicant NGOs", will further restrict civil society space in Greece, and increase "significantly and disproportionately the control of the State over the work of NGOs in the field of asylum, migration and social inclusion".⁵⁸ UN Special

54 [Εισαγγελική έρευνα για φαινόμενα διαφθοράς στο ελληνικό ποδόσφαιρο μετά τις δηλώσεις Αλαφούζου - Documento \(documentonews.gr\)](#)

55 <https://www.bbc.com/sport/football/66711569>

56 [The Himaras Case: Financial prosecutor orders investigation after New Democracy MP resigns over public procurement contracts - govwatch](#)

57 <https://www.documentonews.gr/article/ekthetei-xeimara-i-oikonomiki-eisaggelia-gyrise-piso-os-ateles-to-porisma-toy-sdoe-poy-dithen-ton-dikaione/>

58 [16809ee91d \(coe.int\)](#)

Rapporteur for the Rights of Human Rights, after a visit to Greece, published a report on the situation of human rights defenders,⁵⁹ highlighting that “Law No. 4662/2020 and Law No. 4686/2020, as well as the Joint Ministerial Decision 3063/2020, subsequently replaced by Joint Ministerial Decision 10616/2020, introduced progressively stringent requirements for

NGOs and individuals working in those fields, producing a chilling effect on civil society”. She also underlined that the “Ministry of Migration and Asylum has the power to deny registration to NGOs on vague, arbitrary and ambiguous grounds, which, potentially, leave the registration process subject to abuse”.

Media environment and media freedom -

Key recommendations

- *The Prosecutor of the Supreme Court should commission an independent evaluation of all unresolved cases of attacks against journalists, including cases involving police violence, the conclusions of which should be publicised.*
- *The government and Parliament must ensure that amendments to criminal defamation rules do not have an inadvertent negative impact on press freedom and ensure adequate time for public debate and consultation of Greek and international stakeholders to provide their input on pertinent legislative changes.*
- *The competent authorities should enforce the full implementation of the transparency of media ownership in Greece in an accessible and regularly updated ownership registry for all forms of media, including beneficial ownership.*

Media and telecommunications authorities and bodies

The recent changes to the composition and to the way that new members of the independent authorities of the Hellenic Authority for Communication Security and Privacy (ADAE)

and the Greek National Council for Radio and Television (NCRTV) are selected have been a major topic of public debate (see the section ‘Independent Authorities’ below).

On 7 September 2023, a few days before the controversial vote on the aforementioned

59 [A/HRC/35/25/Add.2: Report of the Special Rapporteur on the human rights of migrants on his mission to Greece | OHCHR](#)

changes, the Plenary of the Parliament amended this provision in the Rules of Procedure of the Parliament and added another member to the Conference of Presidents; the President of the Special Standing Committee on Research and Technology. On 28 September 2023, the Conference of Presidents of the Parliament met to select the members of two of the constitutionally enshrined Independent Authorities: the Hellenic Authority for Communication Security and Privacy, and the Greek National Council for Radio and Television. The procedure followed for the appointment of these members has, however, been the subject of much controversy from political and legal experts. The controversy is mostly focused on the fact that the decision of the Conference of Presidents was taken without the constitutionally required full majority of three-fifths of its members, and that the selection of the new members took place without prior parliamentary consultation or consensus, and without the candidates being subject to a parliamentary hearing. These two, combined with the overall political climate and the fact that one⁶⁰ of two replaced members was a leading figure in the recent wiretapping scandal, indicate that there is political motivation behind these developments.

Pluralism and concentration

Levels of market concentration

The number of media outlets in Greece is large and the landscape is diverse. However, the ownership of major media groups is concentrated

among a handful of influential business owners with interests also in other sectors of the economy.

There is a broad perception that these structural issues, combined with wage pressure and limited work opportunities for journalists, have led to a significant level of self-censorship. Journalists tend to keep away from stories which would tackle the large advertisers or the owner's business interests, including coverage of good relations with the government due to potential participation in state procurement, tax rebates and contracts for state advertising.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

The level of media concentration in Greece is high; this affects both the print and broadcasting sectors and has increased in the last decades together with the emergence of cross-ownership problems. The interdependence between political and media elites is considered among the major factors leading to ineffective and contradictory media policies and poor implementation of anti-corruption rules.

According to the applicable legislation on the Concentration and Licensing of Mass Media Undertakings (Law No. 3592/2007, as amended and in force), controlling more than one electronic media of the same form (television or radio) is prohibited. Participation in another business of the same form is allowed,

60 <https://insidestory.gr/article/giati-mas-afora-oloys-ayto-poy-symbainei-me-tin-adae>

provided that there is no control over it – according to the definition of ‘control’ as set out in the legislation.⁶¹ The Hellenic Competition Commission is the competent authority for the supervision of media concentration, the adoption of measures and the enforcement of the relevant sanctions. Merger control provisions are set out in Law 3959/2011 on protection of free competition, as amended (“Greek Competition Act”) (Articles 5-10 Greek Competition Act). Specific provisions⁶² on mergers in the media sector are provided for in Law 3592/2007 as amended (Article 3).

In practice, it is well known in Greece that the most influential media organisations and companies of the country are controlled by a few powerful entrepreneurs (Ioannis Alafouzos, Themistokles Alafouzos, Theodore/Thodoris Kyriakou, Evangelos Marinakis, Giannis Vardinogiannis) through a system of cross-ownership. One more is considered a semi-foreigner (the Russian-Greek businessman Ivan Savvidis, who used to be engaged in politics serving as a member of the Russian Parliament). All of them are also active in other sectors of the economy apart from media, such as in the oil and shipping industry, and some of them are engaged in the football field too.⁶³

Media ownership is also a field that showcases the inability of the National Council for Radio and Television to regulate the market. The Council publishes information on media

ownership and shareholding, but does not really engage in a robust assessment of their compatibility with the law.

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

On 22 December 2022, the Greek Parliament ratified a new media law, including a new registry and the subsequent formation of a Special Committee, which will be in charge of overseeing the compliance of online media to journalistic ethics, and will have the power to exclude media from receiving state advertising funds for up to two years.

The law, titled “Strengthening publicity and transparency in the printed and electronic press - Establishment of electronic registers of printed and electronic press and other regulations of the competence of the General Secretariat of Communication and Information”, sparked debate in the Greek media. While the overall move to increase media ethics was broadly welcomed, some media raised concern that the new rules could potentially be misused to deliberately exclude media reporting critically on the government from receiving state advertising revenue. State advertising funding is a significant source of revenue in the Greek

61 <https://www.lexology.com/library/detail.aspx?g=5e439b78-c763-42c5-b479-b9183c89fe90>

62 <https://www.mergerfilers.com/guide.aspx?expertjuris=Greece#guidebook>

63 <https://media-ownership.eu/findings/countries/greece/>

media ecosystem and in recent years critical media have been excluded or received disproportionately lower funding from government communication campaigns. Critics have argued that the law gives the authority to a committee to judge if a media outlet is abiding by journalistic ethics, rather than by a self-regulatory industry body.⁶⁴ In November 2023, this new registry was formally presented.⁶⁵

The issue of state funding has been highly controversial the recent years, since the release of the infamous “Petsas list”⁶⁶ which named the media outlets that received money as part of the coronavirus public awareness campaign “We Stay Home”.⁶⁷ The Greek NGO VouliWatch was one of several independent actors raising the issue and demanding accountability through FOI requests. After multiple rejections (many implicit and one explicit) by the National Transparency Authority and two court battles before the Athens Administrative Court of Appeal with opposite outcomes (a positive decision in January 2022 and a negative one in June 2023), in October 2023, VouliWatch filed

an appeal against Greece before the European Court of Human Rights for this issue.⁶⁸

Rules governing transparency of media ownership and public availability of media ownership information, and their application

In the Greek media field, the clarity about the beneficial owners is achieved in many cases of media outlets through the official documents released by the national regulatory authorities (NCRTV, Hellenic Competition Commission) or published in G.E.MI. platform,⁶⁹ revealing the shareholding structure of the companies. The transposition of article 5 of the EU Directive 2018/1808 (Audiovisual Media Services Directive) into the national legal system (Law 4779/2021) obliges media services providers to render some major publicly available information with respect to their organisations: a) name and distinctive title of the media company; b) address of registered office and actual establishment; c) complete contact details and in particular e-mail and/or website address and telephone numbers; d) contact details of the

64 <https://www.mapmf.org/alert/25509>

65 <https://banks.com.gr/parousiasi-tou-mitroou-entypou-kai-ilektronikou-typou-stous-foreis/>

66 Named after the government spokesman by whom it was published, Stelios Petsas.

67 <https://wearesolomon.com/mag/focus-area/accountability/the-grey-areas-on-the-list-of-the-greek-media-outlets-payments-for-covid-19-awareness-campaign/>

68 <https://vouliwatch.gr/actions/article/lista-petsa-edda>

69 The General Electronic Commercial Registry (G.E.MI. in Greek) is a public access source in Greece where anyone can find, based on an internal search engine, all the official documents issued by the administration sector of the media companies. However, the visibility of the relevant data presupposes the user’s basic knowledge with regard to the official name of the media company under investigation. This is usually detectable on the impressum of the media outlet, as depicted either on the printed version of a newspaper/magazine or on its website version.

NCRTV, and in particular e-mail and website address, telephone numbers and postal address.

According to EurOMo indicators,⁷⁰ several media outlets in Greece comply with this regulation, mainly the print-media companies releasing the relevant information both in the printed version of the newspapers or magazines and on their respective websites (in specific printed or electronic sections devoted to the description of the media company's identity). By contrast, in the broadcasting sector, the deviation from the above rule is common, since there are cases of TV or mainly of radio channels that prove to be inconsistent with the obligation set by law, at least by looking at the content of their websites.

Regardless of the different degree of consistency shown by the media organisations towards the above law, a key risk to media transparency is the fact that media outlets are not required up to now to disclose contact details of their direct and actual beneficiary. On the other hand, the extent of the participation in the share capital of the media organisation arises at least from the need to demonstrate that there are registered shares up to a natural person in the entire spectrum of shareholding. Additionally, based on the Presidential Decree 310/1996, the radio and television companies are obliged to submit to the NCRTV a list of all persons employed in the media organisation based on a dependent employment relationship. Moreover, the law sets out requirements for immediate updates in

the ownership identity of media organisations after any relevant change takes place, given that approval or notification of the transfer of shares is required.

Public service media

Editorial standards (including diversity and non-discrimination)

According to its Code of Conduct, the Hellenic Broadcasting Corporation “respects the value of diversity in our organisation and in the public. We are committed to fostering mutual respect and fairness oriented toward teamwork and equal opportunity. The Company’s practices for hiring and promoting employees are free from discrimination on the basis of age, race, colour, religion, gender, sexual orientation, nationality and disability. We are committed to the principles of the dignity of independence, inclusion and equal opportunities.”⁷¹

Other

The Hellenic Broadcasting Corporation, commonly shortened to ERT, is the state-owned public radio and television broadcaster in Greece. ERT is mainly funded by a license fee, which is paid with the electricity bill (along with other applicable taxes) and represents the vast majority of financial resources available to the public body. ERT operates four nationwide TV channels, nine national and 19 regional radio stations. State owned Athens-Macedonian

70 <https://media-ownership.eu/findings/countries/greece/>

71 <https://www.ert.gr/kodikas-deontologias/>

News Agency (ANA-MPA) counts about 240 Greek media organisations among its clients.

Throughout the years, all governments have, more or less, been considered as exercising influence and control over ERT, through appointing persons of their choice to the management and key positions. Shortly after the 2019 election, ERT and ANA-MPA were placed under direct oversight of the Prime Minister's office. This institutional setup, along with installing the former ND director of communications upon the government's proposal as the president of ERT in 2019, reinforced the already existing perception that the broadcasters are not fully independent.

In a similar pattern, after the 2023 elections, it was the chairman of the Election Commission and former Director General of the ruling party, Giannis Bratakos, who took over the reins of state television and radio, the state news agency, the General Secretariat of Information and Communication, and the National Intelligence Service. By assigning all these powers to a person so closely linked to his cabinet, the prime minister further intensified the intertwinement of state-owned media with the party in power.

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

The pressure to regulate social media in Greece has intensified over the previous years – however, it has led mostly to complaints about overblocking or in extremist groups migrating to other platforms. The existing case law in Greece concerning Meta, although mostly relevant to alleged infringement of freedom of speech because of the removal of legitimate political content (i.e. overblocking), suggests that the liability of online platforms before Greek courts is an open issue.

Competence and powers of bodies or authorities supervising the online ecosystem

The 2022 media law (Law 4967/2022) defined “electronic press” (websites and blogs which publish news, information, articles, interviews or audiovisual material with political, social, financial, sports, cultural and other content, with or without compensation), thus making supervision easier. The extent of this competence is however challenged since, according to the Council of State, the national law does not expressly confer jurisdiction to the NCRTV to regulate media content broadcasted exclusively online; the Greek Council of State stressed that these administrative sanctions would be considered legal, only if they could be based on the provisions of the Directive.

Thus, the Greek Council of State has recently referred several preliminary questions to

the Court of Justice of the European Union (CJEU) regarding the EU Directives and the obligations that they impose on the national regulatory authorities as regards media service providers that broadcast exclusively online.⁷²

Public trust in media

The discussion surrounding press freedom intensified in 2022, after the annual press freedom index by Reporters Without Borders (RSF) placed Greece in 108th position (down 38 places from 2021), below many non-democratic countries; the 2023 RSF report puts Greece in a similar position with last year (107th).⁷³ Similarly, a recent study examining perspectives on the news media from over 40 countries highlights that only 19% of Greek consumers had trust in the news media, the lowest among all countries in the report.⁷⁴

More importantly, 2023 Digital News Report – a study carried out by the Reuters Institute for the Study of Journalism that aims to understand news consumption in a range of countries in the digital age – shows that this lack of trust is prevalent across the political/party spectrum: among the 46 countries in the research sample, Greece has the lowest percentage of respondents who say they trust “most news most of the

time” (19%). Compared to the 2022 measurement, we see a decrease of eight percentage points. Over the years, we have noted that the lowest trust rates are observed among respondents who self-identify as left wing or those who do not want to or do not know how to position themselves on the political axis (left/right) – as a general rule, citizens with a low interest in politics. However, 2023 saw the largest decline was among respondents who self-identify as right wing (from 42% in 2022 to 28% in 2023).⁷⁵

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

The Safety of Journalists Platform has documented several cases of verbal and physical attacks and threats against journalists. The numbers are lower than the peak year of 2022 but remain considerably high compared to previous years.⁷⁶ The platform has documented a total of nine alerts over 2023; similarly, the Mapping Media Freedom Platform by the European Centre for Press and Media Freedom has documented five incidents of physical

72 https://www.epra.org/news_items/regulation-of-online-media-providers-preliminary-requests-by-the-greek-council

73 <https://rsf.org/en/country/greece>

74 <https://www.statista.com/statistics/308468/importance-brand-journalist-creating-trust-news/>

75 <https://www.dianeosis.org/2023/06/oi-psifiakes-eidiseis-stin-ellada-to-2023/>

76 <https://fom.coe.int/en/pays/detail/11709522>

assault, four attacks or threats against property and 11 verbal attacks for the reporting period.⁷⁷

On 5 March 2023, three journalists and a camera operator were detained and taken to a police station as they covered the trial of a stationmaster in connection with the deadliest rail accident in Greek history. All four were released later that evening. In a common statement, the Panhellenic Federation of Journalists' Union (POESY) and several editors' unions denounced a "provocation and a flagrant violation of the constitutional obligation of our colleagues", saying the arrest stemmed from an "oral complaint by a lawyer who unprovoked approached the colleagues and started threatening them". International press freedom groups called for an explanation as to why and under what charge the journalists were detained.

Several attacks against journalists have been linked to sport events, football club owners and oligarchs. On 29 August 2023, the journalist and publishing advisor of the newspaper TA NEA, Giorgos Papachristos, was assaulted and injured by the businessman and ship-owner Yiannis Karagiorgis during half-time of a football match between Panathinaikos FC and SC Braga in Athens Olympic Stadium.⁷⁸ On 8 August 2023, a day after publishing an

article criticising, among others, the football club of AEK for the events leading to the death of AEK fan Michalis Katsouris during a fight with Dinamo Zagreb hooligans outside AEK stadium, the journalist Lefteris Charalambopoulos received a phone call from Dimitris Melissanidis, the owner of AEK FC. Melissanidis reportedly threatened Charalambopoulos by saying the journalist "will pay for both the past and the present", "I've already ordered a casket in your size, I have it here", "I'll have everyone chasing you" and "I've marked you". The Journalists' Union of the Athens Daily Newspapers (ESIEA) condemned the intimidation and threats targeted at Charalambopoulos.⁷⁹ On 27 May 2023, Dimitris Hatzigeorgiou, director of the sports department of ERT, was verbally attacked by Peristeri fans shortly after the team's victory over Panathinaikos in the fourth semi-final of the basketball league. Local journalists' unions denounced the attack on Hatzigeorgiou, and called on all competent bodies to take appropriate measures to ensure the safety of media professionals working at sport events.⁸⁰

There has also been a pattern of politically motivated attacks. On 21 March 2023, members of the anarchist group Rouvikonas vandalized journalist Stavros Theodorakis' house in

77 [Mapping Media Freedom: Alerts Explorer \(mapmf.org\)](https://www.mapmf.org/)

78 <https://www.dikastiko.gr/eidhsh/o-dimosiografos-giorgos-papachristos-minyse-efoplasti-kataggellei-oti-toy-epitethike-me-grothies-omothymi-katadiki-apo-kyvernisi-kai-antipoliteysi/>

79 <https://www.in.gr/2023/08/11/plus/medianews/katadikazei-esiea-ti-stoxopoiisi-tou-leyteri-xaralampopou-lou-apo-aek-fc-kai-melissanidi/>

80 <https://www.gazzetta.gr/basketball/basket-league/2226701/psat-katadikazei-tin-epithesi-opadon-toy-peristeri-oy-ston-dimitri>

Chalandri, while Alpha TV was broadcasting the journalist's interview with Prime Minister Kyriakos Mitsotakis in a program called "Protagonists". This was the first televised interview the PM gave after the deadly train accident in Tempí. Local journalists' union ESIEA condemned the act of vandalism as an attempt to intimidate journalists.⁸¹ On 25 August 2023, Kostas Vaxevanis, a veteran journalist and publisher of Documento and his family were attacked by a man who appeared to be unhappy with a report the newspaper had published about a tax evasion scandal. The Journalists' Union of Athens Daily Newspapers published a statement condemning the attack.⁸²

The recent report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor,⁸³ cites the claims of several journalists that they have been subject to assault and other mistreatment, mainly as a result of police violence, particularly in attempting to cover protests or to report on migration issues. Also, some journalists, including foreign correspondents, informed the Special Rapporteur of incidents of their equipment being taken away when they were reporting on pushbacks of migrants, with the authorities forcing them to delete photos.

In November 2023, the Greek Ministry of Justice presented draft amendments to the penal code which media unions warned could leave journalists at greater risk of serving prison sentences for criminal defamation.

Convictions for criminal defamation of journalists in Greece are currently rare, and prison sentences for members of the press are ever rarer. However, press freedom groups have long called for the decriminalisation of defamation in line with EU standards, warning that keeping criminal defamation within the penal code has a chilling effect on media reporting.⁸⁴ Criminal defamation has been abolished in many EU countries. Responding to the draft bill, critics said that under the proposed reforms, rather than move in line with EU norms, Greece would instead increase the likelihood of the imprisonment of journalists over their reporting. In cases involving the convictions of journalists for defamation, appeals to higher courts have in the past overturned the first instance rulings. However, under the new law, a journalist would potentially face years in prison until their conviction was overturned at a higher court. In Greece, it is a common practice for those filing defamation lawsuits against media or journalists in Greece to launch proceedings under both civil and criminal law,

81 <https://www.esiea.gr/i-prospatheia-ekfovismoy-ton-dimosiog/>

82 <https://www.dikastiko.gr/eidhsh/epithesi-se-varos-toy-dimosiografoy-kosta-vaxevani-se-estiatorio-stin-eyvoia-traymatistike-sygggeniko-toy-prosopo-ti-anaferei-o-idios/>

83 [Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor - Visit to Greece \(A/HRC/52/29/Add.1\) \(Advance Edited Version\) - Greece | ReliefWeb](#)

84 <https://www.tribune.gr/media/news/article/874555/poesy-pros-floridi-kathestos-tromokratias-gia-toys-dimosiografos-apo-ton-neo-poiniko-kodika.html>

increasing the intimidating nature of an accusation of serious criminal defamation.

The Parliament is expected to vote on the bill in the new year of 2024; it is the sixth time that the penal code has been amended under the ruling New Democracy government, which won re-election in 2023.

The ESIEA union and the POESY union, along with other groups, sent a joint letter of concern to the Minister of Justice, George Floridis, and the General Secretary of Information and Communication, Dimitris Galamatis, regarding the draft law. They said: “We request that the tightening of the conditions for suspending the imposed penalties does not apply to journalists who, while acting within the framework of the journalistic function, are subject to the wave of SLAPPs...usually brought by companies or individuals with the aim of intimidation, the financial or psychological exhaustion of press representatives, making use of possibilities provided by our legal system. We are sure that you understand the importance of freedom of the press, as a pillar of democracy and the value of criticism as a means of defending a democratic society, and in this context we ask for your timely intervention to resolve the issue.”⁸⁵

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

The rising use of strategic lawsuits against public participation (SLAPPs) and other legal actions aimed at intimidating and silencing journalists, has become a favourite tool of powerful individuals and corporations. The practice became widespread in last couple of years with the aim of silencing journalists who reported around the biggest wiretapping scandal in the Greek history, also called Predatorgate.⁸⁶

In December 2023, Grigoris Dimitriadis – the nephew and former secretary of Greek Prime Minister Kyriakos Mitsotakis, who had resigned following revelations of his alleged involvement with Intellexa, a company that sells Predator, an illegal spyware in Greece – filed a series of SLAPPs against media and journalists over reports about Predatorgate, in which he is allegedly involved.

The Journalists’ Union of Athens daily newspapers, ESIEA,⁸⁷ claimed that Dimitriadis “unleashed a flurry of new lawsuits against many journalists and the media and with exorbitant and exterminating claims”, to intimidate journalists and limit access to information.

Dimitriadis sent lawsuits to the media outlet *Efimerida ton Syntakton*, *EfSyn*, the media group

85 <https://www.documentonews.gr/article/eshea-kai-poesy-antidroyn-gia-tis-allages-floridi-kathestos-tromokratias-gia-toys-dimosiografoys/>

86 <https://predatorgate.gr/>

87 [Να σταματήσει η βιομηχανία αγωγών κατά δημοσιογράφων | ΕΣΗΕΑ \(esiea.gr\)](https://www.esiea.gr/)

Alter Ego and to journalist Dimitris Terzis, and for a second time to journalists Thanasis Koukakis, Nikolas Leontopoulos, Thodoris Chondrogiannos and Christoforos Kasdaglis.⁸⁸

This practice is also becoming widespread in general reporting. In early November 2023, the publisher of *Documento*, Kostas Vaxevanis, and one of the daily's journalists, Vangelis Triantis, were summoned by the Athens Prosecutor's Office as suspects as part of a criminal investigation into possible "fencing violation of official secrecy" in connection with their investigative reporting. The probe could see the journalists face serious criminal charges. It stemmed from a *Documento* article, published in February 2023, that contained details from a report on the audit by the Economic Crimes Enforcement Agency (SDOE) of supply and service contracts concluded by the Secretariat General of Anti-Crime Policy to combat the spread of COVID-19 in prisons, outlining how the state had reportedly lost €2 million to companies. A few months after, the newspaper was heavily fined for financial irregularities. Vaxevanis attributed the fine to a targeting from the authorities because of his previous revelations.^{89,90}

Confidentiality and protection of journalistic sources (including whistleblower protection)

Late in 2022, the Greek Parliament finally voted Law 4990/2022 (Government Gazette A/210-11.11.2022) entitled "Protection of persons reporting breaches of EU law – Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 and other urgent regulations". Until then, Greece did not have any legal framework in place concerning whistleblowing and protection against retaliation.

The purpose of the law is to establish a system for internal and external reporting of breaches of EU law, the protection of persons reporting such breaches, the roadmap of the respective proceedings in order to submit, receive and follow-up the respective reports and the penalties applicable in the event of breaches of the new legislation already in force.⁹¹

Nikolas Leontopoulos, the co-founder of Reporters United who has personally been targeted with SLAPPs and other harassment practices over his reporting the previous years, commented: "The adoption of the law came one full year after the official deadline for transposition but the real problem is that the Greek government failed to consult with any of the

88 <https://balkaninsight.com/2023/12/08/greek-union-condemns-former-govt-officials-mass-slapps-against-media/>

89 <https://fom.coe.int/en/alerte/detail/107640212>

90 <https://balkaninsight.com/2024/01/03/investigative-greek-media-outlet-documento-condemns-fine-as-censorship/>

91 <https://www.lambadarioslaw.gr/2022/12/greece-transposes-directive-eu-2019-1937-re-whistleblowing-is-your-organization-ready-to-comply/>

relevant stakeholders in the field. The result is a weak law that falls short of real, extensive, and inclusive protection for whistleblowers”.⁹²

Other

In February 2023, the decision of a special court⁹³ to convict the former Minister of Digital

Policy, Telecommunications and Media for illegal interference in the TV licensing auction in 2016 – along with others who participated in the process – exacerbated existing perceptions of undue political and business influence in Greek media.

Checks and balances

Key recommendations

- *Ensure the effective and timely consultation in practice of stakeholders on draft legislation, including by allowing sufficient time for public consultation.*
- *Refrain from any interference with the operation of Independent Authorities.*

Process for preparing and enacting laws

Despite efforts to improve the quality of the legislative process in practice, challenges remain. While draft bills are consistently subject to public consultation and follow-up reports address the comments submitted, concerns regarding the lack of effective and timely consultation of stakeholders persists. Civil society organisations and other stakeholders have frequently criticised the practice of adopting omnibus legislation and last-minute amendments.

According to the Centre for Liberal Studies (KeFiM), “in 2023, from the beginning of the year until the closure of Parliament in view of the national elections [May 2023], the quality of legislation in our country decreased by 4.74 points compared to 2022, according to the Quality of Legislation Index published today for the fifth year by the Centre for Liberal Studies”.⁹⁴ The report underlines that the greatest weakness in the quality of legislation in 2023 is found in the implementation of laws (38.4/100) and is linked, inter alia, to two key features of the legislative process: the

92 <https://www.whistleblowingmonitor.eu/?country=greece>

93 [Greek court finds former minister guilty of breach of duty in TV licences case | Reuters](#)

94 <https://kefim.org/deiktis-poiotitas-nomothetisis-2023-arnitiki-i-fetini-proeklogiki-chronia-gia-tin-poiotita-tis-nomothetisis/>

acceleration of lawmaking due to the upcoming elections, and “symbolic lawmaking”, in which laws are passed to satisfy public opinion rather than to solve real problems. Also, the average deliberation days decreased to 12 days in 2023, four days fewer than in 2022, while 82% of the amendments passed per law in 2023 were unrelated to the main subject of the law.

There were at least three legislative instances in 2023 marred by reports of a breach of proper legislative rules:

- The preparation and enactment of law 5043/2023 failed to meet a number of good law-making considerations, including the fact that the public consultation period was shortened without justification, amendments to the law were filed late and were irrelevant to the main content of the bill.⁹⁵
- The government’s amendment on the electoral exclusion of neo-Nazis was, in breach of good law-making rules, irrelevant to the main subject matter of the bill into which it was incorporated. Furthermore, according to a prominent academic, the content of the provision potentially raises issues of compatibility

with Article 6 of the ECHR, which guarantees the right to a fair trial.⁹⁶

- On 10 July 2023, the Ministry of Interior posted for public consultation a bill entitled “Removal of restrictions on registration in the special electoral rolls of foreign voters”. By stipulating, however, that the consultation period would last until 17 July 2023 and failing to adequately justify this decision to shorten the consultation period, the procedure stipulated by Law 4622/2019 and the rules of good legislation were not followed.⁹⁷

A large number of last-minutes amendments⁹⁸ were introduced, which, apart from violating the rules of good legislation prescribed by law, also resulted in a lack of transparency and accountability on issues that affect individual rights, public procurement and other issues of public interest.

Independent authorities

Independent authorities are administrative bodies that are part of the legal entity of the state but enjoy intra-administrative independence and have financial and administrative autonomy. In Greece, independent authorities may be enshrined in the Constitution

95 <https://govwatch.gr/en/finds/o-nomos-5043-2023-kai-oi-provlimatismoi-se-epipedo-kalis-nomothetisis/>

96 <https://govwatch.gr/en/finds/tropologia-gia-ton-eklogiko-apokleismo-ton-neonazi-kaki-nomothetisi-kai-zitimata-symvatotitas-me-esda/>

97 <https://govwatch.gr/en/finds/mi-aitiologimeni-syntmisi-toy-chronoy-diavoyleysis-apo-to-ypourgeio-esoterikon-iolyios-2023/>

98 [ΝΔ και ΣΥΡΙΖΑ ταυτίζονται στην κατάθεση παράνομων και αντισυνταγματικών τροπολογιών | vouliwatch](#)

(the Hellenic Data Protection Authority, the National Council for Radio and Television, the Hellenic Authority for Communication Security and Privacy, the Supreme Council for Civil Personnel Selection and the Ombudsman) or provided for by common law (e.g. the Competition Commission, the Greek National Commission for Human Rights etc.).

The recent changes to the composition and to the way that new members of the independent authorities of the Hellenic Authority for Communication Security and Privacy (ADAE) and the Greek National Council for Radio and Television (NCRTV) are selected, have been a major topic of public debate regarding whether this constituted an attempt to interfere with the functioning of these independent authorities.

According to Article 101A of the Constitution, the staff of these Independent Authorities:

(a) are appointed for a fixed term and are governed by personal and functional independence, as provided by law; and

(b) shall be selected by majority decision of the Conference of Presidents of the Parliament, with a three-fifths majority.

The personal independence of the members of the independent authorities is guaranteed on the basis of a procedure that provides impartial judgement, the provision of a fixed term of

office and the guarantee of a minimum level of financial independence.⁹⁹

Furthermore, Articles 13 and 14 of the Parliament's Rules of Procedure, as amended and in force,¹⁰⁰ regulate matters relating to the composition, convening and powers of the Conference of Presidents of the Parliament.

On 7 September 2023, a few days before the controversial vote, the plenary of the Parliament amended this provision in the Rules of Procedure of the Parliament and added another member to the Conference of Presidents: the President of the Special Standing Committee on Research and Technology.

On 28 September 2023, the Conference of Presidents of the Parliament met to select the members of two of the constitutionally enshrined Independent Authorities, Hellenic Authority for Communication Security and Privacy and the Greek National Council for Radio and Television. The procedure followed for the appointment of these members has, however, been the subject of much controversy from political and legal experts.

The main issues that have emerged as causes for concern are as follows:¹⁰¹

- The fact that the decision of the Conference of Presidents was taken

99 [Οι ανεξάρτητες αρχές \(Γενικό Διοικητικό Δίκαιο, 19.6.2023\) - Ευγενία Πρεβεδούρου \(prevedourou.gr\)](#)

100 [Conference of Presidents \(hellenicparliament.gr\)](#)

101 <https://govwatch.gr/skepseis-me-aformi-tin-prosfati-epilogi-ton-melon-tis-adae-kai-toy-esr/>

without the constitutionally required full majority of three-fifths of its members;

- The fact that the selection of the new members took place without prior parliamentary consultation or consensus, and without the candidates being subject to a parliamentary hearing;
- The fact that the Conference of Presidents was convened unexpectedly and hastily;
- The ministerial decisions and the Official Gazette appointing the selected members were issued much more quickly than is usual practice;
- The fact that the composition of the Conference of Presidents was enlarged just 20 days before the meeting in question;
- The fact that the whole sequence of events calls into question the independence of the authorities and may be construed as interference (or attempted interference) in their work.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication

and the availability and publicity of data concerning administrative decisions)

Diavgeia is the official transparency portal of the government. All government institutions are obliged to upload their acts and decisions on the Internet with special attention to issues of national security and sensitive personal data. Each document is digitally signed and assigned a unique Internet Uploading Number (IUN) certifying that the decision has been uploaded at the “Transparency Portal”. Following the latest legislative initiative (Law 4210/2013) of the Ministry of Administrative Reform and e-Governance, administrative acts and decisions are not valid unless published online.¹⁰²

Although constituting a very important tool for the accessibility of administrative decisions, there is mounting criticism that Diavgeia has not been updated to incorporate new tools and parameters and needs reform in order to serve its purpose.¹⁰³

Powers accorded to the courts to carry out judicial review (including the scope and suspensive effect of review powers)

Judicial review could be carried out either through the annulment or the appeal against adverse administrative acts, or decisions, or material actions. Annulment results in the total or partial annulment of the administrative act

102 <https://diavgeia.gov.gr/>

103 <https://lab.imedd.org/h-elleipsi-anoikton-dedomenon-stin-ellada-odigei-se-adiafaneia-kai-anakoptei-tin-oi-konomiki-anaptyxi/>, <https://www.protothema.gr/economy/article/1419114/pasok-dekatria-hronia-diaugeia-pro-taseis-gia-perissoteri-diafaneia/>

from the legal world, while the appeal gives to the ordinary administrative judge the power not only to annul, referring to the administration, but also to amend the challenged administrative act. Petitions for judicial review (annulment) of enforceable acts of the administrative authorities for excess of power are heard in principle by the Council of State¹⁰⁴ which decides in first and last instance. Certain categories of judicial review (annulment) cases fall under the jurisdiction of administrative courts, following a special provision by law, for reasons pertaining to their nature and their importance. On the contrary, it is the ordinary administrative courts that have the original competence to decide cases by exercising full jurisdiction, while the Council of State has the competence to hear petitions for reversal of final judgments reached by the appellate or first- and last-instance administrative courts in such cases. In certain categories of cases the Council of State has also the competence to decide cases by exercising full jurisdiction, either by virtue of an express constitutional provision (as in cases of dismissal or in cases of downgrading of civil servants) or by virtue of a law issued upon constitutional authorization. Finally, the elaboration of all decrees of regulatory nature falls under the jurisdiction of the Council of State which has the competence to give an opinion concerning the legality thereof.

The administration's obligation to comply with the content of the judicial decisions of the administrative courts is provided for in

article 95 par. 5 of the Constitution and is further specified in article 50 par. 4 of the p.d. 18/1989. Governmental acts (article 45 par. 5 of Presidential Decree 18/1989) and non-executory administrative acts (article 45 par. 1 of the Presidential Decree 18/1989) are excluded from judicial review. In this context, serious political decisions, such as the decision of premature dissolution of the Parliament due to a serious national matter, are excluded from judicial review. In addition, the acts of promotion of judges into the positions of President or Vice-President of the Highest Courts of the State are exempted from judicial review explicitly by the Constitution (article 90 par.6 Constitution as in force). In article 10 of the Constitution, and more particularly in article 27 of the Code of Administrative Procedure, it is stipulated that for the acts of the executive power that are not provided judicial review, administrative review is provided.

Electoral framework

Limitations on the right to vote

Voting is compulsory for citizens who are at least 17 years of age in an election year, although penalties for abstention are not enforced. Citizens who have been found mentally incompetent by a court are deprived of suffrage rights. According to ODIHR/OSCE, "this restriction contravenes principles of universal and equal suffrage, as provided for in the 1990 OSCE Copenhagen Document, UN

104 http://www.adjustice.gr/webcenter/portal/SteEn?_afzLoop=6014480831558289#!%40%40%3F_afz-Loop%3D6014480831558289%26_adf.ctrl-state%3D17xoeb0wwg_209

treaties, and other international obligations.”¹⁰⁵ Citizens forfeit their voting rights due to criminal conviction for certain crimes. Positively, the blanket restriction was abolished, narrowing it down to certain types of serious crimes where the punishment is irrevocable.

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

In the 2023 early Parliamentary Election, the ODIHR/OSCE mission underlined that persons with disabilities faced difficulties in exercising their right to vote in relation to voter information on the electoral process via media as well as physical accessibility and autonomous voting on election day. “In line with recommendations of previous ODIHR missions, a new amendment mandates provision of support to voters with mobility issues at the polling station and allows for them to be accompanied by a person of their choosing. While this is a positive step, further actions could be taken to facilitate autonomous participation, including the use of assistive tools, such as Braille or tactile ballot guides for persons with visual impairments, eliminating physical obstacles in polling centres and exploring the possibility of using alternative voting methods to be in line with international standards. Information on

the electoral process by various stakeholders in the media should also be made accessible to persons with disabilities to enhance their participation in public life.”¹⁰⁶

Based on a law passed in 2019, Greeks residing abroad could vote for the first time in national elections. However, this required physical presence in specific polling stations which practically excluded many potential voters who could not travel what proved to be very big distances in many cases. On a positive development, the government has recently announced that it will introduce a new legislation giving the possibility of postal voting for the first time in the June 2024 EU elections, for citizens inside or outside the country that are registered in the voting catalogues, through postal vote.¹⁰⁷

Rules on political advertising and their enforcement

There is an extensive legal framework that defines the nature and length of obligatory broadcasts.¹⁰⁸ The law requires broadcasters to allocate party coverage proportionally to the results of the last elections. The free-airtime division benefits bigger parliamentary parties, giving them an advantage in terms of both the amount of exposure and time slots. Paid advertising in broadcasts is not allowed while free airtime is available to each registered

105 <https://www.osce.org/files/f/documents/4/0/558300.pdf>

106 <https://www.osce.org/files/f/documents/4/0/558300.pdf>

107 <https://www.euractiv.com/section/elections/news/greece-to-test-postal-voting-in-eu-elections-for-the-first-time/>

108 https://www.kodiko.gr/nomologia/download_fek?f=fek/2023/b/fek_b_2881_2023.pdf&t=da6bafcf94f2524e16c0495f179a45e6

party. Free airtime arrangements allow every contestant to present their views. Both public and private broadcasters are obliged to air 45-minute-long press conferences and 10-minute-long advertising slots for each registered party. Independent candidates can appear once on national channels, and twice on regional channels. Public broadcasters are also obliged to show 45-minute-long interviews with the leader or representative of each registered party and transmit at least two live campaign events for each parliamentary party.

While the broadcasters fulfilled their obligations regarding the amount of airtime, smaller parties generally complained that their appearances were relegated to less popular time slots. Still, given that outside the campaigning period most media coverage is seen to benefit the governing party, we could say that broadcasters generally made efforts to achieve fairness during the election campaign.

Eligibility criteria and restrictions to be a candidate

Citizens who are eligible to vote and have reached the age of 25 can run for parliamentary elections. The legal framework continues to restrict the candidacy rights of certain professions, including all salaried public employees, members of the armed forces, governors and mayors, and chairpersons of boards of public corporations. Candidates can only run in one constituency, with the exception of the party/

coalition leader, who can register in up to three constituencies. In order to be able to present a national list, parties must present candidates in at least three-quarters of constituencies.

Before the elections of 2023, the government introduced a series of legal amendments that led to banning the newly founded party Ellines from running in these elections because of the conviction of one of its leaders, Elias Kasidiaris, in the Golden Dawn trial.

Amendments adopted in February 2023 disqualify parties led by politicians convicted of serious offences and when a party does not “serve the free functioning of [Greece’s] democratic constitution” from competing in elections.¹⁰⁹ The law was further amended in April 2023 to define the “leadership” of a party. It also mandated the Supreme Court to decide on the eligibility of a party to compete in elections. While the prohibition might be in conformity with the specific permissible grounds of limitations as set out in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the broad wording of the amendments could open up the risk of arbitrary application in future elections. In addition, these amendments were adopted in the run up to elections with the support of only two parliamentary parties and thus lacked genuine public consultation and broad political consensus.

¹⁰⁹ <https://www.osce.org/files/f/documents/4/0/558300.pdf>

Several prominent legal scholars¹¹⁰ have challenged the legality of these amendments, both in terms of timing and procedure, but also in terms of constitutionality and scope. It is to be noted that the Greek Constitution, in art. 29, does not provide for the possibility of banning the operation or dissolution of political parties mostly for historical reasons related with the previous banning of the Communist Party, while according to article 51 para. 3 of the Constitution, the deprivation of political rights requires a final court decision. There was a discussion on adding a relevant provision to the constitution during the 2019 revision that never concluded.

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

As analysed above (in the section on “Media Environment”), although the number of media outlets in Greece is large and the landscape is diverse, the ownership of major media groups is concentrated among a handful of influential business owners with interests also in other sectors of the economy. The broad perception that these structural issues, combined with wage pressure and limited work opportunities for journalists, have led to a significant level of self-censorship was also prevalent during the 2023 election period. Smaller, mainly online media outlets fill the gap for investigative journalism. However, their audience is limited and long-term financial viability unclear.

In general, political coverage was seen as being predominantly supportive of the government. While television is still the most popular source, the perceived interdependence of media and politics has led to low trust in journalism with audiences relying on social networks for news.

Free and open civic discourse online and offline during electoral campaign

The ODIHR Election Assessment Mission Final Report for the 2023 early parliamentary election verified the embedded tradition of peaceful and pluralistic elections in Greece in the post-Junta era. The elections were held in a competitive and pluralistic environment, and fundamental freedoms were respected. Voters were provided with ample information enabling them to make an informed choice. Contestants conducted their campaigns freely, and fundamental freedoms of assembly, association and expression were respected. The campaign was competitive, and the wide range of contestants ensured a broad choice of political alternatives. Main campaign topics centred around the economy, growth, employment, living costs, social security, and a potential post-election coalition. Parties mainly relied on small and medium-sized gatherings, face-to-face meetings, social media and television, with large-scale closing campaign events organised in Athens.¹¹¹

110 [Κασιδιάρη - constitutionalism.gr](https://www.kasidiarh.gr)

111 <https://www.osce.org/files/f/documents/4/0/558300.pdf>

Civic space –

Key recommendations

- *Re-evaluate the current registration system for civil society organisations, including by initiating a structured dialogue with CSOs.*
- *Ensure full accountability for the mass surveillance scandal, commonly known as Preda-torgate.*

Freedom of association

Formation, establishment and registration of associations, including rules on membership

Although the Constitution and law provide for freedom of association, courts continue to place legal restrictions on associations of persons who self-identify as ethnic Macedonian or associations that include the term ‘Turkish’ as indicative of a collective ethnic identity. In December 2022, a court in Florina, in northern Greece, approved the registration of an NGO called the Centre for the Macedonian Language, focused on promoting the language and culture of North Macedonia in northern Greece. The decision was appealed by the Prosecutor of the Florina District Court, but the Court of First Instance of Florina upheld the decision in 2023 on the grounds that “associations established for purposes such as the pursuit of various social or economic objectives, the protection of cultural or intellectual heritage, the search for

national identity or the affirmation of a minority consciousness are important for the smooth functioning of democracy. The way in which national legislation establishes this freedom and its practical application by the authorities reveals the state of democracy within the country concerned.”¹¹²

Other

The shrinking of civic space has become a worrying trend in the country in recent years. While no new laws were passed on freedom of association in 2023, a Joint Ministerial Decision, which in 2020 introduced strict requirements for the operation of CSOs working on migration in Greece, is still in place. The law makes it difficult for these organisations to register, consequently hindering their operations. Various domestic and international bodies, including the European Commission, have raised concerns about the compatibility of the legislation with the country’s legal obligations, nevertheless, Greece insists on implementing

112 <http://www.odos-kastoria.gr/2023/06/florina.html>

from the European Union to support his work as a human rights defender.¹²¹

The freezing of assets by the Anti-Money Laundering Authority without any formal process or mechanism of appeal, and without any deadline as to whether a formal investigation will actually be initiated or not, constitutes a harassment tactic that has become more and more frequent in recent years.¹²²

The overall widespread targeting of human rights defenders has raised great concern among civil society as well as independent media correspondents. The UN Special Rapporteur on Human Rights Defenders, Mary Lawlor, expressed in her recent report following a visit to Greece, her concern about the “reports of human rights defenders, in particular those supporting migrants, refugees and asylum seekers, being targeted by hostile comments, including by key stakeholders in the government. They are described as traitors, enemies of the state, Turkish agents, criminals and smugglers and traffickers”.¹²³ Moreover, concerns about the alleged intimidation, criminalisation and restriction of the work of defenders of the rights of refugees, asylum seekers and migrants have been communicated to the Greek government by multiple UN Human Rights Council experts on several previous occasions.

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation in assemblies

The right to freedom of assembly, which is guaranteed by the Constitution, is generally protected. This protection has been partially compromised after the passage of Law No. 4703/2020, on public outdoor gatherings and other provisions, which introduced certain restrictions on the exercise of the right of peaceful assembly, as enshrined in article 11 of the Constitution. It should be noted that the introduction of restrictions on public gatherings was part of the government’s election programme and was unrelated to the COVID-19 pandemic.

The most important changes introduced by the law included obligations imposed on organisers of gatherings or protests to notify the local Hellenic Police or Coast Guard authority of their intent to invite people to participate in a public gathering, as well as to provide details as to the specific time, place and route to be followed by protestors, in “due time”, prior to the protest. Under the law, organisers must also provide the authorities with their identification and contact details and must cooperate with them in maintaining peace and order. Spontaneous public gatherings are permitted, exceptionally, provided that they are not deemed to pose a threat to public safety or to

121 <https://www.fairtrials.org/articles/news/panayote-dimitras-fair-trials-denounces-continuing-harassment/>

122 See also, <https://www.lifo.gr/stiles/optiki-gonia/epameinondas-farmakis-enas-epaggelmatias-toy-prosfygikoy>

123 <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>

present a risk of seriously disrupting social and economic activities.

The legislation has been heavily criticised by human rights defenders, both on the scope and on the process, since it was adopted without the necessary dialogue with social partners, unions or civil society. Most importantly, the provisions on spontaneous gatherings reverse the presumption of legality for peaceful protests, while the provisions on organisers establish a liability for any damages incurred during the protest, ultimately discouraging persons from assuming this role and creating a chilling effect on the organisation of peaceful gatherings.

Policing practices, including dispersion of protests, use of force

Incidents of police violence and arbitrariness are not isolated cases but rather a frequent and increasingly common phenomenon in Greece. The Greek police force has a long history of corruption and excessive use of force but since New Democracy was elected in 2019 – at least in part on a law-and-order platform – complaints have soared.¹²⁴

In her recent report on Greece, UN Special Rapporteur on Human Rights Defenders Mary Lawlor expressed concern about reports of excessive use of force by law enforcement officers acting to disperse demonstrators, including cases of police violence and the extensive use of tear gas against migrants and asylum-seekers protesting in reception centres, such as on Lesbos and Samos. “The Special Rapporteur joins the Committee against Torture in recommending that Greece review the crowd control procedures applied by the police in the context of demonstrations, ensure effective investigations into all allegations relating to the excessive use of force and increase efforts to provide training to all law enforcement officers on the use of force.”¹²⁵

Excessive use of force was reported in several instances, with most prominent the rolling protests that have gripped Greece with demonstrators after the deadliest car crash in Greece’s history at Tempi.^{126,127}

In another indicative case, there were reports and complaints over the use of chemicals and violence by police forces outside the Volos court, where a trial was being held against police

124 [Police brutality on the rise in locked-down Greece, activists warn – POLITICO](#)

125 <https://reliefweb.int/report/greece/report-special-rapporteur-situation-human-rights-defenders-mary-lawlor-visit-greece-ahrc5229add1-advance-edited-version>

126 <https://www.voanews.com/a/police-protesters-clash-at-rail-disaster-rally-in-athens/6990417.html>

127 <https://www.hlhr.gr/%ce%b5%cf%80%ce%b9%cf%83%cf%84%ce%bf%ce%bb%ce%ae-%cf%85%cf%80%ce%b-%cf%85%cf%81%ce%b3%cf%8c%cf%82-%ce%b1%cf%83%cf%84%cf%85%ce%bd%ce%bf%ce%bc%ce%af%ce%b1-%ce%b4%ce%b9%ce%b1%ce%b4%ce%b7%ce%bb%cf%8e/>

officers for a previous case of using excessive violence against a citizen.¹²⁸

In December 2023, 424 people were brought in by the police after a policeman was fatally injured during a football match. Lawyers have complained that people were questioned for several hours without being given the right to speak to their family or a lawyer, while their family members were not given to information on their whereabouts, even if they were under 18.¹²⁹

Most worryingly, according to the latest report of the Ombudsman, complaints about incidents of police arbitrariness and violence against citizens are being investigated inadequately or even in a completely bogus manner. The Criminal Procedure Code designates Hellenic Police and Hellenic Coast Guard officials as “general investigating officers” (γενικοί ανακριτικοί υπάλληλοι) competent for the conduct of the preliminary investigation (προκαταρκτική εξέταση) and pre-interrogation (προανάκριση) following a Public Prosecutor order or ex officio. Furthermore, the Prosecutor may archive cases without preliminary investigation where an administrative inquiry (ένορκη διοικητική εξέταση) has been conducted or a NTA report has been issued. This means that investigations, including administrative inquiries, into potential criminal conduct by law enforcement bodies are carried out by the very same state bodies.

These systemic deficiencies have consistently been highlighted through condemnations by the European Court of Human Rights and corollary Committee of Ministers decisions on the execution of such judgments. In only 12% of the cases of police or administrative arbitrariness examined by the Ombudsman, it was considered that a full investigation had been carried out.¹³⁰

Freedom of expression and of information

The controversial provision of the Criminal Code on the spread of disinformation, voted in 2021, was amended to address the concerns previously identified. In December 2022, Article 191 of the Criminal Code aiming at preventing the spread of disinformation was amended. Thus, for an offence to be committed, the concrete “effect” of “causing fear is required” and not merely the abstract risk of “causing fear in citizens”, which is a concept difficult to prove and not easy to evaluate. Moreover, the amendment removed the aggravating circumstance of repeated offence.

On 26 October 2023, French and Canadian journalist Romain Chauvet was given a six-month suspended prison sentence by an Athens court, which was appealed by his lawyer. Chauvet, an Athens-based freelance reporter for Radio Canada, the French TV news

128 <https://govwatch.gr/en/finds/kataggelia-peristatikoy-astynomikis-vias-sta-dikastiria-toy-voloy/>

129 <https://www.thetoc.gr/koinwnia/article/ekatonrades-oi-prosagoges-meta-ton-traumatismou-astunomikou-15xronoi-anamesa-tous---diamarturia-suggenon/>

130 <https://www.hlhr.gr/wp-content/uploads/2023/10/171023-EMIDHPA-EKTHESH-WEB.pdf>

channel BFMTV and the news site *Courrier des Balkans*, was found guilty of disseminating false information by allegedly making a false bomb alert. The first court hearing took place the next day, on 13 October 2023. Reporters Without Borders (RSF) said the conviction represented a dangerous precedent in the application of the law against fake news.¹³¹

Attacks and harassment

The UN Special Rapporteur on Human Rights Defenders, Mary Lawlor, expressed in her recent report following a visit to Greece, her concern about the “reports of human rights defenders, in particular those supporting migrants, refugees and asylum seekers, being targeted by hostile comments, including by key stakeholders in the government. They are described as traitors, enemies of the state, Turkish agents, criminals and smugglers and traffickers”.¹³²

The swift shift in migration policy to a strict securitisation and militarisation of borders, in which migrants are designated as a “hybrid threat”, coincided with the hardening policy against NGOs. The criminalisation of NGOs, organisations and human rights defenders working at the field include criminal charges for facilitation of entry, migrant smuggling, conspiracy, abuse of office, fraud, abetting

irregular immigration, illegally obtaining state secrets, complicity in trafficking in human beings. Soon the criminalisation took the form of smearing campaigns for money laundering, espionage and membership of a criminal organization.

Allegations against human rights defenders and NGOs in the media undermine their work, creating a generalised suspicion of NGOs. The latter tends to continue long after they are released, as their names are rarely cleared. The lack of action, which is limited to general recommendations by EU and other bodies, has created this atmosphere of impunity regarding the smearing campaign against human right defenders and persons on the move.

Online civic space

Digital surveillance

The mass surveillance scandal commonly known as *Predatorgate* is still tormenting the Greek public sphere.

The surveillance scandal began with revelations in November 2021 that Greece’s intelligence service, EYP, had wiretapped the phone of freelance reporter Stavros Malichoudis.¹³³ It then emerged in April 2022 that the mobile phone

131 <https://rsf.org/en/greece-rsf-concerned-about-possible-conviction-french-canadian-reporter-accused-issuing-false-bomb>

132 <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>

133 [Solomon’s reporter Malichoudis under surveillance for “national security reasons” - Solomon \(wearesolomon.com\)](#)

of Thanasis Koukakis,¹³⁴ a freelance journalist investigating banking and business stories, was infected by the Predator spyware. This software allows users to monitor every aspect of a target's phone, including calls, messages, photos, and videos, as well as to access the microphone and camera. Days later, it was also revealed that the security service had also wiretapped Koukakis' phone through the official procedure.

At the end of July and in early August, it was reported that the intelligence services had also conducted surveillance on the leader of the opposition party PASOK and member of the European Parliament, Nikos Androulakis,¹³⁵ and that there had been an attempt to hack his mobile phone with Predator.

Since then, a much broader and growing list of targets,¹³⁶ including journalists, politicians, entrepreneurs, members of the government, and judicial officials have reportedly also been targeted by Predator, according to the investigative¹³⁷ media outlet *Documento*. National authorities have been accused of being complicit in the surveillance.

The government denies the allegations and its links to the use of spyware. It admitted,

however, that the state intelligence service was monitoring Androulakis for what it described as reasons of national security. The head of the security services, which falls under the direct supervision of the prime minister's office, resigned¹³⁸ following the news.

Almost two years since this scandal broke, people in Greece are still awaiting the outcome of ongoing judicial investigations into the allegations of surveillance, and for improvements to safeguards on the right to privacy. In October 2023, one reporter from Inside Story, who had been summoned to testify by the Athens Prosecutor's Office, was notified that her testimony was postponed because the Supreme Court Prosecutor, Georgia Adilini, had removed the two prosecutors who handled the case and assigned the investigation to the deputy prosecutor of the supreme court Achilles Zisis. Independent media saw a stalling and manipulation tactic in this move.¹³⁹

New legislation was introduced late 2022 by the government, which was criticised for lack of procedural safeguards. Meanwhile, the Hellenic Authority for Communication Security and Privacy stated¹⁴⁰ that the law opens up the possibility of legal monitoring

134 [Greece: Journalist Thanasis Koukakis surveilled for 10 weeks with powerful new spyware tool - https://ipi.media](https://ipi.media)

135 [EU Commission alarmed by new spyware case against Greek socialist leader – Euractiv](#)

136 “Predatorgate”, dozens of Greek ministers and journalists under surveillance / Greece / Areas / Homepage - [Osservatorio Balcani e Caucaso Transeuropa \(balcanicaucaso.org\)](https://www.balcanicaucaso.org/)

137 [SPYWARE | inside story](#)

138 [Greek intelligence chief resigns over alleged spying scandal | Euronews](#)

139 [Αποκαθλώθηκαν οι εισαγγελείς των υποκλοπών λίγο πριν τις διώξεις κατά δύο προσώπων | inside story](#)

140 <http://www.opengov.gr/ministryofjustice/?c=32953>

with spyware technology outside of the existing official system of legally permitted interception of communications.

Public participation

Greece's largest recognised minority population, the Muslim community of Thrace, has full political rights, and four members of the community won seats in the 2023 parliamentary

elections. The right to vote in national elections is restricted to Greek citizens, so the reported delays in naturalization and granting of citizenship process might exclude several people from their right to vote. Though there are no significant legal or practical barriers to women's political participation, women only hold a little more than a fifth of the seats in parliament and sexist and patriarchal attitudes dissuade their active participation.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Strengthen the institutional implementation mechanism through the creation of an inter-ministerial committee in which the competent ministries would participate, along with the Legal Council of State, the National Commission for Human Rights, and the Ombudsman. The committee would meet regularly and formulate proposals relating to implementation measures.*
- *Creation of an independent authority to investigate pushbacks of refugees and migrants.*

Systemic human rights violations

Impunity and/or lack of accountability for human rights violations

Being a part of border control strategies for so long, pushbacks of migrants and refugees in the Greek border zones have gradually become normalised and have become seen as an

alternative way of border control. The frequency and organised coordination of these operations have been well-substantiated by various local and international organisations over recent years, as well as the violence exercised throughout the operations. Greece has been repeatedly denying the existence of these operations, while the EU has – quite hypocritically – been calling for investigation, while at the same time

rewarding Greece's position as the 'shield of Europe'.¹⁴¹

Several NGOs and human rights groups have been documenting those practices for years (indicatively^{142,143,144}); numerous attempts have been made to find legal recourse before national and international courts and bodies. The difficulty to acquire hard data is flagrant: the militarisation of the border regions makes access extremely difficult; a restricted 'buffer zone' runs along both banks of the river Evros while the access to the sea border zone is also practically impossible. Detention centres and border guard stations are often located within this buffer zone, keeping detained people out of sight and without access to legal support. For many people pushed back, it is essentially impossible to return to Greece and pick up where they left off.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

During 2023, Greece had 27 leading judgments of the European Court of Human Rights pending implementation, as well as 41 repetitive

cases.¹⁴⁵ Greece is one of the countries that has been condemned in a large number of judgements relating to administrative detention, reception and accommodation conditions, the treatment of migrants by the police and border authorities, the asylum system, the treatment of unaccompanied minors, and human trafficking.

Overall, Greece has improved its implementation in terms of the number of ECtHR judgements under supervision by the Council of Europe Committee of Ministers. It is now roughly on a par with the European average in terms of time it takes to implement decisions and in terms of the percentage of the judgements, in which implementation is still pending. However, formal compliance with ECtHR judgements does not necessarily go hand in hand with substantive implementation of human rights in administrative practice and government policy. Measures adopted by national authorities, such as legislation or accommodation structures, are often inadequate, or they are not (effectively) put into practice.¹⁴⁶

141 <https://edizionicafoscari.unive.it/media/pdf/books/978-88-6969-636-7/978-88-6969-636-7-ch-07.pdf>

142 <https://www.msf.org/greece-pushbacks-detention-and-violence-towards-migrants-lesbos>

143 <https://ecre.org/greece-decrease-in-arrivals-amidst-ongoing-pushbacks-and-ill-treatment-of-refugees-rights-organisations-denounce-lack-of-credible-investigation-into-pylos-tragedy-amid-ongoing-calls-for-accountability/>

144 <https://www.gcr.gr/el/news/press-releases-announcements/item/2111-new-gcr-report-reveals-violence-against-refugees-at-the-greek-turkish-borders-and-criminalization-of-legal-aid-organizations>

145 <https://www.coe.int/en/web/execution/greece>

146 <https://www.eliamep.gr/wp-content/uploads/2023/02/Policy-brief-127-Anagnostou-final-EN-1.pdf>

Fostering a rule of law culture

Contribution of civil society and other non-governmental actors

Govwatch is an independent, not-for-profit initiative by Vouliwatch.¹⁴⁷ It collects, records and reports violations or suspected violations of the rule of law in Greece, by theme. Govwatch aims to provide a source of information for citizens and institutions, to enable civil society to highlight wrongdoing, and to increase accountability in the political system.

147 <https://govwatch.gr/en/about/>

LIBERTIES

RULE OF LAW REPORT

2024

HUNGARY

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About the authors

Hungarian Civil Liberties Union



The Hungarian Civil Liberties Union is a human rights NGO; since its foundation in 1994, the organisation has been working for everybody to be informed about their fundamental human rights and empowered to enforce them against undue interference by those in positions of public power. HCLU monitors legislation, pursues strategic litigation, provides free legal aid assistance in more than 2500 cases per year, provides training and launches awareness-raising media campaigns to mobilise the public. It stands by citizens unable to defend themselves, assisting them in protecting their fundamental rights. HCLU has a presence in courts, national and international conferences, universities, in the capital and the countryside.

Disclaimer: The present report is based on the Contributions of Hungarian CSOs to the European Commission's Rule of Law Report¹ (January 2024) written by Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, K-Monitor, Mérték Media Monitor, Ökotárs – Hungarian Environmental Partnership Foundation, Political Capital, and Transparency International Hungary

Key concerns

Justice System

Regarding the justice system, there was progress versus the previous year. In 2022 and in

early 2023, the European Union put pressure on Hungary to adopt a legislative package of judicial reforms, which could help to improve its shattered independence. This is a step in the right direction, as important limitations to independence have been removed from the system and important guarantees have been put

¹ https://helsinki.hu/en/wp-content/uploads/sites/2/2024/01/HUN_CS0_contribution_EC_RoL_Report_2024.pdf

in place. However, it's important to approach the assessment of these reforms with caution. Key actors, such as the President of the Curia, may be interested in halting the progress, so it's not guaranteed that the reform will be successful. Despite this progress, changes in the justice system were not satisfactory in light of the European Commission's recommendations. No satisfactory action has been taken on the European Commission's recommendation on the transparency of the case allocation system in the context of the judiciary in 2023. Only the transparency of the case allocation system of the Curia has been improved, but no legislative measures have been taken to improve the transparency of the case allocation systems of the lower courts.

Anti-Corruption Framework

Regarding the anti-corruption framework, there has been no progress from last year. Although an unprecedented volume of anti-corruption measures have been taken in Hungary in the past few years, including the establishment of a new Integrity Authority, there is still no evidence of investigations, prosecutions, and final convictions in high-level corruption cases and their significant results. Similarly, developments regarding EU recommendations in this area were not satisfactory. No progress has been made on adopting comprehensive reforms on lobbying and revolving doors, and on further improving the system of asset declarations to

ensure effective oversight and enforcement. According to the latest publicly available draft of the Hungarian Anti-Corruption Action Plan,² lobbying and the revolving door mechanism will be regulated by non-binding legal instruments, no information is available on the content of future regulations, and no dissuasive sanctions are expected from such regulatory solutions. The content of asset declarations and the related sanction mechanism have not improved. The Integrity Authority published its report and recommendations on the asset declaration regime in December 2023,³ but there is no information on whether these will be implemented. So far, a robust track record of investigations, prosecutions and final judgments for high-level corruption cases is not visible. The primary obstacle can be attributed to the institutional structure of the prosecution, which continues to allow for political interference. There has been no change in this regard, and the 'motion for revision' institution created in the Criminal Procedure to counter this has not been found to improve the quality of the fight against corruption due to its expensive and risky nature.

Media Environment and Media Freedom

Regarding the media environment and media freedom, there has been no progress from last year. The media system's most challenging aspects have not improved, as there has been no progress in establishing measures to ensure the

2 Available on the webpage of the Anti-Corruption Task Force, as an annex to the government position on the opinion on the draft National Anti-Corruption Strategy of the Task Force: <https://kemcs.hu/wp-content/uploads/2023/10/NKS-kiegeszito-jelentesre-adott-Kormanyzati-allaspont.pdf>

3 https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonynyilatkozatok_Eseti_Jelentes_2023-1.pdf

functional independence of the media regulatory authority, the editorial independence and independent management of state media, and the fair and transparent allocation of advertising expenditure by state-owned enterprises for a just and equitable distribution of public revenues and expenses. Developments in this area were not satisfactory when considering the recommendations of the European Commission.

Checks and Balances

Regarding checks and balances, there was no progress this year. Essentially, the system of checks and balances remains unchanged; the ruling parties have almost unlimited power due to their two-thirds parliamentary majority. In this system, the independence of the institutions is not guaranteed. The perpetuation of the special legal order significantly undermines the system of checks and balances and the separation of powers.

Civic Space







There was a regression in civic space this year. At the end of 2023, presumably in preparation for the 2024 election campaign, the smear campaign targeting independent NGOs and the press, and the passage of the Sovereignty and Defence Bill as part of this, led to a significant deterioration in this area. The implementation of recommendations from the European Commission was also unsatisfactory. No steps were taken to implement the recommendation of fostering a safe and enabling civic space environment and removing obstacles for civil society organisations. The immigration tax remains in effect, even though it is not actively enforced. Smear campaigns against independent civil

society organisations (CSOs) persist. There have been no new funding options for independent CSOs. Some progress has been made in their participation in official consultative bodies related to the expenditure of EU funds. However, a negative example is the adoption of Act LXXXVIII of 2023 on the Defence of National Sovereignty, potentially leading to far-reaching consequences and further stifling critical voices.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Regarding the disregard of human rights obligations and other systemic issues affecting the rule of law environment, there was no progress from the previous year. In the permanent special legal order, fundamental rights do not limit the government's power in a meaningful way; the most important institution for the protection of fundamental rights, the ombudsman, is still downgraded because of its inactivity.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system

Key recommendations

- *Ensure the transparency and non-arbitrariness of the case allocation system in courts, including those lower than the Curia.*
- *The problematic scoring system used in the pre-appointment procedure for judges should be replaced by the new system proposed by the National Judicial Council.*
- *Eliminate the possibility for certain public officials to become judges by circumventing the normal conditions for becoming a judge.*

Judicial independence

Appointment of judges

Although the reforms of 2023,⁴ which affected the independence of the judiciary, covered the procedural rules for the appointment of judges, many of the problematic rules and practices of the previous system are still in place, so the change is not yet felt in all areas and it is questionable how far the reform will live up to expectations.

(a) The rather problematic selection system prior to the appointment of judges, the ‘points-based system’, remains substantially unchanged. It favours, for example, candidates who have previously worked in the executive branch. Although the National

Judicial Council (NJC) has drafted the proposal for a new system, its implementation has not yet started.

(b) The system continues to create the possibility of opaque selection without any meaningful opportunity for the NJC to comment. This is the case when several vacancies are opened simultaneously because the result of the application process can be manipulated by the Head of National Office for the Judiciary (NOJ) or the President of the Curia, who can decide the order in which they consider the applications. This problematic feature has not been affected by the reform.

(c) Members of the Constitutional Court already elected by the National Assembly may, by their own choice, continue their

⁴ See the assessment of the Judicial Reform in light of the super milestones set out in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee here: https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf

work as judges without going through the default judicial selection process. In 2023, one member of the Constitutional Court whose mandate expired used this possibility.

(d) As a result of the reform, only judges with at least two years of experience at the Curia may be elected President of the Curia. This is a way of preserving the power of the current leadership, but it is no guarantee that the head will be a professional, independent and impartial person.

However, there have been positive changes in 2023 as well:

(a) The President of the NOJ was previously not required to give individual administrative decisions. After the reform, they are obliged to give reasoned decisions, including those relating to the selection of judges, which are subject to the agreement or binding opinion of the NJC.

(b) In the future, the NJC will be able to prevent the President of the NOJ from declaring a selection procedure unsuccessful if the President is not satisfied with the outcome, i.e. the ranking of candidates by the panels of judges.

Irremovability of judges

Although the judicial reform makes certain decisions of the NJC binding, it does not provide sufficient guarantee for the irremovability of judges. Issues arise in secondments, assignments, and transfers of judges outside the judiciary, raising concerns about potential

abuse, as the legislation lacks clear criteria for these processes, which may lead to arbitrary decisions. Furthermore, transfers create a bypass in judicial careers, allowing judges to acquire leadership positions without following regular promotion proceedings. Loopholes in the law permit short-term transfers to function as disguised promotions. A loophole in the law allows for the overhaul of judicial leadership positions if a leader is dismissed unlawfully and subsequently reinstated. The President of the Curia questions the legitimacy of Service Courts and the Disciplinary Court of Bailiffs, asserting that the Seventh Amendment to the Fundamental Law abolished separate (special) courts. Hungarian legislation permits individuals having highly political backgrounds to be appointed as judges without NJC consent or a cooling-off period. The process lacks transparency and formalities, raising concerns about judicial impartiality and independence.

Promotion of judges

The standard procedure for judicial promotions and leadership positions involves an ordinary application process, but exceptions are widely permitted by legislation. Administrative leaders have full discretion in making decisions on promotions and judicial leadership positions, eliminating the transparency associated with application procedures. No judicial remedy is available against appointments made without an application process, which raises concerns about accountability. Even within a standard application procedure, court leaders can manipulate their outcomes. Assessments of candidates for judicial leadership positions are made at the discretion of the relevant court president, and

while judge peers can provide a non-binding opinion, the lack of guarantees allows presidents to appoint leaders against peer opposition. Particular instances, such as the appointment of the wife of the present President of the Curia as head of the panel at the Metropolitan Court of Appeal, highlight the disregard for judge peer votes.⁵ Apart from formal appointments, the legislation allows for informal means of promotion, including assigning administrative tasks or special judicial positions through non-transparent decisions. Examples include the de facto assignment of a deputy-college leader position at the Curia and the assignment of additional administrative tasks, accompanied by extra remuneration, to a judge with an unconventional appointment procedure.⁶ The lack of criteria and transparency in these informal appointments raises concerns about fairness and accountability in the judiciary.

Allocation of cases

The implementation of the judicial reform, effective from June 1 2023, has raised ongoing concerns about the revised case allocation rules at the Curia. Questions persist regarding the presence of an electronic system capable of ensuring automated case allocation without

human intervention. Both the Curia and the NOJ have been unable to provide evidence of a functioning IT system. The President of the Curia has openly criticized the judicial reform, asserting that it was externally imposed, unimplementable, and has led to legal instability in the Curia's operation.⁷ Electoral cases are of particular concern, where panel compositions are not fixed, and flexible exceptional rules pose challenges for parties attempting to verify compliance with the case allocation scheme. Moreover, the automated system applies exclusively to electronically processed cases, leaving uncertainties for submissions filed on paper.

In lower-instance courts, persistent concerns involve the case allocation system, characterized by unlimited possibilities for modification and frequent changes without substantial control by judicial self-governing bodies. The process lacks automation, relies on direct human intervention, and incorporates a broad range of exceptional rules without sufficient safeguards against inappropriate application. Parties cannot verify the proper application of the scheme or the utilization of exceptional rules in their case allocation. At appeal courts, case allocation schemes determine the composition of chambers and their handling of specific

5 <https://helsinki.444.hu/2022/08/19/egy-itelotablai-tanacselnoki-kinevezes-magyarazatanak-margojara-a-tenyek-tukreben>

6 The Hungarian Helsinki Committee submitted a freedom of information to the Kúria to acquire information on the legal basis of the assignment. See the answer of the Kúria here: https://helsinki.hu/wp-content/uploads/2023/01/informalis_vezetoi_kinevezesek_a_Kurian_2022.pdf

7 See the interview at <https://www.youtube.com/watch?v=EspkKuhO4Zo>. See an outline of the interview here: https://helsinki.hu/wp-content/uploads/2023/10/Baka_v_Hungary_NGO_Communication_under_Rule_9_2-20231005.pdf, Section III.2.

case types. The absence of legal impediments allows for arbitrary transfers of judges between chambers, influencing the status of individual judges and the adjudication of particular cases. Such transfers, including the dissolution of well-functioning chambers, can occur without judicial remedy, as they are practically executed through amendments to the case allocation scheme.

Independence of the NJC

The judicial reform made a positive step through the enhancement of the legal status and powers of the NJC. However, concerns arise about safeguarding the NJC's independence, crucial for the fulfilment of its constitutional role effectively. Several instances indicate political and administrative pressures during the election process, for example, the Judicial Reform allowed current NJC members to seek re-election, prompting accusations of self-interest. NJC members declined re-election to counter such claims. Furthermore, the President of the Metropolitan Regional Court allegedly interfered in the election process by instructing court leaders to conduct open plenary "consultations", which raised concerns about voting secrecy.⁸ A letter from the President of the Curia expressing preference for electors to choose specific

administrative leaders raised doubts about the fairness of the NJC election and respect for electors' autonomy.⁹

The judicial reform lacked a conflict-of-interest rule that would exclude judicial leaders appointed by the NOJ President from NJC membership. This omission poses challenges to the NJC's future operation and elections, potentially compromising independence and impartiality. Throughout 2023, court leaders, government officials, and pro-government media continued to discredit the NJC, questioning its integrity and independence. Smear campaigns against NJC members contribute to an atmosphere challenging the credibility of the NJC and put pressure on potential candidates for the next term.

Accountability of judges

The procedure regarding the constitutionality of the NJC-adopted Code of Ethics is pending at the Constitutional Court,¹⁰ creating a negative impact on judges' freedom of expression and participation in professional debates. Furthermore, judgement C-564/19 of the Court of Justice of the European Union (CJEU) remains unexecuted, as the judicial reform did not address binding precedents on

8 See the detailed report from 23 August 2023: <https://444.hu/2023/08/23/maris-megkezdodott-a-kuzdelem-a-birosagokert>

9 National Judicial Council, Statement of the NJC on the letter of the Kúria President on the NJC election, 21 December 2023: https://orszagosbiroitanacs.hu/az-obt-kozlemenye-a-kuria-elnokenek-levelerol-az-obt-valasztas-kapcsan/?utm_source=substack&utm_medium=email

10 Case no. II/01285/2022, <https://alkotmanybirosag.hu/ugyadatlap/?id=B1E83AFC8B10B1D2C125885B005B-3B7E>

CJEU referrals. In March 2023, GRECO's interim compliance report¹¹ highlighted serious deficiencies in the implementation of recommendations for judges' and prosecutors' immunity and disciplinary proceedings.

The Integrity Policy, unchanged since the NOJ President's election, may be used to suppress judges advocating for judicial independence, citing political implications. Disciplinary cases decided by non-public service courts lacked transparency until November 2022, when the NJC began publishing anonymized decisions. The President of the Curia questioned the legitimacy of service courts, citing constitutional amendments.

Salaries of judges

The relatively low salaries of judges and court staff in Hungary pose a threat to judicial independence. The legislation grants wide discretion to the NOJ President and judicial leaders in determining bonuses, potentially leading to self-censorship. There is no clear statutory list or criteria for distributing promotions among judges, and discretionary decisions by employers can impact the eligibility for certain bonuses.

Autonomy of prosecutors

There has been no change in this respect, neither GRECO nor the European Commission recommendations have been addressed by any reform. The system will continue to ensure that government influence in the prosecutorial organisation will continue to impose the will of the government. The findings of previous years remain relevant.

Smear campaigns and others

Overruling final and binding decisions of ordinary courts by legislation has become a practice to enforce the political will of the ruling majority. For example: the Minister of Justice, Bence Tuzson, stated that the Ministry would amend legislation if court judgements did not serve "the interests of Hungarian citizens and institutions",¹² exemplified by a case involving transgender rights, in which legislative amendments were swiftly introduced after a court ruling in favour of a transgender woman's pension entitlement.

Smear campaigns happen against judges, especially those serving on the NJC. Propaganda media aligned with the government published articles suggesting bias within the NJC and referring to its members as "service staff of the

11 Group of States against Corruption (GRECO), Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Interim Compliance Report – Hungary, GrecoRC4(2023)7, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab87f1>

12 <https://444.hu/2023/07/03/tuzson-bence-mar-a-miniszterjelolti-meghallgatason-nyomas-ala-helyezte-a-birosagokat>

empire”, hinting at the United States and its Ambassador to Hungary.¹³

The President of the Curia has publicly questioned the legitimacy of court administration rules, claiming interference from local court members with insufficient experience at a supreme level and asserting that the Judicial Reform was externally imposed. He contended that this was causing legal instability.

Quality of justice

One of the biggest challenges facing the justice system today is the inefficiency of its support services. These services can be difficult to access and often fail to provide meaningful assistance to those in need. In many cases, victims are only able to access these services after significant delays, resulting in wasted time and missed opportunities. For instance, by the time a decision is made regarding eligibility for support, the window of opportunity for using this service may have already passed.

Fairness and efficiency of the justice system

From 1 January 2022, a new law¹⁴ allows litigants to obtain monetary compensation from the court in the event of an unreasonably long court proceeding. The law was adopted in response to the European Court of Human

Rights’ (ECtHR) frequent condemnations of lengthy civil proceedings. To a large extent, this has remedied the shortcomings identified by the ECtHR in a number of cases.¹⁵

It is important to note that the new compensation system has some flaws. The law defines excessive time periods in a way that is less favourable for clients than what is outlined in the ECtHR case law on “reasonable time”. While Hungarian courts have the ability to determine what is reasonably considered a shorter or longer period of time in a given case, the criteria for this are not specified in the law. Additionally, the daily amount of monetary compensation may be insufficient when considering Hungarian economic realities. The daily amount of monetary compensation is HUF 400, which is approximately €1. This means that in practice, the amount of monetary compensation for a delay of one year is only 3% of the average annual net salary in Hungary.

The NOJ recently released statistics¹⁶ showing that the number of pending court cases classified as protracted decreased by 8.5% by June 30th 2023, compared to the first half of 2022. Moreover, the number of court cases pending for more than 5 years also decreased by 8.6% by the end of the first half of 2023 compared to the first half of 2022. However, the NOJ found that some subsets, particularly criminal cases,

13 <https://magyarnemzet.hu/velemeney/2023/10/a-jurisztokracia-mar-a-spajzban-van>

14 Government Decree 372/2021. (VI. 30.).

15 The Committee of Ministers decided to end its supervision in the Gázsó case in respect of contentious civil proceedings in June 2023. CM/Del/Dec(2023)1468/H46-13, <https://hudoc.exec.coe.int/eng?i=004-10875>

16 https://birosag.hu/sites/default/files/2023-10/ugyforgalom_2023.felev_.pdf

showed an increase while overall the decline in court cases with a long backlog continued in 2023.

Anti-corruption framework

Key recommendations

- *Investigation and prosecution of politically sensitive corruption cases should be entrusted to institutions that are substantially independent of government, ideally the European Public Prosecutor's Office.*

Levels of corruption

Given the low level of control of public power, partly due to the political occupation of the institutions and the limited public sphere, corruption has long been a serious problem. In recent years, it has been the focus of EU measures addressing the rule of law in Hungary. Despite various international recommendations and the establishment of anti-corruption frameworks, Hungary has shown significant shortcomings in effectively combating corruption, leading to considerable implications for the rule of law within the country.

Hungary's failure to implement comprehensive anti-corruption reforms, as recommended by the 2023 Rule of Law Report, underscores the government's reluctance to adopt meaningful measures against corruption. The absence of stringent regulations on lobbying, revolving doors and effective oversight on asset declarations has allowed corruption to permeate various levels of government and public services. Furthermore, the inability to establish a robust

track record of investigations, prosecutions, and final judgements for high-level corruption cases highlights the systemic obstacles to achieving accountability and transparency.

The inefficacy of the anti-corruption framework in Hungary has direct and indirect impacts on the provision of essential services related to human rights. Corruption undermines the justice system, limiting access to fair legal processes and eroding trust in public institutions. For example, the healthcare system, vital for realizing the right to health, faces challenges such as mismanagement of resources, bribery, and unequal access to services, exacerbated by corruption. Education and social services are not immune, with corruption affecting the quality of education and the equitable distribution of social assistance, further marginalizing vulnerable populations.

Despite the establishment of new anti-corruption agencies, such as the Integrity Authority, and efforts to enhance transparency and integrity within public services, the measures aiming

to combat corruption have largely been insufficient. The lack of empowerment, adequate resources, and genuine political will to tackle corruption effectively hinders these institutions' ability to bring about meaningful change. Civil society organisations play a crucial role in exposing corrupt practices and advocating for reforms. However, their efforts are often stifled by a lack of cooperation from governmental bodies and restrictions on access to information.

The evidence of widespread corruption in Hungary, particularly affecting human rights-related goods and services, underscores a critical challenge facing the country. The lack of effective anti-corruption measures and institutional weaknesses has profound implications for justice, security, healthcare, education, and social services, compromising the fundamental rights of Hungarian citizens. Addressing this issue requires a concerted effort from the government, civil society, and international partners to implement comprehensive reforms, ensure accountability, and restore public trust in institutions.

Framework to prevent corruption

In 2023, the European Commission directed two anti-corruption recommendations towards Hungary. However, the Hungarian government has not acted upon either of these recommendations. The first recommendation

suggested comprehensive reforms on lobbying, revolving doors, and enhancing the system of asset declarations. There has been no progress on this front. The new anti-corruption strategy proposed handling lobbying and revolving door mechanisms through soft-law tools, which lack specific guidelines or dissuasive sanctions. The substance of asset declarations and associated sanctions has not advanced either, despite having been scheduled for implementation in the summer of 2023. Although the Integrity Authority published recommendations on the asset declaration system in December 2023,¹⁷ it is uncertain whether the government has accepted them. The second recommendation called for a robust record of investigations, prosecutions, and final judgements for high-level corruption cases. The 2022 criminal procedure reform introduced the “motion for revision” to aid in prosecuting high-level cases, but its effectiveness is doubted.¹⁸ No significant legal or institutional reforms addressing the hierarchical structure of the prosecution service have occurred, hindering improvements in tackling corruption cases.

The implementation deadline for Hungary's 2020–2022 anti-corruption strategy was pushed back to July 2023, yet no evaluation of its effectiveness is publicly available. Despite a June 2023 deadline for a new strategy as stipulated by Hungary's Recovery and Resilience Plan, the country lacks an updated anti-corruption strategy as of January 2024. The development

17 https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonyilatkozatok_Eseti_Jelentes_2023-1.pdf

18 https://k.blog.hu/2023/12/15/antikorrupcios_buntetoeljarasi_reform

process is ongoing, with two preliminary drafts circulated to the Anti-Corruption Task Force for feedback. However, the Task Force and the Integrity Authority were not involved in the drafting phase, and no public consultation occurred. The second draft outlines the main objectives of the anti-corruption plan, including creating codes of conduct for high-ranking officials and MPs, a suggestion from GRECO. However, it lacks detailed guidance on specific conduct rules and penalties.

In late 2022, Hungary underwent significant changes in its anti-corruption institutional framework, establishing agencies like the Integrity Authority, the Directorate for Internal Audit and Integrity, and the Anti-Corruption Task Force. However, these new institutions mainly have subsidiary roles and parallel competencies, relying on pre-existing institutions for substantial impact. The National Protective Service (NPS) remains the primary coordinator of the government's anti-corruption policy, leading to increased institutional fragmentation. The Constitutional Protection Authority (CPA) assumed additional responsibilities in 2022, narrowing the NPS and police's scope, with its 2023 budget more than doubling. The Integrity Authority, with a budget of nearly €44 million, investigates malfeasance involving EU funds but faces limitations in accessing necessary data and conducting independent investigations. The Anti-Corruption Task Force lacks a dedicated budget and struggles with uncertainties about its effectiveness, playing a limited role in coordination and facing challenges with non-governmental members' capacity and participation turnover.

Persistent concerns from previous reports highlight issues in the independence and autonomy of key state control institutions. The majority of these institutions, including the Integrity Authority and Directorate General for Audit of European Funds, are led by individuals aligned with the government, compromising their independence. While the Integrity Authority and Directorate General for Audit of European Funds formally have autonomy, their powers remain limited, relying heavily on other state agencies for action. Government agencies like the National Protective Service and National Tax and Customs Administration maintain anti-corruption tasks, but their effectiveness is hindered by government control and interference. The Government Control Office is an internal monitoring institution of the government, however, its audit plans are approved by the government and therefore non-autonomous. Other seemingly independent bodies, such as the State Audit Office, Hungarian Competition Authority, and Public Procurement Authority, face challenges of government influence, evident in selective examinations of corruption cases and allegations of bias in their reports.

Investigation and prosecution of corruption

In this context, the new legal instrument, which aims to allow private prosecutions for high-level corruption and maladministration in cases where the prosecution fails to take appropriate action, should be discussed. According to the assessment of anti-corruption organisations operating in Hungary, a number of procedural obstacles render this new special remedy procedure inappropriate as a substantive solution

when the state fails to prosecute corruption cases.¹⁹ While private individuals and private entities are entitled to bring corruption cases to justice, this is unrealistic given the lack of access to the necessary documents and the very short timeframes for bringing cases. Private individuals and private legal organisations do not have the resources to replace the work of authorities reluctant to investigate corruption cases. The new special remedies procedure, while formally breaking the monopoly of the prosecution to bring corruption cases to court, is not able to provide a meaningful solution to the state's failure to prosecute abuse of power because of procedural obstacles.²⁰

Marking problematic development in place since 2022, the Office for the Protection of the Constitution (one of the national security services in Hungary) is tasked with investigating all corruption offences where the alleged perpetrators are employed by the government or institutions of national security significance. National security services are exempted from the obligation to report suspected offences to investigating authorities if this would jeopardise the performance of their duties. And since national security services essentially operate in secrecy, it cannot be excluded that the Constitution Protection Office, when it detects

suspected corruption, withholds relevant information, which may result in impunity for the corrupt perpetrators.²¹

Anti-corruption action in less politically sensitive cases faces fewer obstacles. In fact, there is a markedly effective and innovative action on the part of the government in such cases. This can be observed, for example, in the government's efforts to stop corruption in the health-care sector. Compared to previous years, there has been a significant increase in the number of successful prosecutions for corruption in the health sector.²²

19 Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, Assessment of Hungary's compliance: https://helsinki.hu/en/wp-content/uploads/sites/2/2023/11/HU_EU_funds_assessment_Q3_2023_table.pdf

20 https://k.blog.hu/2023/12/15/antikorrupcios_buntetoeljarasi_reform

21 See Act CXXXV of 1995 on the National Security Services, Article 44(2a)

22 <https://infostart.hu/belfold/2024/01/05/csak-az-kapott-kemoterapias-kezelest-aki-fizetett-teritette-lapjait-a-nemzeti-vedelmi-szolgalat>

Media environment and media freedom -

Key recommendations

- *In order to ensure that the media authority is able to fulfil its constitutional function of enabling a pluralist media system and fundamental rights, parliament should amend the law and replace the current media authority with a new independent body. It is crucial that the new media authority's leadership is selected based on merit and not political affiliations, and that its composition is not determined solely by a single centre of power.*
- *To protect the freedom of the press and journalistic sources, parliament must limit the monitoring of journalists and ensure they have access to relevant information. These measures will safeguard their rights and promote transparency in society.*
- *A transparent and pluralistic media system enforced by an independent authority should disrupt government propaganda and ensure press freedom.*

Media and telecommunications authorities and bodies

In 2023, there were no changes to the legal status of the Media Council that would affirm its public or functional independence. The findings made in previous years that the Hungarian media authority does not meet European standards on the independence of such bodies remain valid.

Under the rules that remain unchanged in 2023, the President of Hungary appoints the Authority's president for a nine-year term upon the Prime Minister's proposal. In practical terms, this means that whoever the Prime Minister appoints to this position will become the President of the Media Council. The appointed President becomes the Media Council's nominee and is elected by Parliament with a two-thirds supermajority for nine years.

Parliament has a limited role, merely having the right to reject the nominee. A slightly more substantial parliamentary oversight exists in the election of the council's four other members, each serving for nine years. Since August 2022, this process has been based on the Parliament Cultural Committee's proposal, where the Fidesz-KDNP governing parliamentary group holds a two-thirds majority. And since there has been no political switching (for the last 13 years), the government has been assured of the council's loyalty.

The lack of independence in 2023 was most noticeable in the inaction of the authority in relation to state media. The state media is part of the ruling party's propaganda machine, with no room for pluralistic views, criticism of the government or non-negative portrayals of opposition politicians. Yet, the media authority

does not exercise any meaningful control over state media.

Although there exists on paper a co-regulatory system under the media law to ensure that journalist organisations are involved in media-related decision-making, these organisations have not yet been given a meaningful role. Self-regulatory bodies in the Hungarian media lack influence and play a minor role. The journalist associations were mostly inactive throughout the year.

Pluralism and concentration

The distorted media market has not changed significantly compared to the previous year. In addition to the undoubtedly biased and one-sided public media, the media system is characterised by a large number of state-funded media (through state advertising money) that show unconditional loyalty to the government. The volume of state advertising remains very high. Competition is not fair because state advertisers favour media loyal to the government; independent media are fragile and economically very vulnerable.²³

The phenomenon, described in last year's report, of social media increasingly taking over from the more regulated traditional media system,

persisted. Political actors spent a lot of money on their social media presence: between 2019 and 2023, these expenditures totalled HUF 10 billion (around €26 million).²⁴ The biggest advertisers are the government and its affiliated organisations, as well as the Megafon group, which broadcasts influencers supporting the government and governing parties.

There is no publicly available data on the financial source of this expenditure. Based on the money paid for ads bought on Meta, pro-government messages have a significant, roughly threefold, advantage.

Transparency of media ownership

In Hungary, ownership is generally easy to determine via the company register, and this is also true for media companies.

The Central European Press and Media Foundation (KESMA), which is influenced by the ruling party, owns a number of media outlets that appear to be centrally edited. Alongside it, several commercial media companies are owned by pro-government investors, such as the commercial channel TV2, the Rádió1 network and the news portal *Index.hu*. The ruling party also controls other elements of the media ecosystem,

23 <https://mertek.atlatszo.hu/allamihirdeteselek/>

24 Meta Ad Library, <https://www.facebook.com/ads/library/report/?source=nav-header>; Hanula Zsolt: Így tett a magyar politika 10 milliárd forintot Mark Zuckerberg zsebébe, 1 December 2023. <https://telex.hu/belfold/2023/12/01/politika-propaganda-fidesz-hirdetes-facebook-megafon-kormany-mediaworks>

such as the media agency market, sales houses, printing houses, distribution systems etc.²⁵

As Hungarian media regulation does not restrict the ownership of media companies, large media conglomerates can develop. The control of mergers, which is exercised by the competition authority, partly on the basis of a resolution of the Media Council, does not fulfil its function, particularly because the government can avoid the scrutiny of the competition authority and the Media Council. This transpired in 2018 in the case concerning KESMA.

Public service media

State media does not operate as public service media. It is characterised by biased and one-sided reporting, which is always in line with the political interests and messages of the ruling parties. Critical voices against the government are absent, while the public media are also keen to criticise the opposition.

The state media service provider justifies why it does not have to present dissenting views, i.e. it has its own interpretation of the requirement of balance within the public service, which is specifically imposed on such media. In their reply to a complaint by a member of parliament about the balance of information, they explained that “the requirement of balanced information can clearly no longer be interpreted as meaning that

the media service provider is obliged to present all opposing views in detail, since the audience, once informed that there are opposing views, can also obtain detailed information about them from other sources”.²⁶

The institutional structure of the state media remains rather non-transparent, complex and confusing, and there has been no change in this respect. The Media Services Support and Asset Management Fund (the fund) manages content acquisition and production and is the employer of state media employees. However, editorial responsibility lies with another organisation, Duna Médiaszolgáltató Nonprofit Zrt. The latter is in principle subject to external control mechanisms, but these do not work effectively. At the same time, there is no meaningful independent control of the fund, which is only controlled by the non-independent Media Council. The odd relationship between the two organisations is also reflected in the difference in their budgets: the budget of Duna in 2023 was HUF 2.1 billion (about €5.5 million), while the fund’s budget was more than sixty times this amount, HUF 127 billion (about €334 million),²⁷ meaning that Duna, which has editorial responsibility and is charged with maintaining the public service requirement, cannot play a formative role.

25 Mertek Media Monitor, Media Landscape after a Long Storm – the Hungarian Media Politics Since 2010, December 2021, <https://mertek.eu/wp-content/uploads/2021/12/MertekFuzetek25.pdf>

26 <https://media1.hu/2023/12/19/nem-sikerult-szamonkerni-a-kozmedia-kiegyensulyozatlansagat/>

27 Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

Online media

Independent media in Hungary exists almost entirely in online spaces. The online nature is not being used by the government to impose restrictions on independent press, nor is it being used in this context to obstruct its operation. The government rarely blocks websites (typically gambling sites, less often sites used to commit crimes against children.)

The points made above about advertising spending on social media should be mentioned here. Based on their spending on advertisement in social media, the government and its agencies, as well as Megafon, the organisation running influencers echoing the government messages, are the main channels through which government messages reach citizens.

Public trust in media

Trust in various media platforms and outlets is highly dependent on the audience's political views, as it was stated in the previous report. According to the Reuters Institute's Digital News Report 2023,²⁸ the overall trust in news is extremely low at 25% (-2% from the previous year). In the meantime, 45% have trust in the media they regularly use. Only 9% pay for online news. State media is one of the least

trusted, with 29% of respondents trusting their news.

Safety and protection of journalists and other media actors

Hungarian journalists are rarely physically abused or subjected to unjustified abuse by the police or other authorities. However, the situation is overshadowed by the following problems.

After it was revealed that opposition parties may have received campaign funding from abroad, pro-government politicians, pro-government media and influential figures launched a smear campaign against independent media receiving foreign funding. These media, including *Telex* and *Átlátszó*, were branded as “dollar media” and accused of serving “foreign interests”.²⁹ A pro-government institute published a report which positioned the funding of independent Hungarian news agencies as a threat to Hungarian sovereignty, arguing that “in the Hungarian media space, foreign-funded content producers have reached a critical level, and thus the structure of foreign-funded structural financing raises the question of harm to domestic interests”.³⁰

This smear campaign has evolved into the adoption of the Sovereignty Protection Act,³¹ which

28 <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2023/hungary>

29 The international Press Institute republished the statement in solidarity with Hungarian journalists: <https://ipi.media/hungary-ipi-joins-condemnation-of-passing-of-sovereignty-protection-act/>

30 <https://www.xxiszazadintezet.hu/wp-content/uploads/2023/03/mediaszuverenitas-trend-1-2023.pdf>

31 Act LXXXVIII of 2023 on the Defence of National Sovereignty

poses a serious threat to the press. The Office for the Protection of Sovereignty, created under this law can investigate, among other things, media outlets for serving foreign interests. Its findings are made public and there is no legal recourse against it. The law entered into force on 1 January 2023, and it is not yet possible to predict how its rules will be applied, whether they will be used against the media, or to what extent they will lead to self-censorship.

According to the International Press Institute (IPI), the most widespread cyber-attack against an independent media outlet in a European Union Member State was the unprecedented series of distributed denial of service (DDoS) attacks targeting more than 40 news portals in Hungary and the Budapest Pride website in 2023.³² It is remarkable that the police (the National Investigation Bureau of the Police) remained inactive in the case for weeks, and only opened an investigation six weeks after the incident. The National Cyber Security Centre initially refused to act but later began to investigate, however, this was only after the National Office of the Hungarian Standby Police started its own investigation at the request of the IPI.

The Pegasus cases, which were partly used to target journalists for surveillance and were reported on in detail in previous years' reports, remain inconclusive, with a number of court and administrative proceedings pending. The most important lesson remains that Hungarian law does not provide the necessary guarantees

for the protection of journalistic sources in the field of secret surveillance.

SLAPP lawsuits in Hungary differ from the experience of other European countries. Here, wealthy people close to politics generally use the provisions of the European Union's General Data Protection Regulation (GDPR) to prohibit the press from reporting on the substantial enrichment of their businesses, often with state subsidies. Even if the controversial article was compiled from public data, the GDPR is used as a weapon against the press. A common feature of the cases is that the articles in question concern public affairs, with the political-economic relations of the actors concerned being the main subject. Unfortunately, the GDPR itself does not provide explicit protection for press freedom and can therefore be used to stifle the press in countries that have not established specific rules to exempt the press from the provisions of the GDPR (which the GDPR allows). Hungary is such a country. Several such lawsuits are currently ongoing, with one common feature being the difficulty in convincing the court that the processing of press data is related to public affairs and not only to private interests (e.g. the business interests of the media company). Several controversial judgements have been handed down so far, but these proceedings are still ongoing, so it is too early to discuss a final outcome.

32 <https://ipi.media/hungary-ddos-cyber-attacks-pose-major-new-threat-to-media-freedom/>

Practical barriers to independent journalism

In Hungary, the barrier to the proper functioning of the independent press is not the direct and obvious attacks on journalists and the media, but rather the ignorance of them and their functioning by public figures close to the state and the state. Inquiries from the press go unanswered. It is almost a daily occurrence in the articles of the independent press to report that they have contacted public office on some public issue or other, but that it has not responded to their enquiries. Formal public interest requests for information also tend to go unanswered; they may only lead to the obtaining of data years later, as a result of a court case,

which is obviously not a suitable way to serve the press' need for information. The independent press is very rarely given the opportunity to interview senior public officials, and employees of public bodies (including not only ministries but also, for example, state-run hospitals or schools) are instructed not to make any statements. A narrower group of independent press staff are particularly disadvantaged by the fact that they are typically not accredited for public events related to government, and in many cases are not invited to press conferences (from government spokesperson briefings to municipal press conferences) or are either invited very late or refused registration.

Checks and balances

Key recommendations

- *The government should end the abusively maintained special legal order.*
- *Legislation must be proposed through a procedure that ensures that draft legislation is debated on its merits.*
- *Guarantee the consensus-seeking character of the selection of members of the Constitutional Court by way of legislative amendment.*

Process for preparing and enacting laws

The rules on transparency of legislation and consultation of stakeholders and their frequency remain essentially unchanged in 2023. There has been no substantial progress in the practice of public consultations on proposed legislation

or in the impact assessments of legislation. The rules themselves do not ensure that legislation is subject to public consultation (as there are no legal consequences for breaching them) and are regularly breached. Thus, it happens that (a) important bills proposed by the government are not subject to public consultation (e.g. the Twelfth Amendment to the Constitution,

the transposition of the EU Whistleblower Directive, the abolition of the compulsory membership of the Medical Chamber) or (b) are made available for consultation at a time that makes them impossible to consult (e.g. published ten minutes before submission to Parliament), (c) the explanatory memoranda for the bills are often short and unsuitable for consultation, (d) and there is no sign of serious consideration of the consultation responses received. It is also still common practice to circumvent the rules by submitting bills that have been prepared in a ministry as a private member's bill, as happened, for example, with the Sovereignty Protection Act. A similar way of avoiding the necessary consultation with stakeholders is that the Parliament's Legislative Committee (in which the governing party's majority is guaranteed) can, just before the plenary vote, completely change the content of the bills already debated, even changing the concept of the legislation, using last-minute amendments (this is how the Electoral Procedures Act was finally amended, for example).

The effectiveness of public hearings has been diminished: an emergency government decree in April 2023 permitted the elimination of in-person public hearings in both administrative

procedures and local government.³³ The decree (from January 1 2024, a parliamentary law) authorises local governments, national authorities, and administrative bodies to conduct public hearings without the physical presence of the public, relying solely on information published on their respective websites. This change deprives citizens and civil society organisations of an important forum to articulate criticism of local decision-making. Online consultation is of course inappropriate for confronting decision-makers with criticisms in real time.

Although the Hungarian rules on lawmaking provide a wide range of possibilities for parliament to adopt laws quickly or by exception in contrast to the normal procedure, these possibilities were rarely used within parliament in 2023. Of the 121 Acts of Parliament promulgated in 2023, only one was adopted by urgent debate (the law on asset declarations).³⁴ The Parliament adopted four laws under the exceptional procedure, the most prominent of which is the amendment of the law on the Hungarian Medical Chamber. The background to this was the opposition of the Medical Chamber to the planned measures affecting the medical profession. In response, the government wanted to abolish compulsory membership of

33 Government Decree 146/2023. (IV. 27.) on Establishing Rules on the Operation of Certain Organisations During the State of Danger and Certain Administrative Procedures Rules. See also: K-Monitor, Hungarian government to hollow out public consultations despite commitments, 28 April 2023: https://k.blog.hu/2023/04/28/hungarian_government_to_hollow_out_public_consultations_despite_commitments

34 Act LXX of 2023 on Provisions Relating to Further Simplifying the State's Administration. For more details, see: Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values, 29 September 2023: https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/HHC-reply_FRANET-service-request-no-14_20230928.pdf

the chamber, thereby reducing the weight of its opinion. The bill was submitted to Parliament on 27 February 2023, passed without public consultation the following day and came into force on 1 March.³⁵

These parliamentary procedures are not even necessary for the Hungarian government if they want to legislate swiftly, given that Hungary has had a special order for many years that allows it to regulate by decree, and even to override essentially any Act of Parliament by emergency decree. Although the government can get Parliament to pass any law it wishes, they maintain this legal order because it makes it much easier for them to pass legislation. Compared to the previous year, they have made less use of special powers: while 42% of government decrees in 2022 were based on special powers,³⁶ this fell to 29.5% in 2023.

A more important aim of the government in maintaining a special legal regime is that it allows them to legislate quickly when necessary, which they tend to use abusively in areas that have no connection with the circumstances giving rise to the emergency. An example of such an abusive use of the special power was

the government decree which significantly extended the time limit for immediate dismissal of employees of educational institutions.³⁷ This made it much easier to take action against teachers who engaged in civil disobedience because of the restriction on their right to strike in 2022, and also significantly extended the period of uncertainty (during which teachers may not know whether or not they will be dismissed). This was of particular benefit to the government in dealing with protests by education workers, and the timing of its entry into force was also an important factor. The government drafted this decree on the grounds of the war.³⁸

The government decree allowing for the avoidance of personal public hearings in administrative authority procedures and local government was also adopted to address a situation that became politically sensitive. This was in response to growing protests over environmentally damaging new investments and the fact that public hearings became an important platform for the expression of opinion on these matters.³⁹ Such abuses are easy to recognise by the fact that, after rapid intervention in political processes like protests, when there is no longer

35 <https://telex.hu/english/2023/02/28/a-battle-of-wills-hungarian-doctors-vs-the-government>

36 <https://www.wolterskluwer.com/hu-hu/news/2022-jogalkotasi-statisztika>

37 Government Decree 4/2023 (I. 12.) on Certain State of Danger Rules Affecting Public Education Institutions. For more details, see: Hungarian Helsinki Committee, Curtailing the rights of teachers in Hungary – How the Government used legal tools to crack down on teachers asking for improvements in the public education system, 23 March 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf

38 Government Decree 4/2023. (I. 12.)

39 Government Decree 146/2023. (IV. 27.)

a situation for the government to resolve, the supposedly temporary rule is made permanent by enacting it into law. This is what took place in the previous two examples.

With regard to the constitutional review of legislation, there has been one positive development at the regulatory level in 2023. Implemented as a condition for Hungary's access to previously frozen EU funds, an amendment to the rules on the Constitutional Court's authority eliminated the option for public authorities to contest judicial decisions before the Constitutional Court, claiming a violation of their rights guaranteed by the Fundamental Law.⁴⁰ This amendment put an end to a contentious practice that allowed the Constitutional Court to overturn judicial decisions perceived as unfavourable to the government's interests. Nevertheless, the statement made in previous years that the Constitutional Court does not confront the government by annulling laws (of political importance) remains true. In 2023, in 106 completed cases initiated by petitions challenging legislation, the Constitutional Court annulled legislation in whole or in part in only 7 cases, of which 1 was a decree of a local government. The Constitutional Court prefers to use less confrontational means of action, such as finding constitutional omissions on the part of legislative bodies, which it orders to remedy by setting a deadline, however there is nothing in

the Hungarian constitutional system to guarantee that these omissions will be remedied. According to the National Assembly's website, there are currently 11 established constitutional omissions for which the deadline has already passed (the oldest is more than 10 years old).⁴¹

The reason why the Constitutional Court is not an effective instrument for protecting constitutionality is attributable to its questionable independence. The rules for the appointment of constitutional judges, which have been in force for the past 13 years, ensure that only candidates acceptable to the governing parties are considered for appointment, and the opposition cannot contribute to this process either constructively or destructively. Therefore, no meaningful guarantee of the independence of the Constitutional Court exists; in fact, the current rules guarantee the opposite. In 2023, four new justices were appointed to the Constitutional Court to replace those whose terms had ended. The nomination process for the new justices lacked transparency and did not involve prior consultations with the opposition.

Independent authorities

As a matter of principle institutions cannot be independent under the Hungarian regime, in which all guarantees of independence are based on the fiction that requiring a two-thirds

40 See Article 13 of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan. For a detailed assessment of the Justice Reform, see the contribution of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee: <https://helsinki.hu/en/assessment-of-hungarys-judicial-reforms/>

41 <https://www.parlament.hu/az-orszagyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>

majority in parliament will lead to political balance in decision-making, since in Hungary, apart from a brief period (2015–2018), the current parliamentary term is the fourth in which the two-thirds of the parliament is in the hands of the government side.

Accessibility and judicial review of administrative decisions

From 1 March 2020, decisions by first-instance administrative authorities have to be challenged immediately in court. As a general rule, there is, therefore, no possibility of appeal within the administration. In addition, from 1 March 2022, in some first-instance administrative cases, only the Metropolitan Court of Appeal is allowed to rule, which limits access to the courts in these cases.

The legal status of judges reviewing administrative decisions has some problematic elements. Judges dealing with administrative cases must be appointed for this task; the appointment is made based on recommendations from the presidents of the courts, but the final decision is taken by the President of the NOJ (or, in the case of judges serving in the Curia, by the President of the Curia) in his or her full discretion. The designation may be terminated at any time by the President of the NOJ or the President of the Curia without the consent of the judge on secondment, but the consent of the NJC is required and reasons must be given for the decision from 1 June 2023. However, the legislation does not specify the criteria for either the appointment or its termination. Failure or refusal to designate could lead to obstacles to the appointment of judges, and

additional safeguards are therefore needed, such as the inclusion in legislation of criteria for designation and the extension of the NJC's right of consent.

Electoral framework

In May 2023, for the fourth time after 2020, 2021 and 2022, the government majority changed the electoral legislation with a new political will, again without any negotiation. The amendment also affects the substantive and procedural rules on elections and referendums. The rules on local elections have also been amended, just one year before the elections. These changes make political participation more difficult and restrictive, similar to previous amendments.

The amendment contains both positive and objectionable elements.

The legislative procedure was problematic because the government did not table the amendment as a separate motion, but as an overly broad amendment to a proposal prepared by the National Election Office. This solution significantly limits public debate on the bill.

One of the most important elements of the amendment is the increase in the number of candidates required for the compensation lists. Previously, it was sufficient for a nominating organisation (party, association) to have a compensation list in half of the individual districts. This proportion has been increased to two-thirds. To illustrate with the example of Budapest, it used to be enough to stand as a candidate for mayor in twelve of the capital's

twenty-three districts to have a compensatory list on the Budapest level, but now sixteen districts are required. The increase in the number of candidates required for the compensation list reduces the room for manoeuvre for opposition forces critical of the system. On the one hand, if they wish to join forces, they can only put forward one compensatory list, otherwise there will be overlap in the individual districts where (due to their relative majority nature) it is in the strategic interest of the opposition to have an opposition candidate against the governing party candidate. On the other hand, forces critical of the government or opposed to the (local public) power that do not wish to participate in the opposition coalition will also have to field more candidates, thus spreading the anti-government vote in more districts. The problem is not primarily the size of the list, but the dynamics of how the electoral rules are constantly adapted to the needs of a two-thirds majority.

The amendment also affects the stability of the electoral system. The rules of elections have a fundamental impact on the strategic scope of competing candidates and nominating organisations. However, these rules are not made by institutions independent of political competition, but by the two-thirds majority in parliament, which itself is part of the competition through the parties that make it up. If a political force holds the majority needed to make a change, it can unilaterally tailor the rules to its own political needs. On the one hand, this is a

violation of representative democracy, which is based on political actors competing for public power on a level playing field at fixed intervals. If one actor can unilaterally undermine the chances of the other, the level playing field is not respected. On the other hand, it is also a constitutional requirement for the electorate that the regulation remains impartial. The stability of electoral law has been challenged in Hungary over the past decade. The continued existence of a two-thirds majority has allowed, and continues to allow, election rules to be ‘fine-tuned’ before each election according to primary party interests.

The positive element of the amendment, on the other hand, is that it makes it considerably easier for voters to submit their various requests during the electoral proceedings.

Civic space

Key recommendations

- *The laws on Stop Soros, the special immigration tax, the transparency of NGOs that influence public life and the protection of sovereignty, which are designed solely to combat independent and critical voices, should be repealed.*
- *The government must stop the practice of not debating with those who disagree with it and questioning the legitimacy of dissent, such as on the grounds that it is against the interests of the nation.*

Freedom of association

The legal framework for NGOs is generally in line with European standards. There are no illegitimate restrictions on the establishment of organisations, and their registration is easy and can be done electronically. Until the adoption of the law on the protection of sovereignty at the end of the year 2023, no legislation had been adopted that posed a threat to NGOs. At the same time, the government has still not fully implemented the CJEU judgement in Case C-821/19 of November 2021. The 2018 provisions of the ‘Stop Soros’ package of laws criminalising the support of asylum seekers have not been repealed. The 25% ‘special immigration tax’ remains in force. Although so far no individual or organisation has been subject to these provisions, NGOs and their activists continue to face threats. In addition, under Act XLIX of 2021 on NGOs capable of influencing public debates, the State Audit Office

of Hungary has obliged NGOs with annual revenues of over HUF 20 million to provide data and documents. It is not yet clear what measures the State Audit Office has taken in this case, which has caused uncertainty among the NGOs concerned.

The so-called Sovereignty Protection Act⁴² poses a serious threat to civic space. There are two main parts, the second of which is problematic. The first part prohibits individual candidates, candidate organisations and associations participating in elections from receiving funds from foreign sources, and restricts the use of funds from domestic legal entities by candidate organisations. The second part creates the new Sovereignty Protection Office with broad and unspecified powers, including the collection of information involving intelligence services and the publication of reports on any person or organisation suspected of serving foreign interests and/or receiving financial support, with no

42 The unofficial English translation of the Defence of Sovereignty Act is available here: <https://helsinki.hu/wp-content/uploads/2023/12/Defence-of-Sovereignty-bill-T06222-EN-adopted.pdf>

available legal recourse against them. The law can also be interpreted as potentially identifying advocacy activities as a threat to sovereignty. The law's likely intentionally vague wording could put critical individuals and organisations, including NGOs, journalists, philanthropic donors, trade unions and churches, at risk.

Smear and defamation campaigns targeting human rights defenders continued in government-controlled media and social media in 2023.⁴³ According to the narrative, these are also supported by opposition political forces that allegedly undermine Hungarian national interests. As a result, many organisations refrain from expressing their views in public or are unwilling to engage with organisations that are perceived as 'problematic' or politically sensitive. These campaigns have intensified since the concept, which later became part of the Sovereignty Protection Act, emerged. It is important to note that it is not typical for civic space actors to be at risk of physical attacks.

However, verbal attacks do occur. These are typically based on a link between foreign funding

and actions against the interests of the nation. The EU's Citizens, Equality, Rights and Values (CERV) programme and the USAID Central Europe Fund have been accused of supporting 'Soros organisations' and the 'LGBTQI lobby', claiming that they are thereby operating in Europe under the direction of 'Brussels' and George Soros.⁴⁴ A series of articles published in government-friendly media used this information to create a negative impression about prominent human rights groups in society.

Freedom of peaceful assembly

Since 2012, the ECtHR has ruled against Hungary in eleven different cases for restricting the right of assembly beyond acceptable limits.⁴⁵ Hungary continues to fail in to ensure that public spaces are open to people exercising their freedom of assembly. Eleven years ago, the ECtHR in Strasbourg ruled for the first time that the Hungarian state had violated the right to freedom of assembly by preventing citizens from demonstrating without a legal basis and without adequate legal remedy. Since then, similar cases have continued to multiply,

43 See e.g. <https://magyarnemzet.hu/belfold/2023/02/az-akkumulatortgyar-elleni-hergelessel-gyanusított-egyebesület-valoban-kapott-penzt-sorostol-video>, <https://magyarnemzet.hu/belfold/2023/02/kudarcba-fulladt-kispesti-program>, <https://magyarnemzet.hu/kulfold/2023/09/itt-tartunk-brusszel-fizet-soros-helyett>, <https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>.

44 <https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>, <https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>, <https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>.

45 NGO communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgement of the European Court of Human Rights in the case of Patyi and others case group: https://helsinki.hu/wp-content/uploads/2023/09/Rule_9_Paty_i_case_group_260923.pdf

and the new law on assembly adopted in 2018 has not remedied many of the problems. The cordoning off of the building that houses the Prime Minister's office and the street in front of it continues to prevent demonstrations in front of the Prime Minister's Office building, while the legality of the cordon has been unclear for years.

In the *Patyi* case (and in some similar cases) the Strasbourg court ruled that the declaration of Kossuth Square as a "security operation area" and the cordoning off of the area in front of the Parliament blocked the area from demonstrators without a legal basis and an adequate legal remedy.⁴⁶ A few years later, in another case, the police used a hauntingly similar solution, a last-minute closure, to prevent a protest in front of the Alexander Palace, which the Strasbourg court ruled was unlawful.

The recent legislation on the rights to assembly,⁴⁷ introduced in 2018, has in practice eliminated the possibility of protests organised around the homes of public figures and politicians. While citizens used to hold regular protests in front of the homes of high-ranking government officials, such as the Prime Minister's home, the new provisions, which also provide for criminal sanctions, have made this form of protest completely impossible and removed it from the citizen's means of expression. This is despite the fact that in some of the problematic cases of the

group, the Strasbourg court has condemned Hungary for the unjustified prohibition of demonstrations in the vicinity of the homes of high-ranking politicians.

Since October 2023, the Hungarian police have banned all demonstrations in which the organisers declared that they wanted to commemorate civilian victims who died in Gaza. According to the police, these demonstrations would have been in support of the Palestinian terrorist organisation Hamas. As a basis for the ban, the police argued that, in the light of the ongoing war in Gaza, the demonstrations would pose a direct threat to public order and security, and that there was no guarantee that a possible counter-demonstration would not lead to conflict.⁴⁸ Although it would be legitimate for the police to prohibit events that can be shown to support terrorism or terrorist organisations if they pose a clear and present danger of violating the rights of others, the prohibitions in question are based on assumptions, not evidence. The explanatory memorandum did not provide clear evidence that the demonstrations were in support of Hamas. Nor was it made clear what efforts the police made, or whether they made every effort to restrict the peaceful exercise of the right of assembly only in such cases, and to the extent, that were genuinely justified. In the meantime, the Prime Minister has said that he made arrangements to ban the demonstration, which suggests that the police took the decision

46 *Patyi and others v. Hungary* case (Application no. 5529/05, judgement of 7 October 2008)

47 Act LV of 2018 on the Right to Assembly

48 <https://telex.hu/english/2023/10/13/hungarian-pm-took-action-to-ban-pro-palestinian-demonstration-in-budapest-as-soon-as-he-found-out-about-it>

without careful consideration and under political pressure.⁴⁹

Freedom of expression and of information

Enacted in 2021, the Propaganda Law,⁵⁰ which amends multiple statutes and curtails freedom of speech while discriminating against LGBTQI individuals, remains in force. In 2023, the law and its implementing regulations have had a direct negative impact on book distribution, media and schools. The Propaganda Law broadly bans the depiction of LGBTQI topics in the Child Protection Act and the Family Protection Act without targeting specific groups, undermining rule of law principles like legal certainty. Its vague nature makes it difficult to predict which expressions will be deemed unacceptable, and the absence of clear penalties adds to the uncertainty of outcomes for violations.

Since 2021, a government decree on commercial activities has mandated that products showcasing divergence from gender at birth, gender transitions, or homosexuality be distinctly packaged and not sold within 200 meters of educational institutions, child protection agencies, or religious establishments. This rule

restricts information access and breaches EU and international standards on human rights, and is criticised for its vague wording and unjustified objectives. Following this decree, Lira Book Zrt. was fined HUF 12 million (€31,200) for categorizing ‘Heartstopper’, a book with themes of homosexuality, as suitable for youth without the required packaging.⁵¹ Similarly, Libri-Bookline Zrt. faced a HUF 1 million (€2,600) penalty for offering ‘Good Night Stories for Rebel Girls’, which includes a transgender girl’s story, on the grounds that it violated laws intended to protect the mental and physical health of minors.⁵²

The lack of specificity of the law led to the controversial decision in October 2023 by the National Museum of Hungary to bar minors from the World Press Photo exhibition in Budapest due to LGBTQI content in some photos.⁵³ Despite this, the enforcement proved impractical as the museum lacks the authority to verify ages, culminating in the firing of the museum’s director general. This scenario underscores the law’s inefficacy and the arbitrary application, highlighting the need for clear, fair, and predictable legal standards.

Under Article 9/A of the revised national public education law, educational institutions

49 <https://tasz.hu/cikkek/tuntetesek-tiltasa-a-gazai-konfliktus-kapcsan>

50 Act LXXIX of 2021 on Stricter Action against Paedophile Offenders and Other Amending Acts for the Protection of Children

51 Government Office of Budapest, Consumer Protection Department, Case no. BP/2200/03940-5/2023

52 Government Office of Budapest, Consumer Protection Department, Case no. BP/2200/02500-5/2023

53 <https://www.theguardian.com/world/2023/nov/07/hungary-national-museum-director-fired-lgbt-homosexuality-laws>

are prohibited from hosting certain types of educational content, including sex education, drug prevention, and guidance on internet use, unless delivered by individuals or entities officially registered with a designated state agency. Non-compliance, involving collaboration with unregistered parties, subjects school principals and members of these organisations to potential legal actions for minor offences. The government defended the mandatory registration for CSOs wishing to offer sex education in its Explanatory Report to the Venice Commission,⁵⁴ arguing it was essential to prevent the involvement of groups lacking in professional integrity and established to promote particular sexual orientations. The education minister is tasked with designating a state agency to oversee this registration process and establish the criteria for it, a step that has yet to be taken. Consequently, numerous CSOs have found themselves barred from accessing public schools. Moreover, there have been reports of teachers and school psychologists facing pressure to avoid LGBTQI discussions.⁵⁵ Such restrictions on information access infringe upon various human rights of children.

Attacks and harassment

The Sovereignty Protection Act can be interpreted in part as a preparatory step for smear

campaigns organized by the government. The Sovereignty Protection Office established under this act possesses broad and vaguely defined powers to collect information (even through the use of intelligence services) and publish reports on any individual or organisation suspected of serving foreign interests and/or receiving foreign funding, without providing any means of legal recourse. The deliberately ambiguous wording of the law potentially exposes any critic - including NGOs, journalists, philanthropists, unions, or churches - to defamation, intimidation, and harassment based on the data released by the Sovereignty Protection Office. This could lay the groundwork for subsequent actions by other state bodies (e.g., the tax authority). The new authority is set to be established at the beginning of 2024.

In 2023, organisations working on LGBTQI rights faced ongoing defamation, with government-supportive media frequently branding them as ‘LGBTQP’ where ‘P’ denotes paedophilia.⁵⁶ A notable incident involved the Labrisz Lesbian Association following the release of their children’s book, ‘A Fairytale for Everyone’, in 2020. Magyar Nemzet, a newspaper aligned with the government, accused Labrisz of being a “paedophile organisation”.⁵⁷

54 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)090](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)090)

55 <https://hatter.hu/tevekenysegunk/kutatasok/befogado-terek-emberi-jogi-es-alternativ-oktatas/befogado-terek-lmbtqi>, <https://mpt.hu/a-tarsasagrol/allasfoglalasok/>

56 <https://kuruc.info/t/66/261270/>

57 Even though the organisation took legal action against these claims, the Kúria found that the article did not violate their right to a good reputation. On 26 September 2023, the Constitutional Court found that Kúria’s decision was constitutional. Decision 3408/2023. (X. 11.) AB

Public participation

The government's interest in public input is contingent upon its alignment with official agendas. Public engagement in Hungary is predominantly solicited through what is termed a national consultation—a questionnaire distributed to every household, laden with questions that are not only leading but also reflect a particular bias, rather than fostering genuine inquiry. Remarkably, the feedback from these consultations overwhelmingly supports the government's viewpoint, with a 90-98% endorsement rate. On November 17 2023, the government embarked on another such consultation under the guise of addressing “Hungary's Sovereignty” sending out questionnaires to households.⁵⁸ These national consultations, however, do not offer a legitimate platform for engaging with the populace on key societal issues. Instead, they tend to ask skewed questions on matters that serve the government's political interests, neglecting topics deserving of open and public debate. The method of gathering and processing these responses is neither transparent nor dependable, undermining their validity as a form of meaningful public interaction and relegating them to mere instruments of state propaganda. The latest round of questioning probed citizens' views on Hungary's stance towards EU institutions, especially the European Commission, and touched upon issues like the foreign funding of Hungarian

organisations, the propaganda law, financial and military assistance to Ukraine, and the potential EU membership of Ukraine.

In the past decade, national referendums have been held only on issues initiated by the government.

In the spring of 2023, the Fidesz-majority National Election Committee (NEC) ruled that two questions put by the Teachers' Union were too complex for voters to understand the implications of the questions. Although the Curia overturned this, the Constitutional Court annulled the court's decision. In contrast, the strict clarity and other criteria are not applied when the government wants to call a referendum.⁵⁹ Neither the 2016 refugee quota referendum nor the questions on gender reassignment and sexual content affecting children's development, which were held on the same day as the 2022 general election, met the clarity requirements, yet they were all certified. Local referendums are more likely. In the case of national referendums, the institutional system is centralised, i.e. the same two bodies (NEC, Curia) always certify, but local referendums are decided by the local electoral commission and are brought before the county court. This decentralised nature helps to ensure that an issue slips through the hands of the authorities. In Pilismaró, for example, a local referendum was held on a mine plan that outraged the

58 <https://balkaninsight.com/2023/11/20/hungary-launches-national-consultation-targeting-the-eu-mi-grants-and-ukraine/>

59 <https://www.csee-etuice.org/en/news/member-organisations/5250-court-rejects-claims-against-referendum-on-new-controversial-education-law-in-hungary>

population, and although it was invalidated, the municipality withdrew the plan because of an overwhelming majority of the general vote.⁶⁰ A similar local success was achieved by civic groups defending the lakefront in Tata.

On issues of national importance, the situation is more difficult. In Győr, the court of law upheld an issue that could have prevented the construction of a battery factory, but the Constitutional Court intervened again.⁶¹

The government issued a decree on public hearings at the end of April,⁶² allowing authorities and local authorities to hold them without the personal presence of the persons concerned. Shortly afterwards, the first unlawful practice took place. In Göd, the Fidesz-majority county council organised public hearing only on YouTube and answering machines, limiting the time for comments and the possibility for participants to react to each other's comments.⁶³

Impact of civic space of emergency and crisis situations

The Hungarian police repeatedly banned all protests intended to commemorate the civilian

victims who died in Gaza. The police claimed that these protests would have supported the Hamas Palestinian terrorist organisation. The Prime Minister stated that he was responsible for prohibiting the protest, suggesting that the police decision was made without proper consideration and under political pressure.⁶⁴ In democracies that respect fundamental rights and the separation of powers, it is not the role of the Prime Minister to decide who can express opinions and on what topics, based on political, ideological, or moral considerations. While the police may agree with the Prime Minister on banning a protest, such a decision should only come after careful consideration based on assembly laws, not political directives. However, there is no evidence that such consideration took place in making these police decisions.⁶⁵

The government, which also has a constitutional majority in Parliament, insists on maintaining the special legal order, which is no longer exceptional, but rather the general state of affairs. Since March 2020, with a few months' break, there has been a continuous 'state of danger' in Hungary. The first one was introduced in response to the coronavirus outbreak, but when

60 <https://atlatzo.hu/orszagszerte/2023/08/28/ervenytelen-lett-a-pilismaroti-banyanyitas-ugyeben-tartott-nepszavazas/>

61 Decision 16/2023. (VII. 25.) AB

62 Government Decree 146/2023. (IV. 27.)

63 <https://tasz.hu/cikkek/kozmeghallgatas-uzenetrogziton-fordulj-hozzank-ha-a-te-varosodban-is-csak-tavkozmeghallgatast-tartanak>

64 <https://telex.hu/english/2023/10/13/hungarian-pm-took-action-to-ban-pro-palestinian-demonstration-in-budapest-as-soon-as-he-found-out-about-it>

65 <https://tasz.hu/cikkek/tuntetesek-tiltasa-a-gazai-konfliktus-kapcsan>

it was about to end in 2022, Russia's aggression against Ukraine led to the declaration of a new state of danger, which has since had to be

extended several times. The most recent extension was in October 2023, until 24 May 2024.⁶⁶

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *The misuse of special powers granted by the special legal order to restrict fundamental rights should be stopped.*
- *The Ombudsman should fulfil his role and discharge the duties deriving from his function as a defender of rights.*

Systemic human rights violations

The maintenance of a now-permanent state of emergency in Hungary renders fundamental rights irrelevant. However, since 2020, Hungary has been under a special legal order that allows the suspension or restriction of the exercise of fundamental rights (with some exceptions) beyond the limits of necessity and proportionality, through government decrees. Consequently, these rights do not limit the government's power, as these decrees can be issued at any time under the special legal regime that has become permanent in Hungary.⁶⁷

There have been some instances in recent years when fundamental rights were restricted by decree. For example, at the beginning of 2023, the government, exercising its special emergency powers, issued a decree that allowed for the termination of teachers at any time until August 1 of the school year with immediate effect and without severance pay, instead of within 15 days after learning of the circumstances leading to dismissal, as is the case for everyone else in Hungary.

Meanwhile, the most important institution for the protection of fundamental rights in Hungary is not functioning properly: the Commissioner for Fundamental Rights remains invisible to the

66 <https://helsinki.hu/en/3-5-year-long-state-of-danger-in-hungary-not-reasonable-but-extremely-convenient-for-the-government/>

67 https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf

public and does not speak out against government measures that violate fundamental rights. The decision by the Global Alliance of National Human Rights Institutions to downgrade the Hungarian human rights institution from ‘A’ to ‘B’ status formally removed Hungarian ombudsmen from the prestigious club of credible ombudsmen in 2022.⁶⁸ Reasons include the Commissioner and his office’s inadequate handling of a series of human rights issues, including violations against vulnerable ethnic minorities, LGBTQI people, refugees, and migrants. They failed to protect civilians, press freedom, and the independence of the judiciary, and did not refer politically sensitive issues to the Constitutional Court. This has not changed substantially in 2023.

In recent years, our reports have found that Hungary’s compliance with ECtHR judgements is notably deficient.

The number of leading cases awaiting implementation has increased from 43 (January 2023) to 45 (January 2024).⁶⁹ According to the European Implementation Network’s

data (most recently updated in January 2023), Hungary has a 76% non-compliance rate for judgements over the past decade, the highest in the EU and fourth in the Council of Europe.⁷⁰

Hungary’s compliance with CJEU rulings on asylum and migration is deficient, with a 2022 study showing non-implementation of 9 out of 13 decisions.⁷¹ Key violations include collective expulsions, criminalizing aid to asylum seekers under the ‘Stop Soros’ law, and the problematic ‘embassy system’ for asylum applications, risking fines for non-compliance. Despite some legal updates, Hungary’s reluctance to meet EU legal standards persists.

On 22 September 2023, the Ministry of Interior published a draft of an omnibus law that would, among other things, allow the involvement of vigilantes in border protection tasks and extend the so-called embassy system, which was found to be in breach of EU law this summer. In June, the Court of Justice of the European Union ruled that since May 2020, it has been illegal to apply for asylum in Hungary, and that asylum procedures can only be launched at

68 Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022, https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf

69 <https://hudoc.exec.coe.int/eng#%7B%22execdocumenttypecollection%22:%5B%22CEC%22%5D,%22ex-eclanguage%22:%5B%22ENG%22%5D,%22execstate%22:%5B%22HUN%22%5D,%22execisclosed%22:%5B%22False%22%5D,%22ex-ectype%22:%5B%22L%22%5D%7D>

70 https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/64a29f5698963750a81c90f7/1688379227726/Justice+Delayed+and+Justice+Denied_Final%282%29.pdf

71 Hungarian Helsinki Committee, Implementing judgements in the field of asylum and migration on odd days, 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Implementing-judgements-in-the-field-of-asylum-and-migration-on-odd-days.pdf>

Hungarian embassies in Belgrade and Kiev.⁷² The Luxembourg ruling means that asylum seekers must be guaranteed fair treatment.

Fostering a rule of law culture

Efforts by state authorities

There are still no sincere initiatives by the public authorities to promote a culture of the rule of law in Hungary. The requirement of the rule of law in the narrative of state power is an external constraint, currently imposed on the Hungarian state by the European Union, which is blackmailing it by withholding development and economic recovery funds and other EU financial resources. In fact, NGOs and other professionals defending the rule of law are portrayed as working against Hungarian interests for years.

This has been exacerbated by the national consultation on the defence of sovereignty. The infringements by the Hungarian state, which were found by the CJEU, are presented to citizens in the government propaganda material⁷³ distributed to every household as follows:

“Brussels wants to create migrant ghettos in Hungary too. Brussels wants to decide for us who we should live with and who we should let into our country. They want to oblige us to let migrants into the country even before asylum applications have been processed. This would also create migrant ghettos in Hungary.”⁷⁴

The EU’s subsidies to NGOs (in the government’s parlance, ‘political activists’) are a threat to sovereignty, according to the following excerpt: “In the past, various foreign organisations have given billions of euro to Hungarian political actors and activist groups linked to them. This is how they want to force Hungary to change its position on key issues. Many say this is nothing but political corruption.”⁷⁵

72 C-823/21, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274870&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4691161>

73 <https://telex.hu/english/2023/11/30/they-are-calling-it-a-consultation-but-the-questions-are-worded-to-get-the-answer-they-want>

74 <https://abouthungary.hu/blog/the-12th-national-consultation-has-launched-here-are-the-eleven-questions>

75 <https://abouthungary.hu/blog/the-12th-national-consultation-has-launched-here-are-the-eleven-questions>

LIBERTIES

RULE OF LAW REPORT

2024

IRELAND

#ROLREPORT2024



IRELAND

About the authors

The Irish Council for Civil Liberties



The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.

Inclusion Ireland



Established in 1961, Inclusion Ireland is a national, rights-based advocacy organisation that works to promote the rights of people with an intellectual disability. The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy, and we use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to guide our work.

Mercy Law Resource Centre



Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity and company limited by guarantee which provides free legal advice and representation to people who are homeless or at risk of becoming homeless in the areas of social housing and related social welfare law. The

Centre also seeks to advocate change in laws, policies and attitudes which unduly and adversely impact its client group.

Community Law and Mediation



Community Law & Mediation is an independent community law centre and charity working since 1975 in communities impacted by social exclusion, disadvantage and inequality, through the provision of free legal, mediation and community education services. In 2021, it expanded its services to focus on environmental justice, and established the Centre for Environmental Justice, which provides free legal advice and training and advocates for a rights-based approach to policy and law reform in the area of environmental justice.

Justice for Shane



Justice for Shane was founded following the unlawful killing of Shane O’Farrell in 2011. The errors and failings leading to the death of Shane are such that they undermine public confidence in government and the administration of justice to an extent that it is imperative that public confidence be restored. This must be done in a manner that the whole public can be assured that the full facts can be established, the failings addressed, appropriate action taken, people held to account, and to ensure that lessons are learned so that similar failings don’t happen again.

Irish Penal Reform Trust



Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. IPRT publishes a wide range of policy positions and research documents; we campaign vigorously

across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Outhouse



Outhouse is a community and resource centre for LGBT+ people, their families, and friends. Our vision is of a vibrant and safe space for LGBT people, groups & organisations that is inclusive of the diversity within our communities. Our mission is to provide a safe space which facilitates & encourages the growth of services and supports to the LGBT communities. In all of our work, we are guided by principles of community, equality & partnership.

The National Union of Journalists



For more than 100 years, the NUJ has fought for journalists and journalism. Today, the union is one of the largest independent journalists' unions in the world. NUJ members work across the media, from newspapers, broadcasting and book publishing to magazines, websites, mobile devices, social media and PR agencies. Our members work across a diverse range of jobs – anything from reporting, writing, photography and editing to design, videography, communications and presenting.

Mental Health Reform



Mental Health Reform is Ireland's leading national coalition on mental health. Our vision is of an Ireland where everyone can access the support they need in their community, to achieve their best possible mental health. We drive the progressive reform of mental health services and supports, through coordination and policy development, research and innovation, accountability and collective advocacy. Together with our 80 member organisations and thousands of individual supporters, Mental Health Reform provides a unified voice to the government, its agencies, the Oireachtas and the general public on mental health issues.

Note: While each of these organisations are experts in their areas of concern, no one of the organisations possesses the expertise sufficient to complete this report in isolation. This report represents a compilation of a wide array of material and expertise from the aforementioned organisations, co-ordinated by the Irish Council for Civil Liberties.

Inclusion as a contributor does not equate to an endorsement of the report as a whole.

Key concerns

In the area of justice, a number of significant pieces of legislation have commenced the parliamentary process or passed into law in the last 12 months which, although not perfect, will have an overall positive impact on the judicial system. These include the Judicial Appointments Commission Act and the Courts Delays Bill. The long-awaited report on the future of the Special Criminal Court and the Offences Against the State Act has also been published but with no timeline or plan for the implementation of its recommendations.

On the other hand, while the Judicial Appointments Commission Act has passed into law, the provisions of the act do not reach the highest standard as set out by the European Charter on the Statute of Judges and articulated in previous rule of law submissions. We are also particularly disappointed to note the retention of the Attorney General on the Commission Appointments Commission membership, as this could be perceived as having undue governmental involvement in the Commission's work and skews the balance away from 50% judicial membership and is contrary to best practice. Additionally, there

has been little to no tangible progress on the review of the civil legal aid scheme.

As regards the anti-corruption framework, while some amending legislation with respect to lobbying was passed this year, there has been no progress in the long awaited (and recommended) update of outdated public ethics legislation. Progress has been far too slow on developing a new public ethics regime, despite urgent need for reform in this area and calls from CSOs, the European Commission and GRECO. The last update on the progress of drafting the legislation was almost 12 months ago. Urgent action is required to ensure this legislation is passed before the next general election.







In relation to the media environment and media freedom, the establishment of Coimisiún na Meán and the publication of draft legislation to reform defamation law is welcome, but the review of the freedom of information regime remains stalled. A long-term plan for the financing of public service broadcasting is yet to be agreed. The draft Defamation (Amendment) Bill has completed pre-legislative scrutiny and the revised bill is awaiting publication.

The practice of rushing legislation at the end of parliamentary terms has abated for now. The establishment of the Electoral Commission is also very welcome. We remain concerned, however, that some newly established independent bodies are insufficiently resourced and/or not subject to appropriate governance to prevent political interference in their operation.

As for the civic space, the Charities (Amendment) Bill (2023) was published in December 2023 over a year after the pre-legislative scrutiny of the bill was completed. The long-promised review of the 1997 Electoral Act to remove restrictions on civil society funding has not materialised, despite the establishment of the Electoral Commission and the numerous recommendations and other interventions by domestic, regional and international organisations.

No progress on the issues of disregard of human rights obligations raised in the EU Commission's 2023 report has been reported.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression **No progress** **Progress**



Justice system

Key recommendations

- *Complete a comprehensive review of the legal aid system, which should include, inter alia; provision for an enhanced civil legal aid system, and a large-scale study of unmet legal need in Ireland.*
- *Set out a timeline and plan to implement the recommendations of The Independent Review Group on the Special Criminal Court and the Offences Against the State Act in a manner that ensures that all courts comply with constitutional and international fair trial standards.*
- *Publish legislation to remove prosecutorial powers from Gardaí and replace them with a system of public prosecutors, as per the recommendation contained in the Commission on the Future of Policing's final report.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Judicial Appointments Commission Act was finalised by parliament in July¹ and was found to be constitutional following a referral to the Supreme Court by the President in December.² The Act will establish a new, independent Judicial Appointments Commission to select and recommend persons for judicial office in Ireland, and in the EU and international courts.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

In December 2023 a sitting Circuit Court judge was found guilty of a number of sexual offences dating back to the 1990s.³ Under Article 35.4 of the Constitution, a judge of the Supreme Court, Court of Appeal or the High Court cannot be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann (the lower and upper

houses of parliament, respectively) calling for their removal. This provision has also been interpreted as applying to Circuit Court judges.⁴ Following the verdict, the Minister for Justice issued a statement outlining that she has written to the Attorney General to examine options of the judge's removal.⁵ An opposition justice spokesperson has also written to the Judicial Council asking the body to clarify its role in the judge's removal.⁶ The judge resigned in January 2023, avoiding the necessity for a parliamentary vote on his removal.⁷

Promotion of judges and prosecutors

The Judicial Appointments Commission Act (2023)⁸ provides for a revised and consolidated process by which sitting judges can apply for appointment to higher courts. This will be done through application to the Commission, who will produce a shortlist of candidates for selection for posts. It is in the gift of the government to reject all names on the shortlist if it so chooses, as per section 51 of the Act.

1 [Minister McEntee welcomes the passage of Bill giving effect to major reforms in how judges are appointed From Department of Justice Published on 4 July 2023](#)

2 [BreakingNews.ie Judicial Appointments Bill constitutional, Supreme Court rules December 8th 2023](#)

3 [Long read: The trial of the judge convicted of sex assaults on young men when working as a teacher](#)

4 [Removal from Judicial Office - Association of Judges of Ireland](#)

5 [Justice Minister to consult with AG on removal of judge following conviction for sexual assault.](#)

6 [Sinn Féin pushes for removal of judge convicted of sexual assaults](#)

7 [McEntee confirms resignation of judge Gerard O'Brien following sexual assault conviction](#)

8 [Judicial Appointments Commission Act 2023](#)

Allocation of cases in courts

The Court Proceedings (Delays) Bill 2023⁹ provides for statutory compensation for breach of the right to a hearing within a reasonable time in both civil and criminal matters. The Bill provides for the appointment of a Chief Court Delays Assessor and Court Delays Assessors to assess such applications. The Bill also provides for the making of an application to the Circuit Court in certain circumstances for such a declaration and compensation, and for related matters. The Bill is still in the legislative process as of the time of writing.

Independence/autonomy of the prosecution service

One of the key recommendations of the report of the Commission on the Future of Policing was that gardaí, the state police of Ireland, would no longer act as prosecutors in court cases.¹⁰ It was hoped that the Policing, Security and Community Safety Bill¹¹ would provide

for this recommendation¹² but this has not happened. A high-level group has completed a report on the review of gardaí prosecutorial powers, but this has yet to be presented to the government.¹³

Other

In June 2023 the long-awaited review of the Offences Against the State Act (OASA) was completed. The majority report recommended replacing the court with a new non-jury arrangement with enhanced safeguards and transparency. The minority report recommended that no non-jury courts should be provided for. Both the majority and minority reports agreed that the OASA should be repealed.¹⁴ As of yet there has been no official timeframe or plan announced by the government to implement the recommendations.¹⁵

9 [Court Proceedings \(Delays\) Bill 2023 Bill No. 17 of 2023](#) Rebecca Halpin, Senior Parliamentary Researcher (Law) 23 May 2023

10 [The Commission on the Future of Policing in Ireland Final Report 2018](#)

11 [Policing, Security and Community Safety Bill 2023: Community Safety](#) Patrice McDonnell, Senior Parliamentary Researcher (Law) 20 February 2023

12 [Irish Legal News Government pressed on timetable for removing prosecution powers from gardaí](#) February 2023

13 [Seanad Éireann debate - Wednesday, 4 October 2023 Policing, Security and Community Safety Bill 2023: Second Stage](#)

14 [Minister Helen McEntee publishes independent review of State's primary counter-terrorism legislation](#) From Department of Justice Published on 21 June 2023

15 [Irish Council for Civil Liberties: Minister must implement Review Group's recommendation and repeal the Offences Against the State Acts](#) 27 June 2023

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

A public consultation on the review of the existing legal aid scheme was concluded in February 2023.¹⁶ As of December, no updates have been announced.

Ireland's equality legislation: Following a public consultation on a review of Ireland's equality acts in 2021, the Department of Children, Equality, Disability, Integration and Youth published a report in July 2023 summarising the issues raised in the submissions to the public consultation.¹⁷ The report noted several submissions on the difficulty of taking a case before the Workplace Relations Commission (WRC), restrictive time limits, lack of reasonable accommodation to support people to access justice and the need for procedural accommodation and supports (interpreters, captioned videos, ISL interpretation and audio description of all processes and forms), the need for civil legal aid, the need for dedicated legal services for marginalised groups and the need for all discrimination complaints under the Equality Acts to be heard by the WRC in the first instance. According to the legislative

programme, Heads of Bill are currently being prepared to make provision for proposed amendments arising from the Review of the Equality Acts, but there has been no update on this in a number of months.

Family justice: Long waiting times, overly bureaucratic processes, and at times high legal costs continue to pose barriers for those going through family court proceedings. A Family Courts Bill to provide for the establishment of a Family High Court, Family Circuit Court and Family District Court was published in November 2022, but at the time of writing has not progressed since then. The Bill has completed its first stage in Seanad Éireann.¹⁸

Resources of the judiciary (human/financial/material)

The Judicial Panel Working Group published its delayed report in February 2023. The group made 54 recommendations¹⁹ on the future resourcing needs of the judicial system, including the need to appoint new judges. An implementation plan for the recommendations has yet to be published.

16 [Public Consultation on the Review of the Civil Legal Aid Scheme From Department of Justice Published on 8 December 2022 Open for submissions from 8 December 2022 Submissions closed 28 February 2023 Last updated on 8 February 2023](#)

17 [Minister O'Gorman publishes report on the submissions to the public consultation on the Review of the Equality Acts](#)

18 [Family Courts Bill 2022](#)

19 [Judicial Planning Working Group Report From Department of Justice Published on 24 February 2023](#)

Fairness and efficiency of the justice system

Length of proceedings

In April 2020, the European Court of Human Rights (ECtHR) delivered its decision in the case of *Keaney v Ireland*. In that case, the Applicant claimed that the delay of over 11 years between the date of initiation of proceedings to the date of judgement of final appeal in the Supreme Court was excessive. The court found that this delay was excessive and a violation of Article 6 of the ECHR. The Court further found that there was no effective remedy for delay of this nature in the Irish courts. The Court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic. Although the concurring opinion of Judge O’Leary noted that some progress had been made with the introduction of case management and the expansion of the Court of Appeal, Judge O’Leary was still of the view that Ireland is not doing enough to meet its obligations under Article 6.²⁰ The *Keaney* case was one of many to come before the ECtHR on the length of proceedings in Ireland and *Keaney* was chosen by the Court as a lead case on the issue. The Court Proceedings (Delays) Bill is expected to address this judgement.²¹

Rules on withdrawal and recusal of judges and their application in practice

In February 2022,²² the Judicial Council adopted ‘Guidelines for the Judiciary on Conduct and Ethics’, outlining the standard of conduct of the judiciary and rules surrounding withdrawal and recusal. These Guidelines are based on constitutional principles of independence and impartiality, the Bangalore Principles and the Judicial Council Act 2019. S. 43 (3) of the 2019 Act outlines the procedure for the recusal of a judge and the role of the Judicial Council.

Other

Absence of an alternative forum for resolution of housing disputes:

Mercy Law Resource Centre (MLRC) frequently engages with local authorities on housing matters and pursues informal appeals against refusals of housing entitlements through those authorities. MLRC notes that there is wide variation in how such appeals are processed, and that there is a general lack of transparency and a formalised process to be followed should an applicant wish to appeal a negative decision. MLRC notes that clients who are refused a service or an entitlement are frequently not informed that they have any right of appeal, a right that arises by virtue of the right to fair procedures. Our experience is that appeals can be lengthy to determine, and there is in

20 [European Court of Human Rights: Case of *Keaney v. Ireland* \(72060/17\) April 2020](#)

21 [Court Proceedings \(Delays\) Bill 2023 Bill No. 17 of 2023 Rebecca Halpin, Senior Parliamentary Researcher \(Law\) 23 May 2023](#)

22 [Guidelines for the judiciary on conduct and ethics, Foreword](#)

some instances a failure to apply independent mechanisms for such appeals. We note that the new eviction procedure provided for in Part 2 of the Housing (Miscellaneous Provisions) Act 2014²³ which provides for an internal appeals procedure with respect of tenancy warnings, commenced on April 13th, 2015.

In addition, in 2022 MLRC saw an increase of 250% in the number of queries received relating to refusal of access to emergency accommodation – temporary, emergency housing supports for people experiencing homelessness. This is a trend which continued into 2023. Many of these cases involved a failure to carry out a homeless assessment in line with the responsibilities of Local Authorities under Section 2 of the Housing Act 1988,²⁴ or a failure to give reasons for a decision to refuse to provide emergency accommodation, in line with the requirements of fair procedures. The vast majority of these initial decisions were reversed following the engagement of MLRC, though the need to have recourse to solicitors to access basic, emergency homeless support is concerning. This rise in cases reflects a trend of increasingly formal barriers for people experiencing homelessness to access basic services such as emergency accommodation.

MLRC would welcome the development of less formal and community-based initiatives designed to protect the right to housing. A more cost-effective mechanism of resolving disputes with local authorities with respect to housing matters may be through a tribunal or appeals office. This may

make a remedy more accessible and formalised, and reduce the inconsistencies and related unfairness of the current procedures.

Potential restrictions on access to judicial review

The Planning and Development Bill 2023²⁵ was published in November 2023 and contains concerning plans to restrict access to judicial review in planning matters, rowing back on the significant progress Ireland has made to standing and cost rules in recent years as a result of its adoption of the Aarhus Convention.

Part 9 of the Bill stipulates that in order to challenge a planning decision, residents' associations and other unincorporated associations will be required to have a formal structure and a constitution and prove that two-thirds of their voting members approve the decision to proceed with a legal challenge. The names of all of those participating in the challenge will also need to be submitted. Environmental NGOs will face higher hurdles in bringing challenges on environmental matters. They will be required to have no fewer than 10 members and will have to have been in existence for one year prior to bringing any challenge.

Individuals and unincorporated associations will also be required to show that they have "sufficient interest" in the case, meaning they are directly or indirectly affected by what's proposed.

23 [Housing \(Miscellaneous Provisions\) Act 2014](#)

24 [Housing Act, 1988](#)

25 [Planning and Development Bill 2023](#)

A new *Environmental Costs Legal Scheme* is also proposed. It is unclear how this financial assistance mechanism will operate in practice, but the implications are that groups and individuals who lose judicial review challenges will have to pay their costs in full unless a means test finds them eligible for assistance.

Alongside a number of legal and academic experts, community and environmental groups and citizens, Community Law & Mediation has consistently

cautioned that these changes could have serious consequences for environmental oversight and accountability. In the current climate and biodiversity emergency, access to the judicial review process is crucial, as it is the only way for the citizen to hold decision-makers to account in relation to breaches of environmental and climate obligations.

At the time of writing, the Bill is progressing through the legislative process, with Committee Stage due to commence in February 2024.

Anti-corruption framework

Key recommendations

- *Publish and enact stalled comprehensive updated public ethics legislation without further delay.*
- *Conduct a public consultation on national measures required to address SLAPP litigation and associated NDAs, and implement stringent dissuasive penalties in respect of those pursuing SLAPP as a measure to deter the public and organisations from exercising their access to justice and public participatory and access to information rights.*
- *Instruct local authorities to fully enforce part 15 of the Local Government Act 2001 with regard to asset disclosure of county and city councillors.*

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

In 2021, the government announced a review of Ireland's existing statutory framework for Ethics in Public Life.²⁶ The Review of Ethics Legislation will seek to respond to outstanding recommendations of the Moriarty and Mahon tribunals. The review was published in February

26 [Minister McGrath launches Public Consultation on Review of Ethics Legislation From Department of Public Expenditure, NDP Delivery and Reform](#) Published on 25 November 2021 Last updated on 25 November 2021

2023,²⁷ but no updates have been subsequently provided on plans for reform.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Regulation of Lobbying (Amendment) Act 2023 was signed into law in July 2023. This Act enhances certain aspects of the principal act by increasing the type of groups which are subject to its provisions and improves the operation and enforcement of section 22 of the principal Act, which deals with restrictions on post-term employment as a lobbyist.²⁸

Media environment and media freedom

Key recommendations

- *Publish and enact legislation reforming defamation laws and related NDA restrictions as a matter of urgency.*
- *Progress the review of the Freedom of Information system to ensure a regime that is transparent, user-friendly and accessible.*
- *Ensure that in any action designed to counter hate speech, Coimisiún na Meán, the Electoral Commission and forthcoming incitement to violence or hatred legislation fully respect the right to freedom of expression.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The Future of Media Commission was established by the government in 2020 to examine the future of the media in Ireland, including Ireland's public service broadcasters, commercial broadcasters, print and online media platforms. The Commission's final report was published in July 2022.²⁹ It contains over 50 recommendations on the structure and financing

²⁷ [Review of Ireland's Statutory Framework for Ethics in Public Office From Department of Finance Published on 3 February 2023 Last updated on 22 March 2023](#)

²⁸ [Modifications to the Regulation of Lobbying in Ireland Arthur Cox August 2023](#)

²⁹ [Report of the Future of Media Commission From The Future of Media Commission Published on 12 July 2022 Last updated on 21 July 2022](#)

of media in Ireland. The report recommends moving away from the “television licence fee” model of funding public broadcasting to one of direct exchequer funding. No alternative has thus far been proposed and there has been a collapse in the income from licence fees following a scandal in the public service broadcaster (RTÉ) earlier this year, which has necessitated a government bailout.³⁰

Coimisiún na Meán (The Media Commission) was established earlier in 2023 and has responsibility for the regulation of online and broadcast media.³¹ ICCL has requested that the Commission act to switch off algorithms on online platforms which promote extremism.³²

Public service media

Independence of public service media from economic interference

The failure to provide adequate funding and to reform the licence collection system has had an impact on the main public service broadcaster RTÉ.³³ As of January 2023, the government has not provided information on long-term

proposals for funding of public service broadcasting. The NUJ has viewed this action as an impediment to securing the future viability of public service broadcasting. As previously mentioned, the income generated from the licence fee has collapsed over the course of 2023, necessitating additional central government funding.³⁴

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

Following its establishment,³⁵ Coimisiún na Meán began developing binding online safety codes for content regulation. It is expected that these will be published in 2024.³⁶

30 [Breakingnews.ie Income from the TV licence down €16.4m since July, November 2023](https://www.breakingnews.ie/news/ireland/income-from-the-tv-licence-down-16-4m-since-july-november-2023)

31 [Coimisiún na Meán](https://www.coimisiunna-mean.ie/)

32 [Irish Council for Civil Liberties: A binding Code against toxic algorithms Submission to the Media Commission of Ireland September 4th 2023](https://www.civil liberties union for europe.org/irish-council-for-civil-liberties-a-binding-code-against-toxic-algorithms-submission-to-the-media-commission-of-ireland-september-4th-2023)

33 [TV licence fee in place for RTÉ ‘utterly broken’, Dee Forbes tells committee January 2022](https://www.forbes.com/ireland/2023/01/12/tv-licence-fee-in-place-for-rte-utterly-broken-dee-forbes-tells-committee-january-2022/)

34 [RTÉ faces TV licence fee shortfall of more than €61m over two years as Government to give €16m interim funding Irish Independent October 2023](https://www.independent.ie/ireland/rt-e-faces-tv-licence-fee-shortfall-of-more-than-61m-over-two-years-as-government-to-give-16m-interim-funding-irish-independent-october-2023)

35 [Silicon Republic: Irish regulator seeks public feedback for online safety code July 2023](https://www.siliconrepublic.com/irish-regulator-seeks-public-feedback-for-online-safety-code-july-2023)

36 [Coimisiún na Meán: Online Safety](https://www.coimisiunna-mean.ie/online-safety)

Safety and protection of journalists and other media actors

Smear campaigns

In April, the deputy prime minister (Tánaiste) criticised the work of online investigative website *The Ditch*³⁷ in parliament³⁸ for its work on corruption. The Tánaiste said that the website's work was "political".³⁹ The comments were criticised by the National Union of Journalists.

Rules and practices guaranteeing journalist's independence and safety

A draft bill to amend defamation laws was published in 2023.⁴⁰ The bill has completed pre-legislative scrutiny⁴¹ and it is expected that the revised bill will be published in 2024.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

2023 saw the establishment of a non-statutory body by An Garda Síochána, the Media

Engagement Group (MEG), aimed at improving the safety of media workers. This is a joint initiative of An Gardaí, the NUJ, representatives of media organisations and State agencies. Chaired by an Assistant Commissioner, it meets quarterly, monitors attacks and threats, and provides training. MEG has also established a reporting system for profession related-attacks against media workers.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

It is expected that the amended defamation bill will deal with some elements of SLAPPs against journalists and others.

Confidentiality and protection of journalistic sources (including whistleblower protection)

Head 16 of the General Scheme of the Garda Síochána (Powers) Bill⁴² provides for a general search warrant provision including access to electronic devices, as recommended by the Law Reform Commission (LRC). However, Head 15(6) of the draft Bill is not in line with the

37 [The Ditch April 2023: Niall Collins voted to sell public land bought by wife who's now negotiating sale of social housing on site](#)

38 [Ceisteanna ó Cheannairí - Leaders' Questions – Dáil Éireann \(33rd Dáil\) – Thursday, 27 Apr 2023](#)

39 [Irish Examiner April 2023 Tánaiste doubles down on The Ditch criticism](#)

40 [Draft General Scheme of the Defamation \(Amendment\) Bill From Department of Justice Published on 28 March 2023](#)

41 [An Comhchoiste um Dhlí agus Ceart Joint Committee on Justice: Pre Legislative Report on the Defamation \(Amendment\) Bill 2023. September 2023](#)

42 [Garda powers to be modernised and updated under new Bill from Minister Humphreys From Department of Justice Published on 14 June 2021](#)

LRC's recommendation that urgent applications should be made to the High Court, not the District Court. It is questionable whether such an application would be appropriate at the District Court level. Clarification on why LRC's recommendation was departed from in this instance is needed. As of December 2023 the revised version of the Bill remains unpublished.

Access to information and public documents

A review of Freedom of Information (FOI) legislation, which was commenced by the Department of Public Expenditure and Reform remains ongoing as of December 2023. A report on the initial stakeholder consultation was published in December 2022,⁴³ but it is unclear if any subsequent actions have been taken.

Checks and balances

Key recommendations

- *Ensure that the to-be-established Office of the Inspector of Places of Detention, Office of the Independent Examiner of Security Legislation, The Policing and Community Safety Authority and the Office of the Police Ombudsman are independent of executive interference in governance and operation.*
- *That relevant ministers and government departments should be obliged to respond to pre-legislative scrutiny reports when publishing amended legislation, alongside rationale for the acceptance/rejection of the recommendations of the pre-legislative report and details of changes, if any, made to the draft heads of bill.*
- *Publish plans for bringing parts IV & V of the 2022 Electoral Act into line with EU law.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

While the practice of pre-legislative scrutiny of legislation has now become bedded into the parliamentary system, the recommendations produced are often ignored by the responsible Department when re-drafting the final version of the legislation.

43 [Review of the Freedom of Information Act Progress Update](#)

Independent authorities

Consistent concerns have been raised regarding the structures of the yet-to-be-established offices of the Independent Examiner of Security Legislation, the Policing and Community Safety Authority and the Office of the Police Ombudsman, all of which are provided for in the Policing Security and Public Safety Bill.⁴⁴ ICCL has raised concerns with regard to the proposed governance and structures of these bodies, which may limit their independence and impede their ability to operate effectively.⁴⁵

Electoral framework

Limitations on the right to vote

The right to vote for Irish citizens abroad lapses after 18 months.⁴⁶ No postal, embassy or online methods of voting are available to Irish citizens abroad except in very rare circumstances.⁴⁷ The right to vote for resident foreign nationals in Ireland is very limited, primarily restricted to local and European elections but not including general elections or referenda.⁴⁸ Members of the upper chamber of parliament (the Seanad) are not elected through universal suffrage.⁴⁹ Forty-nine of the Seanad's 60 members are elected

through closed lists and 11 are nominated by the Taoiseach (Prime Minister).

43 senators are elected from panels of candidates representing specific vocational interests. These are: Cultural and Educational (5 Members) Agricultural (11 Members) Labour (11 Members) Industrial and Commercial (9 Members) Administrative (7 Members). The Seanad returning officer (Clerk of the Seanad) maintains a register of bodies entitled to nominate candidates to the panels of candidates. To be eligible for registration as a nominating body, an organisation must be concerned mainly with and be representative of the interests and services of one or other of the panels. A body cannot be registered in respect of more than one panel. Organisations which are mainly for-profit organisations are not eligible for registration. The register is revised annually. There are two sub-panels for each panel: the Nominating Bodies sub-panel and the Oireachtas sub-panel. Each nominating body registered in respect of a panel may nominate a fixed number of candidates for that panel. These candidates comprise the nominating bodies' sub-panel of the different panels. Any four members of the newly elected Dáil or outgoing Seanad may nominate one candidate for any panel, but each member may join in only one nomination. These

44 [Policing, Security and Community Safety Bill 2023: Community Safety](#) Patrice McDonnell, Senior Parliamentary Researcher (Law) 20 February 2023

45 [Irish Council for Civil Liberties: Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill \(2023\)](#)

46 [The vote: returning emigrants warned of 18-month rule – The Irish Times](#) May 2018

47 [Registering to vote: Citizens Information](#)

48 [Right to vote: Citizens Information](#)

49 [Seanad: Citizens Information](#)

candidates form the Oireachtas (Parliament) sub-panel. A specified minimum number of members must be elected for each sub-panel.

The following persons may vote at a general election of panel members:

- Members of the incoming Dáil;
- Members of the outgoing Seanad;
- Members of county councils, city councils and city and county councils.

Each elector has only one vote in respect of each panel, even if he or she is qualified in more than one respect. The electorate numbers approximately 1,000 out of a population of 5 million.

The remaining 6 members are elected by university graduates of certain universities. Every citizen of Ireland who is at least 18 years old and who has received a degree, other than an honorary degree, from the universities concerned is entitled to be registered as an elector. The electorate of the National University of Ireland numbers 110,000 approximately and that of the University of Dublin 50,000 approximately.⁵⁰

The electoral roll is maintained and up-dated by the university concerned. Even within this limited pool of eligible electors, registration and turnout is very low.⁵¹ The exclusion of those with degrees from other 3rd level institutions was ruled to be unconstitutional in 2023⁵² and the government has announced plans to extend the franchise by 2025.⁵³

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

The recently established Electoral Commission has an oversight role in relation to the Electoral Register.⁵⁴ While Electoral Registers are managed and maintained by local authorities, the Electoral Commission may commission or carry out research in relation to: the accuracy and completeness of electoral registers; the maintenance of electoral registers; the processes relating to the compilation, maintenance and functioning of the electoral registers. There has long been evidence that the electoral register is inaccurate and contains duplicates.⁵⁵

The electoral register allows for online registration and pre-registration for 16 & 17 year olds,⁵⁶

50 [How the Seanad is Elected \(Upper House of Parliament\): Oireachtas Website](#)

51 [The Final Seanad Election: National University of Ireland](#)

52 [Laws limiting electorate for Seanad University Panels are unconstitutional; Oireachtas must legislate to expand franchise FLAC March 2023](#)

53 [Expanding Seanad franchise must be done by 2025 following case by UL graduate Limerick Post March 2023](#)

54 [Electoral Operations: Electoral Commission Ireland](#)

55 [Tipperary County Council urges voters to check the Electoral Register for 2024 elections | Independent.ie](#)

56 [Check the Register](#)

but only those living in Dublin can update their details online.⁵⁷

As part of their draft research programme, the Electoral Commission has begun to seek inputs from stakeholders. This programme will guide the Commission's work with respect to its options for examination in the 2024-2026 period.

Rules on political advertising and their enforcement

Rules on political advertising in the broadcast media fall under Rule 27 Guidelines for Coverage of General, Presidential, Seanad, Local & European Elections of the Broadcasting Authority of Ireland (BAI)⁵⁸ and are well enforced. The BAI will be subsumed into the recently established Media Commission in the coming years.⁵⁹

Part IV of the Electoral Act (2022)⁶⁰ grants powers to the Electoral Commission to regulate online political advertising. However, the provisions setting these powers were subsequently found to breach the eCommerce Directive of the European Union and are the subject of

ongoing TRIS procedures.⁶¹ As a result, this part of the Act has not been commenced. The government has not made clear how it intends to legislate to address the incompatibility with the eCommerce Directive.⁶²

The legal limit that can be spent by general election candidates, including on advertising, depends on the number of seats that are being contested in the constituency. The maximum that a candidate can spend on a Dáil election is:

- €45,200 per candidate in a five-seat constituency
- €37,650 per candidate in a four-seat constituency
- €30,150 per candidate in a three-seat constituency

If a candidate receives at least one quarter of the quota of votes for the constituency, they can claim back up to €8,700 in election expenses.

For presidential elections,⁶³ the spending limit is €750,000 per candidate. If a candidate is elected, or gets more than 25% of the quota

57 [Voter.ie](https://voter.ie): Register Check

58 [Broadcasting Authority of Ireland Rule 27 Guidelines Guidelines for Coverage of General, Presidential, Seanad, Local & European Elections](#)

59 [BAI prepares for future within new Media Commission](#): Irish Times January 2021

60 [Electoral Reform Act 2022, Section 119](#)

61 [European Commission TRIS Notification Detail Electoral Reform Bill 2022 \(Part 4 - sections 117 to 139 inclusive\)](#)

62 [Electoral Process Dáil Éireann Debate, Tuesday - 18 October 2022 Cian O'Callaghan TD](#)

63 [Presidential elections in Ireland](#): Citizens Information

in the election, they can be reimbursed up to €200,000 from the State.

In local elections, candidates are allowed to spend a limited amount of money on campaigning. This amount varies depending on the population size of the local electorate area and is between €13,000 and €9,750.⁶⁴

The rules on referenda spending are less clear, as the limits apply to acceptance of donations as opposed to spending.⁶⁵

The Standards in Public Office commission (SIPO) publishes detailed guidelines on rules governing advertising and spending in advance of electoral events.⁶⁶

Eligibility criteria and restrictions to be a candidate

To be a candidate for election to the Dáil or Seanad, you must be:⁶⁷

- An Irish citizen
- At least 21

You also cannot be both a member of the Dáil or Seanad and:

- A member of a local authority

- A member of the European Parliament or another senior official in an institution of the European Union
- A member of the Garda Síochána or a full-time member of the Defence Forces
- A civil servant, unless your contract specifically allows it
- Serving a prison sentence of greater than 6 months
- The President, a Senator, the Comptroller and Auditor General or a judge
- The Electoral Act 1992 also says that you cannot be a TD if you are ‘of unsound mind’.

To be eligible for election as President,⁶⁸ you must be an Irish citizen who is 35 or older. You must be nominated either by:

- At least 20 members of the Oireachtas (Dáil and/or Seanad)
- At least 4 local authorities
- Former or retiring Presidents can nominate themselves

64 [Local elections in Ireland: Citizens Information](#)

65 [Explanatory Note for Third Parties: SIPO](#)

66 [Elections | Guidelines & Information SIPO](#)

67 [Dáil Éireann: SIPO](#)

68 [Presidential elections in Ireland: Citizens Information](#)

You are eligible to be elected to a local authority if you are ordinarily resident in Ireland and you are at least 18 years old. You do not have to be an Irish citizen. You are disqualified from becoming a member of a local authority if you are:⁶⁹

- A member of the European Commission, Parliament or Courts
- A member of Dáil Éireann or Seanad Éireann
- An Ceann Comhairle (the Chairman of the Dáil) or an Cathaoirleach (the Chairman of the Seanad)
- A member of an Garda Síochána or a full-time member of the Irish defence forces
- A judge
- A member of the Court of Auditors of the European Communities
- The Comptroller and Auditor General
- A civil servant - where it does not specifically state in your contract of employment that you may be a member of a local authority
- A person employed by a local authority and is not the holder of a class, description

or grade of employment designated by order under section 161(1)(b) of the Local Government Act 2001

- Employed by the Health Service Executive and at a grade or of a description of employment designated by order of the Minister for Health and Children
- Currently imprisoned for a term longer than 6 months
- A person who has failed to pay local authority charges
- A person who has failed to comply with an order of a court to pay money due to a local authority
- A person who has been convicted of fraud or dishonest dealings affecting a local authority, corrupt practice or acting while disqualified

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

In January 2021, the government published the general scheme of the Electoral Reform Bill (2020).⁷⁰ The draft Bill went through an extensive period of pre-legislative scrutiny, ending in July 2021. A key component of this legislation is the establishment of an Electoral Commission,

⁶⁹ [Local elections in Ireland: Citizens Information](#)

⁷⁰ [The General Scheme of the Electoral Reform Bill \(2020\)](#)

an institution which Ireland is unusual in a comparative sense for not having. As part of the pre-legislative scrutiny process, a number of academics and members of civil society called on the government to equip the to-be-established commission with powers to address and counter dis/misinformation.⁷¹ While the subsequent committee report recommended that “the proposed Bill provides for the maintenance of electoral integrity and the protection against election interference as an explicit function of the Electoral Commission,”⁷² the revised Bill contained no reference to mis/disinformation until an entirely new section was added as an amendment by the Minister late in the legislative process.⁷³ This last-minute addition means that civil society groups were unable to assess the provisions, very little time was given in parliament for the examination of the measures⁷⁴ and they remain subject to infringement procedures by the European Commission.⁷⁵ The rushed and unsatisfactory manner in which the legislation was passed was subject to public commentary⁷⁶ and objections from parliamentarians.⁷⁷

The aforementioned infringement procedures meant that while the Act has been passed by the houses of Parliament, the sections which attempt to combat mis/disinformation and regulate political advertising are un-commenced.⁷⁸ As of December 2023, the government has not brought forward proposals to address the incompatibility of the Act with EU law.

The as yet un-commenced provisions mean the Electoral Commission will have explicit powers in respect of its monitoring and investigatory functions, including a power to issue during an electoral period:

- a take-down notice
- a correction notice
- a labelling order
- an access-blocking order, or
- a notice requiring any operator or host of any online platform to publish a statement

71 [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 2 Feb 2021](#)

72 [Joint Committee on Housing, Local Government & Heritage Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020 July 2021](#)

73 [Government’s Electoral Reform Bill ‘incompatible’ with EU directives on online advertising: Irish Examiner July 2022](#)

74 [Liam Herrick: Democracy may not die by guillotine, but it’s seriously injured: Irish Examiner July 2022](#)

75 [Statement on the Electoral Reform Bill From Department of Housing, Local Government and Heritage Published on 22 July 2022](#)

76 [Approach to Electoral Reform Bill raises serious questions over Government’s respect for rule of law Irish Examiner July 2022](#)

77 [Dáil Éireann debate - Wednesday, 13 Jul 2022 Electoral Reform Bill 2022: From the Seanad](#)

78 [Proposals to enhance and protect the integrity of elections published From Department of Housing, Local Government and Heritage Published on 10 June 2022](#)

informing all affected end-users of the manipulative or inauthentic behaviour or the use of an undisclosed bot.

Complementary to its enforcement powers, the Electoral Commission may publish codes of conduct in consultation with an Advisory Board and a Stakeholder Council, which may apply to online platforms, candidates, political parties, third parties and/or media outlets. It is envisaged that such codes of conduct would apply during an election or referendum campaign period only.

Separately, online platforms will be required to report possible disinformation, misinformation or manipulative / inauthentic behaviour in the online sphere to the Electoral Commission in the lead up to an electoral or referendum period. They will also be required to put in place a notification mechanism for users to report possible disinformation relating to online electoral information and misinformation relating to online electoral process information.⁷⁹

In submissions to the European Commission on the infringement process, ICCL and Technology Ireland⁸⁰ set out in detail the impact that these provisions would have on the free expression of political opinion. This is because the regulations apply not only to “electoral process information”, i.e. information regarding the holding/running of the electoral

event, but also “online electoral information” which includes “any online content relating to:

- i) a candidate in an election
- ii) a political party that has candidates standing in an election
- iii) issues that are of relevance to an election, or
- iv) issues that are of relevance to a referendum

Head 144 of the Bill stipulates that any content which constitutes “disinformation” with respect to the above topics can be removed or otherwise restricted. “Disinformation” is defined in the Bill as:

“any false or misleading online electoral information that—

- (a) may cause public harm, and
- (b) by reason of the nature and character of its content, context or any other relevant circumstance gives rise to the inference that it was created or disseminated in order to deceive;”

In this sense, the power of the Commission to limit the freedom of expression of individuals is

79 [Dáil Éireann An Bille Um Athchóiriú Toghcháin, 2022 Electoral Reform Bill 2022 Leasuithe A Rinne An Seanad Amendments Made By The Seanad](#)

80 [European Commision TRIS Notification Detail Electoral Reform Bill 2022 \(Draft Heads of Bill - new Part 4A\)- Contributions](#)

based on the Commission's own interpretation of what is;

1. Misleading
2. Of a nature which "may" cause public harm
3. Deceitful in nature

It is the contention of ICCL that granting the Electoral Commission such wide-ranging powers as this creates the potential not only for a chilling effect on the free expression of opinion, but also may create scenarios where statements, utterances or other online publications incorrectly classified as "misinformation" are effectively excluded from the electoral discourse.

Civic space

Key recommendations

- *Remove restrictions on funding for CSOs which prevent fundraising for advocacy work through amendment of the 1997 Electoral Act.*
- *Instruct the Charities Regulator to revise their advice on political advocacy for charitable organisations.*
- *Progress and enact the Charities (Amendment) Bill without further delay.*

Freedom of association

Involuntary dissolution

Concerns have been expressed by organisations that proposed powers to be granted to the Charities Regulator as part of the draft Charities (Amendment) Bill (2022) would allow for deregistration for minor breaches of the 2009 Charities Act. In their pre-legislative

scrutiny report, the parliamentary committee examining the legislation requested that these provisions be amended.⁸¹ The amended legislation was published in December 2023.⁸² These concerns seem to have not been addressed (subject to detailed legal analysis) through the revision of the Bill as per head 30(c).⁸³

Freedom to determine objectives and activities, including the scope of operations

81 [Report on the Pre-Legislative scrutiny of the General Scheme of the Charities \(Amendment\) Bill, 2022](#)

82 [Charities \(Amendment\) Bill 2023](#)

83 [Charities \(Amendment\) Bill \(2023\)](#)

Concerns have been expressed that the Charities Regulator has gone beyond its remit in determining what work can be deemed to be beyond the charitable purpose and/or “political” in nature. This has been, in part, driven by a response to hostile complaints. The Regulator published updated advice on political activity in late 2021, which further narrowed the scope of “political” activities of charities. In their pre-legislative scrutiny report on the Charities (Amendment) Bill (2022), the parliamentary committee examining the legislation requested that this advice be amended.⁸⁴

Impact of rules on foreign funding, accounting and auditing rules, anti-money laundering regulations

The definition of “political purposes” as contained in the 1997 Electoral Act prohibits any person or organisation based in Ireland from accepting sizable or any international donations to assist them in campaigning on or seeking to change public policy. The Act also places onerous tracking and reporting requirements on small domestic donations.

According to the wording of the 1997 Electoral Act, these donation restrictions apply to civil

society advocacy work at all times, and not just when advocating an election or referendum result. The basic freedom of individuals and organisations in Ireland to raise funds and campaign on issues that affect them are constrained by the Electoral Act in ways that violate their constitutional rights, EU law and their freedom of assembly and association. This situation has a considerable chilling impact on funders, who fear that their donations may breach electoral law.⁸⁵ The government has committed to reviewing the act and this task has fallen to the Electoral Commission to complete. There has been no indication of when this review will commence.

Freedom of peaceful assembly

Policing practices, including dispersion of protests, use of force

Following protest⁸⁶ and riots⁸⁷ in Dublin in September and November 2023, the government sought to enhance equipment available to gardaí to manage protests.⁸⁸ There were also calls for greater clarity on the levels of acceptable force⁸⁹ which could be used to restore order. ICCL and others have consistently opposed⁹⁰ the proposals to equip gardaí with

84 [Report on the Pre-Legislative scrutiny of the General Scheme of the Charities \(Amendment\) Bill, 2022](#)

85 [Coalition For Civil Society Freedom Statement on the Electoral Act ICCL 2018](#)

86 [Far-right posts featuring mock gallows outside Dáil remain online despite Garda investigations](#) The Journal.ie September 2023

87 [‘Unfolding chaos’: Watch how Dublin’s riots developed](#) RTÉ December 2023

88 [Irish riot police to be armed with Tasers](#) BBC November 2023

89 [GSOC rejects claims it may have role hindering policing](#) RTÉ November 2023

90 [Rights group ‘strongly opposed’ to gardaí being granted facial-recognition technology](#) The Journal.ie May 2022

facial recognition technology, as was mooted as a response⁹¹ to the riots. A narrative of “excessive” oversight of policing leading to a fear of deploying force has also entered public discourse,⁹² ICCL has sought to oppose this narrative as Ireland has had historically weak policing oversight.⁹³ Proposals to limit the ability of protesters to assemble in the vicinity of parliament has also been opposed by civil society.⁹⁴

Surveillance of protests

Following riots in Dublin in November, calls have been made to expedite the roll-out of facial recognition technology (FRT) for policing in order to assist in the identification of agitators and others engaged in criminal activity.⁹⁵ Previous proposals for legislating for the use of this technology were deferred earlier in 2023.⁹⁶ ICCL has opposed the use of this technology in Ireland.⁹⁷ In December 2023 the Department of Justice published a draft bill for the use of FRT.⁹⁸

Freedom of expression and of information

Rules on hate speech and their enforcement

The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 is continuing its passage through parliament but has not progressed since June 2023.⁹⁹

Censorship and self-censorship, including on the use of symbols and slogans

Over the course of 2023, ICCL conducted a large-scale survey of the voluntary and community sector and their experiences of advocacy. The survey found that almost 40% of respondents have restricted their advocacy efforts for fear of loss of government funding. This rises to 50% for organisations involved in homelessness and/or addiction services. There is a perception within the sector that speaking out on controversial issues or opposing government policy can result in implicit or explicit threats to withdraw funding. A full report on this work will be published in Q1 of 2024.¹⁰⁰

91 [‘Huge distortion’ over advent of facial recognition technology, Drew Harris says](#) BreakingNews.ie November 2023

92 [Gardaí ‘reluctant’ to use powers in case of GSOC investigation](#) Irish Examiner December 2023

93 [Dublin riots must not be an excuse to magic away legal and human rights](#) Irish Times November 2023

94 [Gardaí prepare ‘mini sterile zone’ around Leinster House for budget day](#) Irish Times October 2023

95 [McEntee has ordered officials to beef up facial recognition laws in response to Dublin riot](#) The Journal.ie November 2023

96 [Government to introduce standalone bill on facial recognition technology](#) Irish Legal News June 2023

97 [Criticism of FRT plans by Government TDs welcomed by ICCL](#) Irish Council for Civil Liberties April 2023

98 [Minister McEntee receives Cabinet approval for draft Facial Recognition Technology Bill.](#)

99 [Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#)

100 [ICCL “Free to Advocate” Survey: Initial Findings August 2023](#)

Restrictions on access to information

A review of freedom of information legislation was commenced in 2021 but has not progressed in over 12 months.¹⁰¹

Online content regulation

The Online Safety and Media Regulation (OSMR) Act was signed into law on December 10, 2022¹⁰² leading to the establishment of Coimisiún na Meán in March 2023.¹⁰³ The Commission is currently developing binding online safety codes for video sharing platforms.¹⁰⁴ ICCL has argued that as part of these codes, the Commission must address algorithmic amplification.¹⁰⁵

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

In 2023 there was a sustained low-level attempt to discredit and call into question the role of civil society in public discourse in Ireland in both media and in commentary from some

politicians. This has mostly taken the form of the “foreign NGO” trope and is mostly related to migration and LGBT issues. Online harassment of some organisations has become so acute that they have removed themselves from online platforms such as X.¹⁰⁶ A significant report by the Institute for Strategic Dialogue: “Uisce Faoi Thalamh”¹⁰⁷ was published on the mis/disinformation media landscape in Ireland in 2023, which examined some of the issues raised with respect to attacks on NGOs.¹⁰⁸

101 [Review of the Freedom of Information Act Progress Update](#)

102 [President Higgins signs Online Safety and Media legislation into law December 2022](#)

103 [New media regulator, Coimisiún na Meán, formally established March 2023](#)

104 [Coimisiún na Meán seeks views for developing Ireland’s First binding Online Safety Code July 2023](#)

105 [Media Commission urged to switch off Big Tech’s toxic algorithms Irish Council for Civil Liberties September 2023](#)

106 [Why we decided to leave Twitter/X - Belong To - LGBTQ+ Youth Ireland October 2023](#)

107 [Uisce Faoi Thalamh: Topic Analysis - ISD November 2023](#)

108 [Major analysis shows how Irish disinformation ecosystem has been ‘co-opted by far-right actors’ The Journal.ie November 2023](#)

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Progress the Draft Heads of Bill to amend the Mental Health Act, 2001 as a matter of urgency.*
- *Expedite the development of a new system for accommodating asylum seekers and conduct an investigation into the status of those minors reported missing from state care.*
- *Ratify the Optional Protocol (OPCAT) and amend the Inspection of Places of Detention Bill (which seeks to implement OPCAT) to ensure that direct provision centres and other congregated settings are subject to independent human rights focused inspections.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The Assisted Decision-Making (Capacity) Amendment Bill¹⁰⁹ 2022 which amended the Assisted Decision-Making (Capacity) Act 2015 was fully commenced in April 2023. As stated in the 2023 submission, this is a very welcome piece of legislation that abolishes wardship in Ireland. However, those involuntarily detained under Section 3(1)(a) of the Mental Health Act, 2001 remain the only cohort of people deprived of the rights extended under this new legislation

(including legally binding Advance Healthcare Directives). The government has stated its intention to remedy this discriminatory omission in the reform of the Mental Health Act, 2001.

In February 2023, the United Nations Committee on the Rights of the Child published their concluding observations¹¹⁰ on Ireland's compliance with the UNCRC. The Committee raised concerns about insufficient and inadequate mental health services for children and urged the State to “*ensure that the revisions of the Mental Health Act and the Assisted Decision-Making (Capacity) Act include:*

109 [Assisted Decision-Making \(Capacity\) \(Amendment\) Act 2022](#)

110 [CRC/C/IRL/CO/5-6](#) United Nations Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Ireland

(i) An explicit prohibition of the practice of placing children with mental health issues in adult psychiatric units;

(ii) A recognition of children's right to be heard in decisions regarding their mental health care and assistance from an independent advocate"

In July 2023, the Mental Health Commission published an Independent Review of the provision of Child and Adolescent Mental Health Services (CAMHS)¹¹¹ in the State. The Mental Health Commission's report shows there are serious deficits in CAMHS which are resulting in dysfunctional mental health services for children and young people. Poor clinical governance, failure to manage risk and inadequate oversight have severely compromised the safety and quality of care in CAMHS. The Mental Health Commission has outlined 49 recommendations in its report including the immediate and independent regulation of CAMHS through the legislative reform of the Mental Health Act, 2001.

Despite all the repeated pressing concerns raised in 2023, particularly around youth mental health, the Draft Heads of Bill to amend the Mental Health Act, 2001 has remained in priority drafting for the Autumn 2023 Government

Legislation Programme and has not progressed to priority publication. The Draft Heads of Bill to amend the Mental Health Act, 2001 should be progressed as a matter of urgency.

Impunity and/or lack of accountability for human rights violations

In December 2023 an investigation uncovered that 62 children seeking international protection in Ireland have disappeared from state care since 2017. Seventy-five percent of those missing have not been subject of missing person appeals. The report has raised serious questions regarding trafficking and exploitation of vulnerable children.¹¹²

Other systemic issues

In 2011, Shane O'Farrell was killed in a hit-and-run incident in Monaghan. The individual responsible for his death had broken numerous bail conditions and should not have been free at the time of the killing.¹¹³ There is extensive evidence of a failure within the criminal justice system in this case. The current deputy prime minister said that the case "reveals shocking malpractice and dysfunction in the criminal justice system".¹¹⁴

111 [Independent Review of the provision of Child and Adolescent Mental Health Services \(CAMHS\) in the State](#) Inspector of Mental Health Services July 2023

112 [Over 60 migrant children missing after disappearing from State care](#) The Journal.ie December 2023

113 [Justice for Shane](#)

114 [Dáil Éireann debate - Wednesday, 3 May 2017 Leaders' Questions](#)

In 2018 and 2019, both houses of the Irish parliament^{115,116} voted to hold a public inquiry into the circumstances surrounding Mr. O’Farrell’s death; this, however, has not been progressed by the government. In its place, the government commissioned a retired district court Judge to carry out a scoping exercise, conducting a preliminary review to ascertain whether there were any circumstances surrounding the death of Mr O’Farrell which required further inquiry beyond those already carried out.

The scoping exercise report was received by the Minister for Justice and the O’Farrell family in 2022 and published in 2023.¹¹⁷ The terms of reference asked the District Court judge to consider the outcome or reports of investigations or inquiries that have already taken place, with a particular emphasis on the reports of the investigations carried out by GSOC and the Independent Review Mechanism. It appears that the Judge was not provided with the statutory GSOC reports which are within his terms of reference (nor did he request them), nor was he provided with the report of the Independent Review Mechanism which the Department of Justice refused to waive privilege over. The family believes that this is an incomplete and deeply

flawed report, a sentiment that is shared across the political spectrum^{118,119} as evidenced by responses in parliament to its publication.¹²⁰ The family of Mr. O’Farrell continues to demand that the full Garda Síochána Ombudsman Commission (GSOC) public interest report into the killing is provided to them and that the parliamentary decision to hold a full public inquiry is respected in order to vindicate their rights under Article 2 of the ECHR.

115 [Dáil Éireann debate - Thursday, 14 Jun 2018 Death of Shane O’Farrell: Motion \(Resumed\) \[Private Members\]](#)

116 [Seanad Éireann debate - Wednesday, 13 Feb 2019 Death of Shane O’Farrell: Motion](#)

117 [Report of Scoping Exercise in relation to the death of Shane O’Farrell](#)

118 [Helen McEntee under pressure after ‘whitewash’ report into hit-and-run death of Shane O’Farrell | Independent.ie](#)

119 [Final Report of the Independent Scoping Exercise into the Circumstances surrounding the Death of Mr. Shane O’Farrell: Statements](#)

120 [Final Report of the Independent Scoping Exercise into the Circumstances Surrounding the Death of Mr. Shane O’Farrell: Statements – Seanad Éireann \(26th Seanad\)](#)

LIBERTIES

RULE OF LAW REPORT

2024

ITALY

#ROLREPORT2024



ITALY

About the authors

Italian Coalition for Civil Liberties and Rights (CILD)



Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of civil society organisations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action.

Antigone



Antigone is an Italian NGO founded in 1991, which deals with human rights protection in the penal and penitentiary system. Antigone carries out cultural work on public opinion through campaigns, education, media and publications. It conducts studies and research, and it contributes to the writing of normative texts. Thanks to its Observatory on Italian prisons for adults and minors, it monitors conditions in all prisons in Italy and publishes a report on the Italian penitentiary system. Antigone has an Ombudsman and legal clinics around Italy that collect complaints from prisoners. Antigone also carries out investigations about ill-treatment and is at times formally involved in the related trials.

A Buon Diritto Onlus



A Buon Diritto Onlus, since its establishment, has been carrying out activities of rights promotion, legal assistance, social guidance, monitoring, research and advocacy, with a focus on migration. The organisation works to safeguard fundamental rights, offering qualified assistance to those who are deprived of their liberty, those who are trying to integrate in our country, those who are victims of discrimination or racist episodes, and those who have suffered abuse and torture.

Osservatorio Balcani e Caucaso Transeuropa



Established in 2000, OBCT is a think tank focused on Southeast Europe, Turkey, and the Caucasus that explores and reports on the socio-political and cultural developments of Italy and six other EU Member States, namely those taking part in the EU enlargement process and those included in the European Neighbourhood Policy. As an operational unit of the Center for International Cooperation, OBCT is committed to strengthening the European project by supporting transnational relations and raising public awareness on areas at the heart of many European challenges, thanks to a participatory and multi-sectoral approach that weaves together online journalism, research, training, outreach, and policy advice.

La Società della Ragione (SdR)



SdR is an Italian non-profit organisation, founded in 2008, working in the field of criminal law, civil and human rights, social marginalities. It aims to promote a new approach to criminal law, to reduce incarceration, and improve compliance with human rights. SdR conducts different initiatives and research activities.

Key concerns

In the area of justice, there have been reforms that generally tend to make the justice system less efficient, promoting, in particular, a securitarian approach.

Advancements were made this year in anti-corruption measures, following the implementation of one of two recommendations contained in the European Commission's 2023 Rule of Law Report. A new National Anti-Corruption Plan ('23-'25) was approved and the Whistleblowing Decree (No. 24 of 2023)

entered into force in March,¹ followed by the release of updated guidelines for implementation,² thereby transposing the EU Directive 2019/1937 into Italian law. On the other hand, political changes delayed the progress of recommendations for lobbying laws.³

2023 saw a worrying increase in the level of political influence in the Italian media sector. The unwarranted interference in public broadcasting service not only threatens the independence of public service media and its financial sustainability, but it also causes major concern over the protection of free, independent and pluralistic journalism in the country. The Italian Parliament advanced five bills to reform the regime on defamation.⁴ However, some of these amendments have shifted their focus from the need to protect journalists from abuses of the law and vexatious lawsuits to the need to safeguard plaintiffs, prioritising the right to reputation over freedom of expression.

Regarding checks and balances, compared to 2022 no progress has been made in establishing a sustainable, functional, and independent institutional body for the protection of human rights, in line with UN Resolution No. 48/134 of 1993.

In the area of civic space, there has been a regression. The Decree Law No. 1/2023 criminalises rescue operations at sea, endangering migrants' right to life and the right to asylum. The government's hostility to civil society impedes the crucial work of NGOs to contribute to the development of democracy and human rights. The government has also imposed limitations on the right to strike and has been particularly hostile towards protesters. Additionally, comprehensive anti-conflicts of interest rules and lobbying regulations to establish an operational lobbying register, including a legislative footprint,⁵ still need to be adopted. The government continues to hinder journalists' work as 'watchdogs' of democracy and anti-corruption.⁶

1 <https://www.ocme.com/modello-231/procedura-whistleblowing-ocme-rev.0.pdf>

2 <https://www.dataguidance.com/news/italy-anac-releases-guidelines-whistleblowing-decree>

3 <https://freedomhouse.org/country/italy/freedom-world/2023>







4 <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/55242.pdf>; <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/55273.pdf>; <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/56433.pdf>; <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/56728.pdf>; <https://www.senato.it/service/PDF/PDFServer/DF/425746.pdf>

5 The Italian CSO The Good Lobby has launched two campaigns: one on the adoption of regulations to establish an operational lobbying register and one on the adoption of anti-conflicts of interest rules. The government has yet to adopt these two provisions. <https://www.thegoodlobby.it/campagne/lobbying-italia/>; <https://www.thegoodlobby.it/campagne/conflicto-di-interessi/>

6 <https://www.article19.org/resources/italy-seizure-order-article-domani/>

In Italy, 2023 is confirmed as a year marked by the absence of a real legislative proposal on LGBTQIA+ people's rights and combating discrimination based on sexual orientation and gender identity, and a year of steps backwards regarding surrogacy, crime of torture and rights of detainees.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression No progress Progress



Justice system

Key recommendations

- *Guarantee the magistrates' freedom of opinion and thought, and above all the independence of the judiciary.*
- *Avoid the criminalisation of dissent and the introduction of new forms of criminal repression, which, among other things, would further increase the already high rates of overcrowding in prisons.*
- *Preserve the specificities of the juvenile justice system, which is historically characterised by an educational-pedagogical, rather than punitive, approach.*

Judicial independence

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the in-

dependence of the judiciary (e.g. Council for the Judiciary)

Despite the failure of the 2022 referendum on the separation of judicial careers,⁷ the

⁷ <https://elezioni.repubblica.it/2022/referendum/20220612/3/italia/>

issue remains on the agenda of Italian public debate. Between 2022 and 2023, a series of bills⁸ were tabled on the subject which, in brief, envisage: the separation of the hiring process for judges and prosecutors, the creation of two separate Superior Councils of Judges and Prosecutors, with an increase in the number of so-called ‘lay’ members (mainly academics or lawyers), appointed by Parliament or partly by Parliament, and partly by the President of the Republic (the bills differ on this point).⁹ In addition, the Minister of Justice, Carlo Nordio, stated at a conference on 11 November 2023 that the implementation of the announced separation of careers would be ‘postponed’ to the process of the other constitutional reform, that of the elected Prime Minister, declaring his inclination towards a constitutional law inspired by the British system, in which “the public prosecutor is independent, but he is the prosecutor’s lawyer and has no powers over the judicial police”.¹⁰

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In 2023, government representatives’ public statements significantly shaped political discussions, though not always resulting in legislative

actions. On 2 October, the ‘Apostolico Case’ marked a pivotal moment when Judge Iolanda Apostolico, from the Catania court’s immigration section, ordered the release of a migrant in a detention centre for repatriation (Centri di permanenza per il rimpatrio - CPR) due to an unpaid €5,000 deposit. This decision challenged the applicable decree (Decree-Law No. 1 of 2 January 2023, and the Ministry of the Interior Decree of 14 September 2023), with Judge Apostolico arguing the regulations contradicted EU directives.

Prime Minister Giorgia Meloni, expressing disbelief on Facebook, labelled the justifications behind Judge Apostolico’s order as “unbelievable”.¹¹ Subsequently, Minister of Infrastructure and Transport, Matteo Salvini, posted a video on social media depicting the magistrate participating in a 2018 procession protesting the government’s handling of migrants on the ship Diciotti. Salvini argued that this indicated the magistrate’s personal biases against government positions, leading to calls for Judge Apostolico’s resignation from politicians in the majority.¹²

Government statements impacting public perception of the judiciary also came from Minister of Defence Guido Crosetto, who asserted that “the only threat to the stability of Giorgia

8 Recently in 2023: <https://www.senato.it/service/PDF/PDFServer/DF/424240.pdf>

9 https://www.sistemapenale.it/it/opinioni/rossi-separare-le-carriere-di-giudici-e-pubblici-ministeri-o-riscrivere-i-rapporti-tra-poteri#_ftnref1

10 <https://www.ilgiornale.it/news/interni/separazione-carriere-subito-premierato-nordio-annuncia-nuova-2239770.html>

11 <https://global.ilmanifesto.it/the-reality-behind-melonis-propaganda-against-a-catania-judge/>

12 <https://www.editorialedomani.it/giustizia/video-apostolico-salvini-cosa-successo-migranti-lgjk1ebx>

Meloni's government is the judicial opposition".¹³ Additionally, Alfredo Mantovano, Under Secretary to the Presidency of the Council of Ministers, proposed introducing psycho-aptitude tests for magistrates, a suggestion that was ultimately rejected.¹⁴

Fairness and efficiency of the justice system

Length of proceedings

In 2023, there was a gradual reduction in the duration of trials and, at the same time, an acceleration in the reduction of the backlog in courts, in line with the objectives of the PNRR agreed with Europe. The data as of 30 June 2023, compared to the reference year of 2019 specified in the PNRR, indicate a decisive acceleration in the reduction of the duration of trials calculated on the basis of disposition time - a key indicator that gauges the ratio between pending and finalised trials. In the civil justice sector, there was a substantial decrease of 19.2%, while the criminal justice sector witnessed an even more pronounced reduction of 29%. Particularly marked was the reduction in the last year in the criminal sector (17.5% lower compared to the first half of 2022), thanks to a substantial increase in the number of finalised proceedings.¹⁵

Execution of judgments

In the Italian justice system, the so-called 'security measures' still exist in the penal code and may be enacted against people charged with crimes and sentenced to prison in addition to the period of imprisonment, if they are deemed by the judge to be 'socially dangerous'. In this case, after the person has served the sentence for the committed crime, the judge may order an additional period of detention in so-called 'work houses'. The work houses are located in eight prisons as a special section of the same prisons. Perpetrators of crimes who are considered 'socially dangerous' are usually sentenced to serve a 'security measure' for one or two years in a work house. At the end of the period, the security measure may be extended (and frequently is extended) for more years, without any limit to the extensions. Therefore, the implementation of the security measures in principle may lead to what Italians call *ergastolo bianco*, or a 'white life sentence', because the security measure can be extended indefinitely. The designation of 'socially dangerous' is not connected to the seriousness of crimes; usually people sentenced to this 'security measure' come from poor backgrounds and are recidivists for minor crimes, such as theft, minor drug crimes etc. Clearly, the provision of security measures does not comply with the guarantees required in a democratic and liberal

13 <https://www.ilfattoquotidiano.it/2023/11/26/lattacco-di-crosetto-ai-magistrati-so-di-riunioni-tra-toghe-per-fermare-il-governo-lanm-fake-news-il-pd-infondati-complotti-e-velate-minacce/7365353/>

14 https://www.repubblica.it/politica/2023/11/28/news/crosetto_magistrati_caso_giustizia-421413211/

15 https://www.giustizia.it/giustizia/page/it/monitoraggi_giustizia_civile_e_penale#; <https://www.sistemapenale.it/it/scheda/gatta-gialuz-riforma-cartabia-e-durata-media-del-processo-penale-29-nel-primo-semester-del-2023-i-dati-del-monitoraggio-statistico-del-ministero-della-giustizia>

state, as such provision is related to the features of the person, instead of the actions he/she has committed. At the end of 2023, the Ministry of Justice¹⁶ reported that there were 311 people serving in the work houses, compared to 294 at the end of 2022 and 298 at the end 2021. On 13 October 2022, the proposed law ‘Amendments to the Penal Code, concerning the abolition of detention security measures for imputable persons and the regulation of probation’ (Chamber Act No.158/2022), an initiative of Deputy Riccardo Magi, was presented and assigned to the Justice Commission. Presently, the bill is waiting to be put on the commission’s agenda to be discussed.¹⁷

Respect for fair trial standards, including in the context of pre-trial detention

To gauge the efficacy of the justice system in Italy, it is crucial to examine instances of miscarriages of justice leading to unfair detentions. From 1992 to 31 December 2022, a concerning 30,556 cases were identified where individuals were wrongly placed in pre-trial detention, underscoring a disconcerting trend. This equates to more than 985 innocent people annually experiencing pre-trial detention. The

financial implications of these miscarriages of justice are substantial, amounting to a total compensation cost exceeding €846,655,000, averaging around €27,311,000 annually.¹⁸ The year 2022 alone witnessed 539 cases of unjust detention, necessitating a compensation payout totalling €27,378,000.

Other

In 2023, on the topic of migration, Italy witnessed an unparalleled surge in decrees and agreements, significantly compromising the rights of asylum seekers and migrants. The attention and controversy surrounding the issue stem from political propaganda rather than a genuine necessity for improving its management or addressing emergencies. On 26 February, on the beach of Steccato Cutro, a few kilometres from Crotone, the bodies of dozens of migrants who died in a shipwreck at sea washed up. In the end, 94 bodies were recovered.¹⁹ The Meloni government seized on this incident for political gain, convening a Council of Ministers on 9 March 2023 in Cutro, resulting in Legislative Decree No. 20/2023.²⁰ This decree increased penalties for so-called smugglers, often victims themselves, and curtailed asylum seeker

16 https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST996131

17 <https://www.societadellaragione.it/progetti/misure-di-sicurezza/>

18 <https://www.errorigiudiziari.com/errori-giudiziari-quantisono/>

19 <https://www.fanpage.it/attualita/naufragio-crotone-quantisono-i-morti-i-sopravvissuti-e-i-dispersi-in-mare/>

20 <https://www.gazzettaufficiale.it/eli/id/2023/05/05/23A02665/sg>

protections, raising concerns about adherence to international refugee and human rights laws.²¹ Moreover, the government has increased the detention time of migrants in detention centres for repatriation (CPR) to up to 18 months of detention.²² This move is an unnecessarily afflictive and propagandistic measure that has no impact on the success of repatriations, as reported by some Italian non-governmental organisations,²³ and by the data contained in the report ‘Black Holes: Detention without charge in Repatriation Centres for Migrants - Centri di Permanenza per i Rimpatri (CPRs)’.²⁴

Further, the Meloni government announced a memorandum with Albania on 6 November,²⁵ outlining collaborative efforts to manage migratory flows. Albania will grant Italy the use of designated areas on its territory, allowing Italy to establish, at its own expense and

jurisdiction, two centres for managing sea arrivals of migrants, asylum requests and expulsion procedures.²⁶ This agreement faced constitutional legitimacy doubts²⁷ due to its contents falling within Article 80 of the Italian Constitution, therefore requiring parliamentary involvement, and because the automatic recourse to detention is clearly not compatible with European and Italian legislation on the matter. However, it was the Albanian Constitutional Court that suspended the ratification²⁸ of the controversial agreement in December 2023, as it fell into the category of agreements that require authorization from the President of the Albanian Republic. The final decision of the Albanian Court is expected in March 2024.

In 2023, reforms in the Italian justice system raised concerns about potential negative impacts

21 There have been many critical issues raised by civil society and the United Nations High Commissioner for Refugees regarding the compatibility with international legislation on refugees and human rights, regarding the feasibility of the envisaged measures, the potential impact on the asylum, and the space of protection guaranteed to asylum seekers, refugees and stateless persons: <https://www.unhcr.org/it/wp-content/uploads/sites/97/2023/05/Nota-tecnica-di-commento-legge-Legge-5-maggio-2023-n.-50.pdf>

22 <https://www.gazzettaufficiale.it/eli/id/2023/09/19/23G00137/sg>

23 <https://www.asgi.it/notizie/cpr-riforma-costi-non-misure-irragionevoli/>; <https://cild.eu/wp-content/uploads/2023/10/Antigone-CILD-commento-DL-124-2023.pdf>

24 https://cild.eu/wp-content/uploads/2022/07/ReportCPR_En_2vers-1.pdf

25 <https://integrazioneimmigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/3496/Protocollo-dintesa-tra-Italia-e-Albania-in-materia-di-gestione-dei-flussi-migratori>

26 For an estimated cost of 16 million in the first year of implementation.

27 <https://www.asgi.it/notizie/accordo-italia-albania-asgi-illegittimo-parlamento/>

28 <https://www.balcanicaucaso.org/aree/Albania/Albania-la-Corte-Costituzionale-sospende-l-accordo-Rama-Meloni-229028>

on both fairness and efficiency.²⁹ Decree-Law No. 123 of 15 September, converted with amendments by Law No. 159 of 13 November (called the ‘Caivano decree’), introduces criminal provisions concerning minors, promoting a punitive approach.³⁰ The Caivano decree testifies to the widespread practice of normative intervention, almost always by means of emergency decrees following dramatic events in the news, with the illusion of pursuing this or that emergency through the tightening of penal instruments. The extension of punitive measures proposed, to the detriment of the educational approach to young people, is at

odds with the cultural foundations that have shaped the Italian justice system, which has proven to be effective and is even considered a model at European level. Instead of moving more decisively in the direction that had proved to be the most beneficial, the Caivano decree, which was later converted into law, reversed the course by pushing for a dangerous homologation of the instruments of punishment for minors with those for adults. While the Pacchetto Sicurezza, comprising three bills endorsed by the Council of Ministers on 16 November 2023, advocates for an unnecessary and inequitable reinforcement of the criminal

29 <https://www.antigone.it/upload2/uploads/docs/AntigoneDICaivano.pdf>

30 In the Official Journal No. 266 of 14/11/2023. The most relevant points are:

- The maximum penalty for non-culpable offences for which it is permitted to accompany a minor caught in the act of committing an offence to the police station is reduced from five to three years; for measures other than pre-trial detention, the threshold of applicability to persons over the age of 14 is lowered from five years to four years.
- The maximum penalty required to proceed with detention, arrest in *flagrante delicto* and pre-trial detention of juveniles aged 14 and above for non-culpable offences is reduced from nine to six years. Additionally, the legislation allows for detention, arrest, and pre-trial detention of minors aged 14 and above in specific cases (i.e. aggravated theft, offences related to carrying weapons or offensive objects, violence or threats against public officials, resistance to public officials, and production and distribution of drugs).
- Regarding the internal security of juvenile prisons (IPM), a significant change grants the director the authority to seek authorisation from the Surveillance Magistrate for transferring individuals aged 18 to 21. This applies if the person, who committed an offence as a minor, engages in behaviour compromising security, disrupting order, using violence, or threatening others in the institution. For detainees aged 21 to 25, clearance may be requested based on engaging in any of the mentioned behaviours, providing discretionary power to the penal institution.
- Implementation of the measure of ‘aggravation’ (*aggravamento*), i.e. placing a minor in an IPM due to removal from the community or repeated violations of prescriptions, the recent change eliminates the previous maximum duration of 30 days for this measure. As a result, the duration becomes indefinite.

and prison repression model.³¹ These measures contribute to a further rise in the prison

population, which is now characterised by a 123% overcrowding rate.

Anti-corruption framework

Key recommendations

- *A draft law was tabled aimed at abrogating the offence of abuse of public office and limiting the scope of the offence of trading in influence, but progress still needs to be made in this regard.*
- *Legislation addressing conflicts of interest comprehensively is yet to be enacted and needs immediate adoption. While a parliamentary inquiry on the necessity of establishing comprehensive rules for lobbying is in progress, it should be replaced by an amendment of the legislation as originally planned before the change in government.*
- *Senate hearings to examine the practice of directing donations through political foundations and associations have commenced, yet tangible legislative changes are still pending.*

Framework to prevent corruption

Integrity framework, including incompatibility rules (e.g.: revolving doors)

Minister Cartabia's reform of the judicial system and its self-governing body, the Supreme Council of Magistrates (CSM), was passed in June,³² which it is hoped will have an impact on halting revolving doors. According to the new regulations, judges entering politics and

31 Notably, it proposes:

- Introduction of the offence of prison riot (Art. 415 bis of the Criminal Code), carrying penalties of two to eight years for promoting, organising, or directing a riot, and one to five years for mere participation. This offence is equated with mafia and terrorism charges and can apply to CPR detainees.
- Raising the penalty limits of several criminal offences.
- Extension of the catalogue of hostile offences under Article 4bis of the Penitentiary Law and restrictions on prison benefits.
- Increased penalties for offences committed against public officials.
- Imprisonment of pregnant women or those with children under one year of age by repealing paragraphs 1 and 2 of Art. 146 of the Criminal Code.

<https://www.antigone.it/news/3508-i-nostri-6-no-al-pacchetto-sicurezza>

32 https://www.ansa.it/english/news/2022/06/16/justice-reform-passed_cdf96094-6159-4b74-921f-330171c886c1.html

securing public office are barred from returning to their judicial roles after completing their terms. Those elected to the Italian or European Parliament, regional or town councils, or those winning mayoral elections may assume administrative roles in the justice ministry after their term, but are restricted from presiding over cases. Additionally, magistrates who run for office without success or assume non-elected government positions face a three-year prohibition from serving as judges. The reform also prohibits judges from concurrently holding judicial positions and political offices, even if in different regions.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

There is no information on accessible reporting on behalf of the government (if conducted at all) through civil society consultations. While a platform exists,³³ it has invited consultation on around 25 non-contentious items over several years, with limited input of civil society sought actively.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The Whistleblowing Decree (No. 24 of 2023) entered into force in March followed by the release of updated guidelines for implementation, transposing EU Directive 2019/1937 into Italian law. While it's too early to earnestly comment on the practical effectiveness of this law, as it has only been in force for under a year and thus needs to be 'tested' for a longer period, on its face it appears that the law is an improvement on previous Italian regulations regarding whistleblowing, which were regarded, at least in the private sector, as being rather fragmented and limited in scope.³⁴

With the introduction of this new Whistleblowing Decree, rules on whistleblowing in both the public and private sector are now laid out within a single, comprehensive instrument, and more people fall within its scope. Whereas before the implementation of the Decree the obligation was limited to companies adopting and using an organisational and management scheme, according to Legislative Decree No. 231/2001 for the prevention of criminal conduct within the workplace protection is now formally extended to those employed in companies employing at least 50 employees under permanent or fixed-term employment contracts over the previous year,

33 https://partecipa.gov.it/processes?filter%5Barea_id%5D=&filter%5Bdate%5D=all&filter%5Bscope_id%5D=

34 <https://www.martinimanna.com/blog/13tr4ap2a4anzupx74gnun33ip6kgi>

and employees of companies falling within the scope of application of regulations on financial services, products and markets, prevention of money laundering or terrorist financing, transport security, and environmental protection.³⁵ The law also allows non-profit entities to provide support measures to whistleblowers.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

A new public procurement code fully entered into force in July 2023 (Legislative Decree No. 36 of March 31 2023),³⁶ which now applies to public tenders for work, services, and supplies. In our view, however, the elements allowing subcontracting without percentage limits and ‘cascade subcontracting’ may require additional reform, as many argue that limiting subcontracting to a maximum of one or two sub-layers and limiting the permitted percentage of employed workers, the number of tasks, and the percentage of the turnover generated down the subcontracting chain, is necessary.³⁷

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

A draft law was tabled aimed at abrogating the offence of abuse of public office and limiting the scope of the offence of trading in influence,³⁸ but progress still needs to be made in this respect.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The practice of channelling donations through political foundations and associations before they are transferred to political parties remains an obstacle to public accountability because these transactions are difficult to trace and monitor. In the previous legislature (before the Meloni government was installed) there had been a text already approved by the Chamber, which only needed to be passed by the Senate.³⁹ The fall of that government and the subsequent installation of the Meloni government killed that attempt. Currently in Parliament, on the topic of lobbying there are only proposals

35 <https://www.seyfarth.com/news-insights/new-rules-and-obligations-for-employers-in-italy-concerning-whistleblowing.html>

36 <https://www.lexology.com/library/detail.aspx?g=51b8f2d6-e57c-4a42-9887-f15de31cf4e3>

37 <https://www.limitsubcontracting.eu/materials/rules/Better%20subcontracting%20rules%20GB.pdf>

38 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023SC0812>

39 <https://www.thegoodlobby.it/qui-si-fa-la-storia-ok-della-camera-alla-legge-sul-lobbying-ora-il-senato-deve-migliorarla/>

presented by the opposition. None have progressed to examination - see here such proposals of the opposition parties, the discussion of which has not yet begun: PD, IPD;⁴⁰ M5S;⁴¹ M5S;⁴² AZ,IV,RE.⁴³ The government is showing no interest in regulating the representation of interests in line with previous efforts aiming towards this objective.

The President of the Constitutional Affairs commission of the Chamber, Nazario Pagano (from the Forza Italia party) started a fact-finding investigation within the Constitutional Affairs commission in March 2023 on this topic, but after some initial hearings, the work seems to have stopped again (in this video⁴⁴ the hearings in March 2023 can be viewed).

In November 2023 then Pagano stated that the proposed law on the regulation of stakeholders could be implemented “by January”,⁴⁵ following the (imminent) conclusion of the fact-finding investigation on the phenomenon carried out by the same parliamentary body, but this remains to be seen. Among the previews on the provision provided to the media outlet ANSA by Pagano, there is the hypothesis that a register of such professionals who carry out ‘lobbying’ activities could be kept “by the CNEL, or by a Guarantor”.⁴⁶

In Italy, an excellent job is done by The Good Lobby, which has been asking for the approval of a law text for years, whose campaign remains ongoing.⁴⁷

Media environment and media freedom

Key recommendations

- *Italian decision-makers should initiate a comprehensive reform of defamation laws, which must be aligned with international freedom of expression standards and should focus on decriminalising defamation and establishing reasonable limits on damages within civil law to protect press freedom, free expression, and the public’s right to know. Any such reform must take into account the current EU debate on the proposal for a directive on SLAPPs*

40 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/55231.htm>

41 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/55306.htm>

42 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/55677.htm>

43 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/56180.htm>

44 <https://www.youtube.com/watch?v=7JMthMJHtLs>

45 https://www.ansa.it/sito/notizie/fisco_lavoro/2023/11/29/pagano-fi-verso-la-proposta-di-legge-sulle-lobby-a-gennaio_12d79f58-aa16-49c2-a978-681782e5151d.html

46 https://www.ansa.it/sito/notizie/fisco_lavoro/2023/11/29/pagano-fi-verso-la-proposta-di-legge-sulle-lobby-a-gennaio_12d79f58-aa16-49c2-a978-681782e5151d.html

47 <https://www.thegoodlobby.it/campagne/lobbying-italia/>

and consider the impact that it will have on public participation and public interest issues; In the transposition phase of the anti-SLAPP Directive, Italian policy-makers should implement a progressive reform in which the Commission's horizontal anti-SLAPP Recommendation is fully integrated.

- *Italian authorities should guarantee the autonomy of the national Coordination Centre for the monitoring, analysis, and permanent exchange of information on the phenomenon of intimidation of journalists and make it fully independent of the Ministry of Interior. They should enhance the scope of the Centre to allow for a comprehensive reporting of all types of violations, threats, and attacks against journalists and media workers - including legal threats and SLAPPs - and adopt a more adequate monitoring methodology that goes beyond the reports solely collected by the police.*
- *Italian authorities must speed up the creation of a national registry of beneficial owners of media enterprises, which must be publicly available for consultation in an open data format. Moreover, Italian authorities must commit to the protection of the editorial independence of media organisations and of the journalistic sources by prohibiting the use of surveillance technologies, and spyware in particular, by law enforcement agencies or any other actor to access journalistic sources.*

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

In order to fully address the need for information on state advertising in media, broad transparency obligations both within national and EU regulations are needed. Public authorities are usually obliged to keep records of their advertising expenditure, and such a collection of data can be used to achieve a greater transparency at EU level through the creation of

national and EU-wide databases that provide transparent data around the funds that states allocate to media companies through public advertising. The proposed EMFA regulation partially addresses this issue by providing a general framework to all the Member States.⁴⁸

It should be acknowledged that there is a concern that wide-reaching transparency of state advertising in media may deter smaller governments from funding small and local media, which would put their existence in jeopardy. However, there is little empirical evidence that supports this concern.

48 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>

Times of emergency, when governments and other public institutions communicate with the wider public through paid emergency messages, which benefit from certain exemptions from general rules, also constitute a case of particular concern. The Opinion of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament provides for a comprehensive proposal on how to address this specific issue by bringing emergency messages under the general regulatory framework, which has proven its efficacy.⁴⁹

Rules governing transparency of media ownership and public availability of media ownership information, and their application

Transparency of media ownership strengthens the accountability of media service providers, enforces media freedom and pluralism, and improves the health of the entire EU media market, especially if the wider public is made aware of the structural connection between media ownership, private interests and they shape public opinion.

Based on the work of a consortium of European organisations that analysed the text of the proposed EMFA regulation, we can appreciate that the coming European Media Freedom Act (EMFA) will partially address this issue by enforcing increased transparency about who owns media companies and how, which is key to ensure that political interferences in our democratic life are curbed.⁵⁰

Still, the proposed regulation falls short of providing an efficient response to the issue, which could be better addressed by making transparency of media ownership for every media service provider mandatory through an EU-wide database of media ownership. This would be a primary tool to ensure that Member States adhere to the same standards, develop national regulatory authorities or bodies, and maintain national databases of media ownership. Mandatory yearly reports on media ownership data by national regulatory authorities or bodies should be produced, which include the obligation for data on media ownership to be made publicly available free of charge and in an electronic, user-friendly manner.

Public service media

Independence of public service media from governmental interference

The relation between media and the Meloni government has been affected by the interference of the executive in the governance of the Italian public broadcasting service.

The independence of Radiotelevisione Italiana (RAI), the Italian national public broadcasting company, is a traditionally sensitive topic which periodically surfaces on the Italian political agenda, its funding and governance being subjected to political interference. The 2023 Media Pluralism Monitor placed Italy among the countries in which the independence of public

49 https://www.europarl.europa.eu/doceo/document/LIBE-AD-746757_EN.pdf

50 https://epd.eu/content/uploads/2023/11/EMFA_openletter_nov_2023_transparency.pdf

service media is most threatened.⁵¹ Last spring, the current cabinet made significant internal management changes, which led to the resignation of the public broadcaster CEO.⁵² On that occasion, international media freedom groups raised alarm about the Italian public service broadcaster's independence.⁵³ Such political appointments set a worrisome precedent for two reasons. Firstly, the RAI CEO resigned one year prior to the conclusion of his term and just a few weeks before the yearly expiration of a number of RAI's TV show contracts, citing political pressure. Secondly, the newly appointed CEO, Roberto Sergio, swiftly implemented an editorial shift, arguably in line with the ruling coalition's agenda, which had immediate consequences on RAI's programming.⁵⁴ The timing resulted in a flood of well-established shows migrating to private broadcasting companies, such as the celebrated show *Che Tempo Che Fa*, led by Italian journalist Fabio Fazio.⁵⁵ Similarly, the case of Roberto Saviano's anti-mafia show, *Insider*, which had been already recorded and then cancelled abruptly, caused international

resentment.⁵⁶ What both Fazio and Saviano have in common, along with other professionals who left RAI over the past few months, is their criticism, subtle or vocal, toward members of the current cabinet.

Another unjustified political interference in the independence of the Italian public service broadcaster was registered last November when *Report's* presenter, Sigfrido Ranucci, was summoned by the RAI Director's Supervisory Committee.⁵⁷ This can be seen as a manifestation of political pressure targeting an independent investigative TV programme, whose reporting has been critical of a number of members of the current government. The summons was not only unusual, given that individual journalists have never been audited by the Committee before, but members of the ruling coalition also took the chance to publicly mock Ranucci during the meeting.⁵⁸

Finally, Giorgia Meloni's coalition partner and Lega's leader, Matteo Salvini, decided to shrink

51 <https://op.europa.eu/en/publication-detail/-/publication/945f485e-2514-11ee-94cb-01aa75ed71a1/language-en>

52 <https://fom.coe.int/en/alerte/detail/107639298;globalSearch=true>

53 <https://www.rcmediafreedom.eu/News/Italy-International-Media-freedom-groups-raise-alarm-about-RAI-s-independence>

54 https://www.adnkronos.com/Archivio/politica/rai-lettera-dellad-sergio-ai-dipendenti-ora-al-lavoro-per-far-ri-partire-lazienda_3Ily4NtstrjwfxFKThaZfo

55 https://www.repubblica.it/spettacoli/tv-radio/2023/05/14/news/fabio_fazio_lascia_rai_nomine_meloni-399825394/

56 <https://www.mapmf.org/alert/30556>

57 <https://www.ilfattoquotidiano.it/2023/11/07/vigilanza-rai-processo-report-destra-scatenata-ranucci-inchieste-su-tutti/7346561/>

58 <https://www.rcmediafreedom.eu/News/Italy-MFRR-partners-condemn-summons-of-RAI-presenter-Sigfrido-Ranucci>

the funding allocation to the broadcasting service, a provision which was introduced into the recently approved Budget Law – a change which further threatens RAI's financial autonomy.⁵⁹

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

Over 2023, Mapping Media Freedom registered 15 cases of physical assaults against journalists and media workers - four of which resulted in injury - 27 cases of verbal attacks and 11 cases of attacks or threat to property.⁶⁰

Here we report some examples.

On 31 January, Tg2 journalist Stefano Fumagalli and cameraman Davide Messineo were assaulted by protesters gathered in front of Opera Prison in Milan. The assailants hurled stones and firecrackers at them. The group comprised supporters of Alfredo Cospito, who had recently been transferred to that prison and is being held in solitary confinement.⁶¹

On the same day, journalists Anna Iselle and Mirko Longhi from the Vicenza local media outlet TvA Notizie were verbally assaulted and threatened by a group of people who surrounded them while the two were filming a press conference about the area's redevelopment. The two journalists promptly called the police, who intervened without delay.⁶²

On 27 November 2023, an envelope with a bullet and written threats addressed to a journalist was delivered to the headquarters of the Roman Journalists' Union. The envelope included a 357 Magnum calibre bullet and a paper with four ungrammatical lines, written on a computer in capital letters, stating "this is one of the 6 that we stick in the bas** journalist's head". The letter was not signed. The envelope and its content were delivered to the police and a complaint was filed. The reporter, expressly mentioned in the text by surname, had carried out numerous investigations into crime in the Roman suburbs, with particular focus on drug trafficking. Local press freedom groups and journalists unions denounced the serious death threat against the journalist.⁶³

59 <https://www.usigrai.it/con-il-taglio-delle-risorse-la-rai-rischia-di-essere-smantellata-nel-silenzio-generale-le-dispute-nel-governo-danneggiano-il-servizio-pubblico/>

60 https://www.mapmf.org/explorer?f.from=2023-01-01&f.to=2023-12-31&f.country=Italy&f.type_of_incident=-Physical+assault; https://www.mapmf.org/explorer?f.from=2023-01-01&f.to=2023-12-31&f.country=Italy&f.type_of_incident=Verbal+attack

61 <https://monitor.civicus.org/explore/climate-activists-charged-for-throwing-paint-at-senate-building-facing-possible-prison-sentences/>

62 <https://www.mapmf.org/alert/25638>

63 <https://fom.coe.int/en/alerte/detail/107640326>

Law enforcement's capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

According to the latest report of the Italian Coordination Centre for the monitoring, analysis, and permanent exchange of information on the phenomenon of intimidation of journalists,⁶⁴ which covers the first 9 months of 2023, the police registered 71 cases of intimidation or attacks involving 68 journalists - 17 women and 51 men.⁶⁵ Insults and verbal attacks were among the most frequent cases of intimidation, mostly happening via the web, especially social networks. Lazio, Lombardia, and Campania remained the regions with the highest number of cases.

This data show a decrease in cases compared to the first 9 months of 2022 when the police registered 84 acts of intimidation. At first glance, this might appear to be a positive development, but it must be considered that not all journalists or media workers decide to report violations to the police, which may explain the relatively low number of women targeted by attacks. As highlighted in the research *Interviewing Journalism II - Needs and Gaps in support for women and local journalists* published by OBC Transeuropa, women are often more vulnerable to threats than their male colleagues; yet, the fear of professional retaliation prevents them

from reporting their cases to the police, leading to a worrying trend of under-representation and underreporting of the attacks.⁶⁶

In 2021, the European Commission identified the Italian Coordination Centre as establishing best practices to ensure journalists' safety; representatives of the Italian media sector, the FNSI, and OdG have also recognised that the establishment of this special body has improved the relationship between journalists and public authorities. Nevertheless, some crucial shortcomings remain: firstly, the fact that the Centre is part of the Ministry of the Interior exposes it to political interferences that undermine its independence. Secondly, there continues to be a serious risk of underreporting: besides the fact that journalists may decide not to report attacks, the fact that data is based on police reports also means that cases of intimidation or attacks from the police are not taken into account. Finally, the Centre does not monitor cases of legal threats or so-called SLAPPs that are prevalent and worrisome in the current Italian media context.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In 2023, Mapping Media Freedom registered 24 legal incidents located in Italy.⁶⁷ The number

64 <https://www.article19.org/resources/europe-directory-to-protect-journalists/>

65 https://www.interno.gov.it/sites/default/files/2023-12/report_9_mesi_2023_web.pdf

66 <https://www.balcanicaucaso.org/eng/Occasional-papers/Interviewing-Journalism-II.-Needs-and-gaps-in-support-for-women-and-local-journalists>

67 https://www.mapmf.org/explorer?f.from=2023-01-01&f.to=2024-01-09&f.country=Italy&f.type_of_incident=-Legal+incident

of acts of legal intimidation and formalised lawsuits initiated by political figures targeting critics of the government has been increasing steeply. Intolerance to criticism pertaining to political conduct signals a disquieting trend of Italian leadership, which fails to take into consideration the public interest. Here is a list of important examples:

1. In March, Domani's newsroom learned that Claudio Durigon, Undersecretary at the Ministry of Labour and Social Affairs, had initiated a criminal defamation lawsuit against them when two police officers handed them a seizure order directed at one of Domani's articles. The article examined the alleged links between Durigon and members of local criminal organisations in Latina, south of Rome. The seizure order was followed by an awkward order of release signed by Rome's prosecutor. The lawsuit was recently dismissed.⁶⁸

2. In May, Adolfo Urso, Minister of Enterprises and Made in Italy and member of Fratelli d'Italia party, announced he will take legal action against RAI's investigative program Report following alleged "blatant falsehoods made with clear defamatory intent" contained in the broadcast.⁶⁹

3. In June, Lega leader and current minister of Infrastructures Matteo Salvini announced that he had instructed his lawyers to file a complaint against L'Espresso for their 2019 report about the so-called Metropoli case, which revealed alleged connections between Lega and the Kremlin.⁷⁰

4. In June, Minister of Tourism and member of Fratelli d'Italia party Daniela Santanché announced she had mandated her lawyers to file a defamation lawsuit against RAI's investigative program Report due to its recent critical reporting on the minister's business ventures.⁷¹

68 The dismissal did not stop the undersecretary from going after Domani's newsroom again, as he presented them with a legal notice demanding €200,000 compensation plus €500 daily until a number of investigative articles he dislikes are removed; <https://www.mapmf.org/alert/25312>; <https://www.editorialedomani.it/politica/italia/una-repubblica-fondata-sulle-querele-contro-i-giornalisti-cz5igtzn>; <https://www.rcmediafreedom.eu/News/Italy-Prosecutor-issues-seizure-order-for-article-published-by-newspaper-Domani>; <https://www.rcmediafreedom.eu/Publications/Focus-on-SLAPP/Focus-on-SLAPP/Media-politics-and-vexatious-lawsuits-An-Italian-perspective>; <https://www.rcmediafreedom.eu/Multimedia/Video/Interview-with-Nello-Trocchia>; <https://www.editorialedomani.it/idee/commenti/il-procuratore-di-roma-ferma-lultimo-attacco-giudiziario-del-governo-a-domani-vgf8k19q>; <https://www.editorialedomani.it/durigon-querela-domani-hf99l26b>; <https://www.editorialedomani.it/fatti/durigon-chiede-soldi-a-domani-p9tkyk7y#:~:text=E%20basta%20articoli%20sulla%20casa>

69 <https://www.mapmf.org/alert/30345>

70 <https://www.mapmf.org/alert/30351>

71 <https://www.mapmf.org/alert/30437>

5. In August, Arianna Meloni, wife of Minister of Agriculture Francesco Lollobrigida and sister of the prime minister Giorgia Meloni, currently secretary of the political section of leading coalition party, Fratelli d'Italia, filed a lawsuit against satirical illustrator Mario Natangelo in relation to a caricature published in *Il Fatto Quotidiano*.⁷²

6. In September, Giancarlo Giorgetti, current Minister of the Economy, announced that he instructed his lawyers to file a lawsuit against daily newspaper *Domani* for an article authored by investigative journalist Giovanni Tizian. In the quoted piece, Tizian had examined links between business ventures and government contracts granted to Francesca Verdini, partner of Matteo Salvini.⁷³

7. In October, Ignazio La Russa, president of the Senate and member of Fratelli d'Italia, announced a criminal defamation complaint against RAI show *Report*. The announcement was made one day prior to the show screening an episode dedicated to La Russa's family alleged business ventures.⁷⁴

8. In October, Italian writer and journalist Roberto Saviano was found guilty of criminal defamation by the Criminal Court of Rome. The case was initiated by Giorgia Meloni in November 2021, when she was leader of the opposition, prior to her assuming the current role of Prime Minister. The criminal lawsuit accused Saviano of aggravated criminal defamation due to his critical comments about Meloni's persistent anti-migrant stance, voiced during the television program. The Criminal Court of Rome convicted Saviano of criminal defamation. The conviction represents a serious blow to freedom of expression.⁷⁵

9. In December, the third hearing in the criminal defamation trial initiated by current minister of Transportation Matteo Salvini against Roberto Saviano was postponed for the second time by the judge due to Salvini's non-appearance.

Confidentiality and protection of journalistic sources (including whistleblower protection)

Article 4 of the EMFA regulation is a slippery and dangerous precedent, as it creates the legal basis for the use of spyware against journalists

72 <https://www.mapmf.org/alert/30589>

73 <https://www.mapmf.org/alert/30714>

74 <https://www.mapmf.org/alert/31095>

75 The judge acknowledged the mitigating circumstances, mentioning the moral motivation that led Saviano to formulate his criticism. The criminal court ordered the writer to pay a fine of €1,000 and €2,600 of legal expenses; a further compensation for civil claims of the plaintiff will be determined by a civil court; <https://www.rcmediafreedom.eu/News/Italy-Roberto-Saviano-s-conviction-a-major-blow-to-free-expression>; <https://www.rcmediafreedom.eu/Multimedia/Video/SLAPPs-in-Italy-Roberto-Saviano-on-public-figures-seeking-to-silence-criticism-on-questions-of-public-interests>

through the abuse of the press freedom alleged values.

The form of substandard protection introduced by Article 4 represents bad news for those EU countries which currently enjoy better protection, while the argument that the EMFA introduces just a minimum standard seems weak, as the regulation constitutes a political signal that producing lower protections is possible in the coming EU framework.

Italy can be counted among the countries that would see a *de facto* decrease in the quality of the norms that protect journalistic sources in case any future government will adapt the national standards to the new minimum provided in the EMFA. This worrying trend overlaps with the fact that Italy was one of the fiercest supporters of watering down the protections nested in Article 4 during the legislative process in 2022–2023, as well as during the trialogue between the EU institutions in November 2023.

Access to information and public documents

In implementing the European Directive 2016/343/EU⁷⁶ aimed at strengthening the presumption of innocence, Italy has created a rule that makes it difficult, if not impossible, to verify news. It imposes a stop on the full or partial publication of the content of wiretaps,

reasons for arrest, judicial proceedings and the contents of precautionary custody orders at least until the end of the preliminary hearing. The ban was labelled by Italian journalism, professional representatives and advocates as a ‘gag law’, which has nothing to do with the principle of presumption of innocence and represents a serious blow to the right to freedom of the press.⁷⁷

Another cause of concern among media professionals was the new law promoted by the Italian Minister of Justice, Carlo Nordio, related to the use of wiretapping. The legislator has the task of finding the right balance between two principles of constitutional rank, the right to privacy and protection of the dignity of people, and the right to inform and be informed, a cornerstone of the democratic system. The minister announced that he wanted to proceed with a profound review of the discipline as, he claimed, wiretaps have become an instrument of personal and political delegitimization that puts a huge burden on the public coffers. Unions and journalistic organisations have defined this further tightening on the publishability of judicial documents and the contents of wiretaps, already the subject of three legislative interventions between 2017 and 2020 (law 103/2017, decree 216/2017, law 7/2020), a harmful restriction on freedom of the press and expression.⁷⁸

76 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496243297811&uri=CELEX:32016L0343>

77 <https://www.articolo21.org/2022/12/tutela-delle-fonti-e-del-diritto-di-cronaca-consiglio-nazionale-fnsi-in-piazza-il-14-dicembre/>; <https://www.balcanicaucaso.org/aree/Italia/Rete-NoBavaglio-appello-professionisti-giornalisti-e-societa-civile-Non-ci-faremo-mettere-il-bavaglio>

78 <https://www.balcanicaucaso.org/aree/Italia/Intercettazioni-e-trojan-il-ddl-Nordio-allarma-i-giornalisti-226922>

Other

Throughout 2023, the Italian Parliament advanced five bills (No. 81,⁷⁹ No. 95,⁸⁰ No. 466,⁸¹ No. 573,⁸² No. 616⁸³), aimed at reforming the current civil and criminal defamation provisions, and responding to the call of the Italian Constitutional Court (ruling No. 132/2020⁸⁴ and ruling No. 150/2021).⁸⁵

None of the bills considered the EU current debate on the proposal for a directive aimed at countering SLAPPs.⁸⁶ Specifically, two key concepts were missing from the text of the Italian bills: public participation and public interest. The lack of any elaboration of these notions resulted in legislative attempts which are unable to address the challenges that SLAPPs pose to journalists and press freedom. Eventually, it became clear that the bills would only have a marginal effect compared to the task assigned by the Constitutional Court, which had called on the Italian Parliament to initiate a ‘comprehensive’ reform of defamation

provisions, and to implement the 2023 Rule of Law Report recommendation from the European Commission.

In October 2023, the Italian Senate eventually chose to bring forward only the bill advanced by the ruling coalition, Bill No. 466, which aims at reforming the criminal code addressing criminal defamation through the press.

While Italian civil society has welcomed the provision codifying the abolition of prison sentences in line with the rulings of the Strasbourg Court, this practice was already consolidated in Italian jurisprudence and prescribed by the Constitutional Court (No. 150 of 2021). However, the bill introduces a number of pejorative aspects.⁸⁷ Bill No. 466 proposes to significantly raise the minimum fine, setting two brackets: penalties from €5,000 to €10,000, and €10,000 to €50,000. An increase in fines of any amount goes against the interpretation of Article 10 ECHR provided by the jurisprudence of the ECtHR.⁸⁸ Moreover, monetary penalties

79 <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/55242.pdf>

80 <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/55273.pdf>

81 <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/56433.pdf>

82 <https://www.senato.it/leg/19/BGT/Schede/FascicoloSchedeDDL/ebook/56728.pdf>

83 <https://www.senato.it/service/PDF/PDFServer/DF/425746.pdf>

84 <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2020&numero=132>

85 <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2021&numero=150>

86 <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52022PC0177&from=EN>

87 <https://www.rcmediafreedom.eu/Resources/Reports-and-papers/Italian-civil-society-organisations-take-part-in-parliamentary-consultations-on-defamation-reform>

88 The ECtHR has repeatedly stressed that penalties for defamation must take into account the impact they will have on the economic situation of the defendant, in order to prevent the imposition of a disproportionate fine which would trigger a chilling effect on freedom of the press and expression.

emerge as particularly damaging for those with limited means, such as small publishers and freelance journalists, while they prove ineffective for those with generous financial resources, a dynamic that encourages the use of lawsuits for the mere purpose of intimidation.

In addition, the introduction of the publication of an automatic rectification, without the chance for the editor to add a title, a comment or reply, shrinks the space for press freedom.

Finally, provisions concerning the imposition of disciplinary penalties intended to disqualify journalists from practising the profession for a period of up to 6 months are worrying, due to the potential deterrent effect of criticism.

Bill No. 466 is therefore problematic,⁸⁹ and risks triggering a chilling effect on freedom of the press and expression, even more so in a context characterised by an alarming number of politicians and public figures who respond to investigative journalism and criticism with SLAPPs.

Checks and balances

Key recommendations

- *Thirty years after the approval of UN Resolution 48 of 1993, the Italian government should urgently step up its efforts to create a sustainable, functional, and independent institutional body for the protection of human rights. No progress has been made since last year, as the bill to establish the Data Protection and Human Rights Authority is still being discussed in Parliament.*
- *It is crucial to monitor the progress of the two worrying proposals for constitutional amendments presented at the end of 2023 by the government, concerning Article 77⁹⁰ of the Italian Constitution on the conversion into law by the Parliament of decree-laws presented by the government, and concerning the so-called 'Reform of the Premierate',⁹¹ which would transform Italy from a Parliamentary Republic to a Presidential Republic.*

89 <https://www.fnsi.it/ddl-diffamazione-fnsi-e-cnog-senza-modifiche-pronti-a-scendere-in-piazza>

90 <https://www.senato.it/service/PDF/PDFServer/BGT/01372867.pdf>

91 <https://www.senato.it/service/PDF/PDFServer/DF/428967.pdf>

Process for preparing and enacting laws

Regime for constitutional review of laws

At the end of 2023, the government submitted a draft constitutional law proposing an amendment to Article 77 of the Italian Constitution,⁹² which regulates the conversion of decree-laws initiated by the government into law by Parliament within a maximum period of 60 days, subject to expiration penalties. The current proposal, yet to be approved, suggests extending this conversion period from 60 days to 90 days. Some legal experts⁹³ have raised concerns about the potential consequences of this reform. They argue that it may legitimise the misuse of decree-laws by the government, originally intended as instruments of necessity and urgency only. Critics fear that this adjustment could make it even easier for governments to resort to decree-laws, further diminishing the role of Parliament. When considered alongside the Premierato⁹⁴ reform, this measure could collectively weaken the influence of the Italian Parliament and its political representatives.

Independent authorities

Thirty years after the adoption of UN Resolution 48/134 and countless recommendations from European and international bodies, Italy has still not established a National Human Rights Institution in line with the Paris Principles. In 2023, there has been no progress at the normative level. The bill introduced at the end of 2022 by a member of the Italian Senate, proposing the creation of a Data Protection and Human Rights Authority,⁹⁵ has not yet received approval from Parliament. It is currently under consideration in the Senate Constitutional Affairs Committee as of March 2023.⁹⁶ According to the proposed and not yet approved law, the responsibility for respecting and protecting human rights would be assigned to the Italian Data Protection Authority,⁹⁷ an already existing body, extending its competence and powers and enabling it to supervise the respect and enforcement of human rights, including on the web, extending well beyond the protection of personal data.

Electoral framework

In November 2023, the Council of Ministers approved⁹⁸ a draft constitutional law, called

92 <https://www.senato.it/service/PDF/PDFServer/BGT/01372867.pdf>

93 <https://www.editorialedomani.it/politica/italia/il-governo-interviene-sullabuso-di-decreti-legge-ma-la-top-pa-e-peggiore-del-buco-utwj3ljv>

94 <https://www.senato.it/service/PDF/PDFServer/DF/428967.pdf>

95 <https://www.senato.it/service/PDF/PDFServer/BGT/01361649.pdf>

96 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/56026.htm>

97 <https://www.garanteprivacy.it/web/garante-privacy-en>

98 <https://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-57/24163>

‘Reform of Premierate’, intending to institute direct elections for the Prime Minister. The constitutional reform, yet to be approved by Parliament, has the declared objective of strengthening the stability of Italian governments, signifying a departure from a parliamentary to a presidential form, which would be the first time in the country’s Republican history.

The proposed text⁹⁹ introduces the novel concept of direct election of the Prime Minister through universal suffrage, with a proposed term of five years in office. It also would abolish the position of Senators for life, appointed by the President of the Republic, in the future. Additionally, the constitutional amendment outlines an electoral law designed to adhere to principles of representativeness and governability. This law proposes a majority prize on a national basis, allocating 55% of the seats in the Chamber to lists and candidates associated with the Prime Minister. However, the reform faces opposition from various quarters. Notably, the Democratic Party secretary, Elly Schlein, who is critical of the government, asserts that the proposed reform is flawed and hazardous, contending that it weakens the parliamentary system, restricts the prerogatives of the President of the Republic, and dismantles the parliamentary form of government.¹⁰⁰ Similarly, the Coordination for Constitutional Democracy

also expresses severe and clear disagreement with the draft constitutional law:

“The Meloni government wants to deal a definitive blow to the parliamentary democracy outlined in the Constitution, born out of the resistance to Nazi-fascism. For these reasons, the government’s draft must be rejected. [...] The direct election of the Prime Minister must be countered with the demand to give voters the power to choose their representatives. This is the real reform to be achieved with a new electoral law and the modalities of constant participation in the democratic life of citizens, not every five years on the day of the vote for the premier, as Giorgia Meloni would like.”¹⁰¹

99 <https://www.senato.it/service/PDF/PDFServer/DF/428967.pdf>

100 https://www.ansa.it/sito/notizie/politica/2023/11/03/pd-m5s-e-azione-contro-la-riforma-del-premierato_53725b89-0315-499c-8b60-e407afe3e3d2.html

101 <https://www.coordinamentodemocraziacostituzionale.it/2023/11/30/premierato-no-del-coordinamento-per-la-democrazia-costituzionale-agenzia-di-stampa-askanews/>

Civic space

Key recommendations

- *The right to protest and strike are crucial elements of a functioning rule of law framework. The government should ensure that the aforementioned rights are protected.*
- *The government, especially the Ministry of the Interior, should stop criminalising NGOs' activity at sea by assigning ports which are extremely far away from the location where migrants are in danger. The government has to ensure that no migrant is left behind during rescue operations.*
- *Some ministers have been attacking journalists due to their research activity on corruption, conflicts of interest and transparency. The government should protect journalists, as their role as watchdogs of the rule of law is crucial for a functioning democracy.*

Freedom of association

Criminalisation of activities, including humanitarian or human rights work

Decree Law No. 1/2023 criminalises rescue operations at sea, endangering migrants' right to life and right to asylum. The government wants to stop NGO ships from carrying out multiple rescue operations at sea: the Minister of the Interior is now able to assign ports that are located far away from where migrants are in danger, and NGO ships are forced to conclude rescue operations fast with the risk of leaving some migrants at sea. Decree Law No. 1/2023 has been criticised by the Council of Europe (CoE)¹⁰² as it raises both procedural and

substantive difficulties with respect to freedom of association and the protection of civil society space.

Freedom of peaceful assembly

Criminalisation of protesters

In the so-called DDL Eco-Vandali (Bill No. 693 against climate activists and their actions),¹⁰³ many critical issues can be highlighted in relation to the guarantees of freedom of assembly. One of the most worrying aspects is that the proposal intends to punish the same conduct already prosecuted by the penal code (Article 518-duodecimos), further aggravating the sanctioning system. These rules have a

102 <https://rm.coe.int/expert-council-conf-exp-2023-opinion-italy-30-jan-2023-en/1680a9fe26#:~:text=Decree%20Law%201%2F2023%20requires,such%20information%20with%20the%20authorities>

103 <https://www.senato.it/leg/19/BGT/Schede/Ddliter/57050.htm>

clear criminalising effect on activism and on those who carry out acts of civil disobedience as an instrument of individual or collective protest.^{104,105}

Freedom of expression and of information

Criminalisation of speech

Members of the government and Parliament have been using strategic lawsuits against journalists to intimidate them and to hinder their work on corruption, conflicts of interest, transparency and accountability. For example, see lawsuits against the Italian newspaper Domani and journalist and writer Roberto Saviano.¹⁰⁶

Restrictions on access to information

Journalists have been protesting against a new amendment¹⁰⁷ applied to Article 114 of the

Code of Criminal Procedure, the so-called Legge Bavaglio, which restricts the publication of procedural documents verbatim, full of interceptions and information still to be verified. According to the Italian Order of Journalists, this provision will represent an obstacle to access to judiciary information.¹⁰⁸

Spread of and responses to disinformation

The government adopted Presidential Decree No. 174/2023¹⁰⁹ to combat disinformation. According to the provision, there should be a ‘guarantor of information’ whose task it is to hinder the spread of fake news. However, the decree does not specify how this figure will have to carry out the difficult job of preventing the spread of disinformation. Nevertheless, according to the text, the guarantor must be a figure of “proven professionalism, experience, impartiality and without previous membership of the agency where he works.”

104 <https://www.amnesty.it/il-senato-approva-il-testo-di-legge-contro-gli-attivisti-climatici/>

105 https://www.ansa.it/english/news/politics/2023/11/10/salvini-attacking-the-right-to-strike-says-landini_c94d-fc47-d4bf-4b98-8a8e-aa60e114ebcd.html

106 <https://www.article19.org/resources/europe-jovanovic-saviano-slapps-perugia-festival/>; <https://www.editoriale-domani.it/idee/commenti/italys-govt-is-attacking-media-freedom-but-we-can-stop-it-fcwkcljp>

107 https://documenti.camera.it/leg19/resoconti/assemblea/html/sed0216/leg.19.sed0216.allegato_a.pdf#page=93

108 <https://www.google.com/url?q=https://www.odg.it/ordini-regionali-giornalisti-legge-bavaglio-e-una-minaccia/53719&sa=D&source=docs&ust=1704903726575280&usg=AOvVaw0frCicByWNc8Bpmx9CacS7>; Giovanni Zaccaro, secretary and member of the association Area Democratica per la Giustizia: “*News of the arrests will circulate anyway but without the support of the reasons that justify them. In this way, the spread of partial reconstructions, inferences and half-truths is encouraged, which are certainly not good for confidentiality and the presumption of innocence. To guarantee the presumption of innocence, even on the media scene, we do not need bans but only investing in the professionalism of magistrates, defenders and journalists*”, in Il Manifesto; <https://ilmanifesto.it/non-ce-bavaglio-ma-per-i-cittadini-e-anche-peggio>

109 <https://www.gazzettaufficiale.it/eli/gu/2023/07/27/174/sg/pdf#page=24>.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

In 2022, Minister of the Interior Matteo Piantedosi used the term *carico residuale* (residual load) when referring to ‘non-vulnerable’ migrants who would not have been allowed to disembark from the NGO ship SOS Humanity 1 which arrived at the port of Catania. As a matter of fact, many humanitarian associations and NGOs affirmed that Minister Piantedosi used offensive words that dehumanised migrants, as if they were objects. On that occasion, an inter-ministerial decree¹¹⁰ was issued against SOS Humanity 1 and its commander which permitted entry in territorial waters only for the time strictly necessary to ensure assistance operations for people in emergency conditions and precarious health conditions, as assessed by the ‘competent national authorities’. The shipwrecked people then turned to the Civil Court of Catania, presenting a precautionary appeal to ask that they also be allowed to leave the ship in order to start the asylum procedure. The Civil Court of Catania affirmed that the Decree was illegitimate.¹¹¹

Online civic space

Attacks, threats and hate speech online

In 2023 there is a general alarming increase in online attacks, threats and hate speech, including by public institutions and politicians. An important example is the case against Elena Cecchetti, Giulia’s sister, who had to go through a large wave of attacks, threats and hate speech online after she decided to use her voice and her social media platforms to spread awareness of gender-based violence, rape culture and how these two elements are rooted within the Italian society and culture. Elena Cecchetti is Giulia’s sister, the young woman killed on November 11 2023 by her ex-partner Filippo Turetta in the Veneto region. Elena was attacked by Stefano Valdengamberi, a far right-wing member of the Regional Council of Veneto, who criticised what she was wearing – suggesting she was a “satanist” – and denied the existence of patriarchy and rape culture.¹¹²

110 Interministerial decree between the Ministry of Defence, the Ministry of Infrastructure and Ministry of the Interior; https://sos-humanity.org/wp-content/uploads/2022/11/IT_Decree_HUM1_IT.pdf

111 <https://www.asgi.it/notizie/sbarco-e-domanda-di-asilo-devono-essere-garantiti-senza-distinzioni-commento-al-lordinanza-su-sos-humanity/>

112 <https://www.euronews.com/2023/11/24/femicide-is-italy-doing-enough-to-protect-its-women-and-girls-and-those-they-leave-behind>; https://www.ansa.it/english/news/general_news/2023/12/10/giulia-cecchettins-family-threatened-insulted-online_1acfd584-c9e3-40dd-9890-356ec79b6536.html; <https://www.fanpage.it/politica/consigliere-veneto-attacca-la-sorella-di-giulia-cecchetti-fa-una-recita-ideologica-ed-e-satanista/>

Disregard of human rights obligations and other systemic issues affecting the rule of law environment



Key recommendations

- *Consider schools and universities as primary places to fight gender-based violence, discrimination, and hate crimes and speech by promoting the dissemination of non-stigmatizing and non-exclusionary language, providing structural financial resources, and investing in the training and education of trainers and teachers.*
- *Develop at the political level a non-stigmatizing and non-exclusionary language that respects the LGBTQIA+ people, who are systematically targeted by attacks based on ideological positions and for propaganda purposes, especially by the political majority elected in September 2022.*
- *Reform parenting and adoption regulations with a view to protect the children of all homosexual couples and grant equal status to family social formations other than the male-female pair.*
- *Grant LGBTQIA+ people full recognition of their right to health, including procedures and treatment of transition pathways, breaking away from the pathologizing view of LGBTQIA+ people and deconstructing the cultural stigma of sexual orientation and gender identity pathways through the dissemination of different cultural models.*
- *Do not criminalise surrogacy. In July 2023, the Italian Chamber of Deputies approved and forwarded to the Senate a draft law on the prosecution of the crime of surrogacy committed abroad by an Italian citizen, which would be considered a universal crime.*
- *Do not amend the crime of torture in any way. The proposal to amend the torture offence unequivocally represents a major step backwards in a constitutional state, especially for the rights of detainees. In general, the 2023 reforms go in the direction of limiting the rights of the prison population, thereby promoting a closed prison model.*
- *Ensure the implementation and full compliance with the recommendations of international bodies regarding the need to prevent torture in all its forms, as well as ensuring cooperation and fruitful dialogue with these bodies.*

- *To ensure effective prosecution of crimes of alleged torture committed in prisons, each prison should therefore be equipped with a video surveillance system that covers every room in the building and has long-term archiving arrangements, so that facts can be established even if reported after a certain period of time. Another necessary measure is to ensure the identification of the officers, at the very least when engaged in activities to restore law and order within prisons.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

In 2023, Italy witnessed a notable absence of legislative proposals addressing the rights of LGBTQIA+ individuals and combatting discrimination based on sexual orientation and gender identity. The political stance adopted by the majority elected in September 2022 indicated limited prospects for increased recognition of LGBTQIA+ rights, with the community being consistently targeted for ideological attacks and propaganda purposes.¹¹³

The National Observatory on Femicides, Lesbicides, and Trans*cides, operated by the association Non Una Di Meno, reported 113 cases of femicide, lesbicide, and trans*cide as of 8 December 2023. These included 97 femicides, 1 trans*cide, 10 suicides, and 5 deaths under

investigation, all linked to hetero-cis-patriarchal violence and hatred.¹¹⁴

Italy still lacks a specific law allowing adoption for same-sex couples and the transcription of birth certificates for children born within such families. This legal provision is crucial to safeguard the rights of the 20,000 individuals in civil unions who declare a homosexual or bisexual orientation, 8.4% of them with cohabiting children.¹¹⁵ In 2022, several Italian cities blocked and denied the transcription of certificates of children naming both parents, providing transcription only in relation to the biological parent. The trend was later confirmed with the Circular No. 3 of 2023,¹¹⁶ which followed the Supreme Court United Sections ruling No. 38162 of 30 December 2022.¹¹⁷ This decision states that the foreign act certifying the filial relationship - which includes both the biological parent and the parent of choice of a child born by surrogacy - must be considered contrary to law and order, therefore the transcription of the act cannot be automatic. The Supreme Court

113 <https://www.rapportodiritti.it/lgbtqi#capitolo>

114 <https://osservatorionazionale.nonunadimeno.net/>

115 https://www.welforum.it/wp-content/uploads/2022/09/LUG02_LGBT.pdf

116 <https://dait.interno.gov.it/documenti/circ-dait-003-servdemo-19-01-2023.pdf>

117 https://www.formazionegiuridica.org/images/Sentenze/Sez_Unite_38162-2022.pdf

is retaining a provision for legal recognition of the affective bond through adoption in special cases, pursuant to Article 44, co. 1(d), Law No. 184 of 1983.

In 2023, the Italian approach was denounced by the European Parliament through an amendment submitted by Renew Europe, as it constituted a worrying “broader attack against the LGBTQI+ community in Italy”.¹¹⁸ Finally, in July 2023, the Italian Chamber of Deputies approved and forwarded to the Senate a worrying and discriminatory draft law on the prosecution of the crime of surrogacy committed abroad by an Italian citizen, considered as a universal crime.

The report ‘Rapporto Diritti 2023’ asserts that the Italian context is still strongly characterised by a culture with homolebotransphobic traits and that several actions should be implemented to change the current situation (the report includes a list).¹¹⁹

Follow-up to recommendations of international and regional human rights monitoring bodies

Almost 30 years after ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment (UNCAT), the Italian parliament approved Law No. 110/2017, which introduced the crime of torture into the Criminal Code (Article 613bis).

The definition of torture provided by the law diverges in several aspects from the one provided by the UNCAT, but the introduction of the new crime represented an important step forward. The first convictions for torture that came at the beginning of 2021 and the numerous proceedings that are still ongoing are proof of this.

In September 2023, the sentence of the Court of Siena convicted five prison officers at the San Gimignano prison of torture for the crimes committed against detainees on February 17 2021, imposing sentences ranging from 5 years and 10 months to 6 years and 6 months imprisonment. This is a leading case in the field of torture in the Italian criminal justice system. The sentence also identified the solitary confinement units inside the prison as the primary location of prison violence.¹²⁰

To date, there are several open proceedings for torture allegations. The most important one, in terms of people involved and media coverage received, is undoubtedly the trial for the brutal violence committed by hundreds of

118 <https://www.associazionelucacoscioni.it/notizie/comunicati/trascrizione-figli-coppie-omogenitoriali#:~:text=%E2%80%99CI%20Sindaci%20italiani%20%E2%80%93%20continua%20,orientamento%20sessuale%20dei%20genitori%E2%80%9D>

119 <https://www.rapportodiritti.it/lgbtqi#capitolo>

120 https://www.questionegiustizia.it/data/doc/3626/trib_siena_anonimizzata.pdf

prison officers against detainees at the Santa Maria Capua Vetere prison in April 2020.¹²¹ Thanks to the surveillance video, it was possible to prosecute more than 100 people, including police officers, doctors and prison administration managers.

Despite this, the majority party ‘Fratelli d’Italia’, with the support of some members of the government, has proposed to repeal the offence of torture, reducing it to a common aggravating circumstance. This would jeopardise ongoing trials, starting specifically with the trial for the brutality committed in the Santa Maria Capua Vetere prison, the largest torture trial in European history.¹²²

Fostering a rule of law culture

Efforts by state authorities

Too little attention is paid to the publication of the Rule of Law Report in EU Member States. In Italy, over the course of 2023, mainstream newspapers have not given much media space to the Rule of law report, as previously reported. Targeted efforts to increase the impact of the reports are still necessary.

121 <https://www.rapportoantigone.it/diciannovesimo-rapporto-sulle-condizioni-di-detenzione/santa-maria-capua-vetere/>

122 <https://ilmanifesto.it/tortura-riformare-la-legge-ora-vuol-dire-affossare-i-processi>

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RULE OF LAW REPORT

2024

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About the authors

Latvian Centre for Human Rights



The Latvian Centre for Human Rights (LCHR) was established in 1993 as an independent non-governmental organisation. Over three decades, the LCHR has worked on integration (minority rights and promotion of tolerance) issues, elimination of discrimination and hate crimes/speech, asylum, migration and fundamental rights issues, as well as human rights observation in closed institutions (prisons, immigration detention facilities).

The LCHR conducts human rights monitoring, research and policy analysis, training of different target groups, and provides legal aid to victims of human rights violations, including their representation before domestic and international courts. The LCHR provides expert opinions both locally (to government, Parliament, media, educational institutions, courts, and lawyers), as well as internationally. The LCHR is involved in advocacy for change, ranging from raising public awareness to specific policy or legislative change.

Key concerns

Regarding the justice system, in 2023 the Parliament confirmed a new judge to the Supreme Court, reversing the previous Parliament's vote against her candidacy. However, in terms of safeguards in the appointment procedure for Supreme Court judges, potential unsuccessful candidates cannot request judicial review against the Parliament's decision, which also does not have to contain

reasons for a rejection. Progress in this area was not satisfactory in relation with the recommendations made by the European Commission, as no process was initiated to introduce such safeguards to appointment procedure.

Corruption remains a concerning issue in Latvia. By November 2023 there were ongoing investigations in more than 33 criminal proceedings related to the crimes of embezzlement of EU structural funds. Some cases involve the

apparent collusion of public officials with private entities, with one case focusing on alleged illegal acts to obtain more than €4 million from the European Regional Development Fund Plans to adopt the Cabinet of Ministers regulations concerning the practical implementation of the Law on Transparency of Representation of Interests, widely known as the ‘Law on Lobbying’, were set for September 2023, however they have been postponed to the first half of 2024.

Regarding the media environment and media freedom, generally, public trust in Latvian media remains above the EU average, and has ticked up slightly in recent years. However, there is concern that public authorities are misusing excuses such as national security to justify the unlawful blocking of freedom of information requests made by the journalists. There has been criticism over amendments in 2023 by the Latvian legislature to move the category “information for service needs” from the Freedom of Information Law to the Law on State Secrets, as it will increase the number of restricted documents.

In the civic space, hate speech against civil society organisations and rights defenders remains a problem. According to a 2023 survey, 17 NGOs responded that they themselves (their staff or members) had been subjected to hate speech during the last three years. Despite laws, regulations, and policy documents that include various mechanisms for the involvement of civil society in the decision-making process, citizen participation in decision-making processes remains low, including at the local and regional levels.

As it relates the disregard of human rights obligations and other systemic issues affecting the rule of law environment, on 9 November, the Parliament amended eight laws introducing a new partnership institution to legally strengthen relations between two adults, including same-sex couples. They were adopted three years after the Constitutional Court judgement obligating the legislature to adopt a legal framework for the protection of all families. The amendments, though, fail to address the issues of property relations and adoption, and therefore the EU’s 2022 recommendation can be considered only partially fulfilled.

Justice system

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

On 5 October 2023, the Parliament confirmed Sanita Osipova, the former Chairperson of the Constitutional Court as a Supreme Court judge. Fifty-one MPs voted for her candidacy, while 41 MPs voted against. In 2022, the previous Parliament rejected her candidacy for the same post in an unexpected and controversial move. The vote in 2023 was preceded by a debate, which, like that of the previous Parliament, referred to the decisions taken in the Constitutional Court during Osipova's presidency of that court. In particular, there was much debate over the Constitutional Court's decision allowing more rights to same-sex couples, and the resulting instruction on the legislature to develop a legal framework to protect all families in Latvia, including those formed by same-sex couples.¹

The 2022 Rule of Law Report recommended to Latvia to “initiate a process in view of ensuring adequate safeguards against undue political influence in the appointment of Supreme Court judges, taking into account European standards on judicial appointment.” In terms of safeguards in the appointment procedure, potential unsuccessful candidates cannot request judicial

review against the Parliament's decision, which also does not have to contain reasons for the rejection.

In 2023, no process was initiated to introduce adequate safeguards against undue political influence in the appointment procedure to the Supreme Court. Hence, no progress has been made on the implementation of the recommendation made in the 2022 Rule of Law Report.

Anti-corruption framework

Recommendation:

- **Strengthen the capacities of Corruption Prevention and Combatting Bureau**

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Plans to adopt the Cabinet of Ministers regulations concerning the practical implementation of the Law on Transparency of Representation of Interests, widely known as the ‘Law on Lobbying’, were set for September 2023,

1 LSM.LV (2023). [Osipovu pretēji iepriekšējās Saeimas lēmumam apstiprina par Augstākās tiesas tiesnesi](#), 5 October.

however they have been postponed to the first half of 2024.

According to the national authorities the time frame set for developing and implementing interest representation registry and interest representation declaration system is 1 January 2025.

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

The Corruption Perceptions Index (CPI) of Latvia² in 2023 is 60, up by only one point compared to both 2022 and 2021. In 2022, Latvia ranked 36th among the 180 countries in the index. In 2023, it is ranked 39th. Latvia's performance indicates that Latvia will fail to meet the National Development Plan for 2021-2027 target of 64 points in 2024 and 67 points in 2027.

The leading civil society organisation Society for Transparency - Delna has criticised the Corruption Prevention and Combatting

Bureau (KNAB) for its lack of visibility in preventing bribery. "Latvia's slow progress in the fight against corruption can be explained by the delay in taking responsibility and implementing bold anti-corruption measures. Delna has prepared a series of recommendations for the government and decision-makers, which we can hope will improve the fight against corruption in areas such as political integrity, prevention of wastage of public resources, as well as business integrity."

According to the European Public Prosecutor's Office (EPPO), in Latvia by November 2023 there were ongoing investigations in more than 33 criminal proceedings related to the crimes of embezzlement of EU structural funds. During the last two and half years, criminal proceedings have been opened in 40 cases, five cases have reached the courts, and in three cases sentences have been handed down. The majority of these are VAT fraud cases.³

In 2023, the EPPO, in cooperation with the Corruption Prevention and Combating Bureau (KNAB), began investigating several cases regarding possible fraud in several Latvian municipalities.

On 19 June, the EPPO carried out 16 searches and seized up to €6 million in assets during an investigation into a case of suspected VAT fraud

2 Delna, Transparency International (2024). Korupcijas uztveres indekss 2023, <https://delna.lv/wp-content/uploads/2024/01/KUI-LV-2023-analize.pdf>

3 LSM.LV (2023), [Eiropas Prokuratūra izmeklē 33 lietas par ES naudas izkrāpšanu Latvijā](#), 28 November.

totaling €14 million.⁴ Specifically, the investigation is focused on a municipal company, based in the capital Riga, suspected of colluding with private companies to artificially inflate the prices of goods and services delivered. The suspected scheme inflated the operating costs of the municipal company, thus increasing the deductible expenses and allowing the company to pay less tax.

In 2023, several investigations into suspected EU money fraud involved production buildings in industrial parks, where it has been suspected that projects were aimed at specific entrepreneurs.

On 12 September 2023, the EPPO, in cooperation with KNAB, carried out searches of 20 locations in a probe into possible fraud involving state officials of the municipality of Valmiera. Together with representatives of several companies, they are suspected of committing illegal acts to obtain more than €4 million from the EU's European Regional Development Fund (ERDF), for a project implemented by the municipality.

On 7 November, the EPPO, in cooperation with KNAB, carried out searches and detained

three persons for possible fraud involving state officials from the Municipality of Valka.⁵ The suspects, together with representatives of a private company, are alleged to have committed illegal actions to obtain more than €740,000 from the ERDF and over €30,000 from Latvia's state budget, for a project implemented by the municipality.

The investigative programme *De Facto*, presented by Latvian Television, the state-owned public service television broadcaster, reported in October that the State Police Economic Crimes Combatting Administration launched criminal proceedings with the street restoration project, where it could turn out that no business needed repairs to the streets in question. The case goes back to 2017 and the repairs cost a combined €800,000, half a million which came from ERDF.⁶

On 20 December, former governor of the Bank of Latvia and European Central Bank governing council member I. Rimšēvičs was sentenced to six years in prison for taking bribes, with a ban on holding state and local government positions for five years and a probationary period of one year, as well as confiscation of property. He claimed that he would appeal the verdict.

4 European Public Prosecutors Office (EPPO) (2023), Latvia: EPPO carries out 16 searches in probe into €14 million VAT fraud – €6 million seized, <https://www.eppo.europa.eu/en/news/latvia-eppo-carries-out-16-searches-probe-eu14-million-vat-fraud-eu6-million-seized>

5 European Public Prosecutors Office (EPPO) (2023), Latvia: Three detained in probe into possible fraud involving Municipality of Valka.

6 LSM.LV (2023). Jauna ES fondu kriminālieta Līvānos: izmeklē ielas noasfaltēšanu līdz graustā icecerētām SPA, 8 October.

Rimšēvičs's arrest by KNAB in February 2018 caused major international headlines.⁷

Media environment and media freedom

Public trust in media

Trust in public media is gradually, albeit slowly, increasing: 56% trust Latvian Television and 53% trust Latvian Radio. This is higher than the EU average of 48%.⁸

In a public opinion survey commissioned by the State Chancellery in July 2023,⁹ 57% of inhabitants trusted Latvian media information about the war in Ukraine, up by 10% compared to December 2022, and by 4% compared to March 2023. Latvians have higher levels of trust (71%) compared to non-Latvians (34%). Only 25% of respondents in eastern Latvia (Latgale) trust the Latvian media about the issue.

Safety and protection of journalists and other media actors

Access to information and public documents

In June 2023, Balticada Investigations Studio, with the support of Reporters Without Borders, published a study¹⁰ based on a comparative analysis of 15 disputes between journalists and civil servants in Estonian, Latvia and Lithuania. The study found that freedom of information in the Baltics suffers from significant shortcomings, despite their high ranking in the World Press Freedom Index. Private data, business secrets, and national security, despite being all legitimate reasons for the denial of access to information, are also being misused as an excuse for the unlawful blocking of freedom of information requests made by the journalists. Research has also shown that a lack of resources and skills and resistance from officials leads journalists to surrender to challenging information bans. As a result, only a few experienced and determined reporters in the Baltic countries challenge the ban on information and defend the public interest.

7 TIESAS.LV (2023). Rīgas rajona tiesa Jūrmalā apsūdzētos Ilmāru Rimšēviču un Māri Martinsonu atzīst par vainīgiem, 21 December; LSM.LV (2023). Former Latvian central bank governor Rimšēvičs sentenced to 6 years in prison, 6 December.

8 Eurobarometer (2022). Media & News Survey. <https://europa.eu/eurobarometer/surveys/detail/2832>

9 State Chancellery (*Valsts kanceleja*), Kvantitatīva Latvijas iedzīvotāju aptauja par attieksmi pret aktuāliem jautājumiem "Kvantitatīva Latvijas iedzīvotāju Omnibusa aptauja interneta vidē (CAWI)"

10 RSF (2023). Disputes over access. A Study on Journalists' Access and Practises and Freedom of Information Policies in the Baltic States, 129 p.; RSF (2023). Access to information in the Baltics: RSF asks the authorities to address a weak spot of press freedom.

The study recommends media regulators, legislators, journalist organisations, and media owners should agree on a balanced freedom of information regime, including a national security safeguard, whilst retaining the right to information for all journalists across ethnicities or regions in order for them to be able to access information equally freely. The study also criticises the amendments in 2023 by the Latvian legislature to move the category “information for service needs” from the Freedom of Information Law to the Law on State Secrets, as it will increase the number of restricted documents. The study argues that imposing on heads of institutions the responsibility for decisions on whether the restricted information can be issued to journalists will potentially result in more disputes. It also argues that the current model for appealing decisions to a higher institution is ineffective due to its long, 30-day response term.

The study also recommends legislators to update the term ‘journalist’ to include everyone conducting journalistic activities, pointing to the practice in several nearby countries (e.g. Estonia, Sweden).

Other

The National Electronic Mass Media Council (NEPLP) imposed an administrative fine of €8,500 on the Internet news portal tvnet.lv¹¹ for

the alleged misuse of the word “deportation”.¹² The word was not used by Tvnet.lv but by the interviewee, Member of Parliament Aleksejs Roslikovs, on a webcast carried by TVNet.lv, in which he referenced a nationalist party in the Latvian government as trying to inaugurate “the first wave of deportations in the history of the re-independent Latvia.”

According to the NEPLP decision of 18 May,¹³ the news portal had provided deliberately incorrect information, namely that possible amendments to the Immigration Law provide for the deportation of residents of Latvia if they have not applied for the Latvia language proficiency check and for the status of permanent resident of the European Union. The NEPLP argues that the correct word to use in this case is not ‘deportation’ but ‘expulsion’ in the context of Russian and Belarusian citizens to their country of nationality if they fail to comply with the requirements of the law for claiming the status of a long-term resident of the European Union. According to the document, the portal has been fined for “failing to respect due precision and neutrality” by not changing the course of the conversation or explaining the topic to the audience when the word appeared.

The editor-in-chief noted that the word “deportation” is a widely used legal term for national immigration policy and does not apply only to

11 LSM.LV (2023). [Media watchdog fines news portal for alleged word misuse](#), May 23.

12 The word “deportation” is strongly associated with the mass deportations of the Baltic people to Gulag camps by the Soviet regime in 1941 and 1949

13 NELPL (2023). [LĒMUMS Nr. 199/1-2 \(18012000000723-2\)](#), 18 May.

historical events before and after World War II in Latvia.

The Latvian Media Ethics Council criticised the decision to fine Tvnet.lv for this alleged misuse of the word “deportation” as “disproportionate, undemocratic and bureaucratic.”¹⁴

On 6 October, the Council of Europe Safety of Journalists platform¹⁵ published a Level 2 alert – a statement by six media freedom and journalists organisations¹⁶ warning against the ‘National Security Concept’, a policy-planning document approved by the Latvian Parliament (Saeima) on 28 September 2023 according to which all content created by the public media after 1 January 2026 must only be in the Latvian language or other languages belonging to the European cultural space, i.e. the EU, candidate countries and countries of the European Economic Area (EEA).¹⁷ The move would essentially prohibit Latvian TV and Latvia Radio from producing content in the Russian language as of 2026. The Russian language is spoken by over a third of Latvia’s population, including not only ethnic Russians but also other minorities as well as some of the refugees from Ukraine. Currently, Latvian TV and Latvian Radio provide content in a range of minority languages through a variety of

platforms, including the RUS.LSM portal and Latvia Radio 4, which reaches around 150,000 listeners a week and has around 1.3 million listeners per year to their podcasts. The authors of the statement express their concern that this change risks depriving Russian speakers in Latvia of access to credible and fact-checked information, leaving them exposed to disinformation and propaganda which is especially critical in light of the Russian war of aggression in Ukraine. It would also undermine citizens’ fundamental human rights to access the media and impart and receive information including in their own language.

Objections to the proposal were earlier expressed by the Public Electronic Media Council.

Civic space

Online civic space

Attacks, threats and hate speech online

In 2023, the Latvian Centre for Human Rights conducted a survey on the experiences on NGOs with hate speech,¹⁸ and whether they themselves become targets of hate speech.

14 Latvijas Mēdiju Ētikas padome (2023). [Latvijas Mēdiju ētikas padome uzskata par nesamērīgu, nedemokrātisku un birokrātisku NEPLP lēmumu par TVNET piemēroto sodu](#), 24 May

15 <https://fom.coe.int/en/alerte/detail/107640028>

16 RSF (2023), [RSF and its partners are extremely concerned by Latvian proposal to ban Russian-language content on public service media](#).

17 Vestnesis.lv (2023). [Par Nacionālās drošības koncepcijas apstiprināšanu](#), 28 September.

18 Latvian Centre for Human Rights (2023). [Hate Speech in Latvia – Trends and Challenges](#) (unpublished, forthcoming in March-April 2023).

Twenty-six NGOs, most of them leading NGOs at national level working on women's rights, the rights of asylum seekers and refugees, integration and equality issues, the rights of persons with disabilities, patients' rights, minority rights issues, and other human rights issues responded to the survey. Seventeen NGOs responded that they themselves (staff or members) had been subjected to hate speech during the last three years. NGO activities focusing on sensitive and controversial issues, the rights of national minorities, asylum seekers/refugees and migrants are most often targets of hate speech. Several NGOs indicated that hate speech was connected with their support for Ukraine and Ukrainian refugees, and several in connection with their support for the ratification of Istanbul Convention, their participation in the debates on themes such as "residence permits to citizens of Russia, Russian speakers in Latvia, situation on the Latvian/Belarus border, " work with newcomers or that this is not directly in the interests of Latvians, on compensation to the Jewish community for loss of property during the Holocaust and Soviet regime, for persons in wheelchairs, etc. In most cases, hate speech against NGOs occurs on social networks and in comments to articles on internet news portals come from anonymous users. Seven NGOs have also received letters and e-mails containing threats, seven have received personal threats during an event, and four NGOs have been subjected to hate speech in the media.

Public participation

Rules on access to and participation in consultations and decision-making processes

The entry into force of the Law on Local Government Referenda has been postponed until 1 September 2024. Provisions which foresee electronic voting in local government referenda will come into force on 1 August 2025 when relevant provisions in the Law on Population Register come into force.¹⁹

Other

According to the 2023 audit of the State Control on Citizen Participation,²⁰ Latvia's laws, regulations, and policy documents include various mechanisms for the involvement of civil society in the decision-making process, however, citizen participation in decision-making processes is low, including at local and regional levels. Eleven local and regional governments were included in the audit sample. The report cites a lack of a strategic vision of local and regional governments regarding the benefits of citizen participation. In the near future, local and regional governments plan to implement several important infrastructure projects, including those for people with functional disabilities, at a cost of at least €21 million. The audit findings raise concerns as to whether this infrastructure will be respectfully usable and accessible to all residents of a local or regional

19 Latvijas Vēstnesis (2023). *Grozījumi Vietējo pašvaldību likumā*.

20 Valsts kontrole (2023). *Iedzīvotāju līdzdalība – neizmantota iespēja kvalitatīvu lēmumu pieņemšanai pašvaldībās*, 17 May, 132 p.

government. Almost no local or regional government anticipates citizen participation in the development of binding regulations and other regulations affecting citizens and municipal budgets. As it follows from the results of the population survey conducted as part of the collaboration between the State Audit Office of Latvia and the students of the Communications Department of Riga Stradins University, factors such as the lack of information about the possibilities of citizen participation or their complexity, as well as the lack of confidence that an opinion will be taken into consideration as a result of participation, are the reasons why the majority (85%) of surveyed residents do not participate in municipal decision-making processes. Each of the surveyed 11 municipalities have been issued deadlines to comply with the recommendations to increase citizen participation in the decision-making process.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Systemic human rights violations

Partnership law

On 9 November, the Saeima (Parliament) amended eight laws introducing a new partnership institution aimed at legally strengthening relations between two adults, including same-sex couples. The package of amendments were adopted three years after the Constitutional Court judgement²¹ obligating the legislature to adopt a legal framework for the protection of all families.

Two persons of legal age will be able to legally register their relationship before a notary, and enter into a partnership.²² The amendments provide for the legal and social protection of these persons. The law also stipulates that partnership does not equate to marriage. With the amendments to the Law on the Rights of Patients,²³ people in partnership will have the right to decide on consent to the

21 Constitutional Court of the Republic of Latvia (2021). Case No 2020-34-03, 8 April.

22 Saeima (2023). Amendments to the Notariate Law (*Grozījumi Notariāta likumā*), <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/F3275831F10924A0C2258AA9002B6B98?OpenDocument>

23 Saeima (2023). Amendments to the Law on the Rights of Patients (*Grozījumi Pacientu tiesību likumā*), <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/D25C5D65D01EA5A9C2258A6E00512464?OpenDocument>

partner's medical treatment, treatment method, or refusal of it. Amendments to the Law on State Pensions²⁴ provide that partners will have the right to receive social guarantees, including, in the event of the death of the other partner, the calculated amount of pension, which has not been paid up to the death of the relevant person. The Law on Personal Income Tax²⁵ also provides for tax relief from various property transactions, including gifts, as well as loans, if the transactions take place between people in partnership. With amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials,²⁶ it is stipulated that the official's partner will be subject to the same restrictions already imposed on the relatives of the official. The partnership will have to be indicated in the public official's declaration.

Thirty-four MPs asked the President not to promulgate the Notariate Law to begin the collection of signatures for passing the laws to a referendum. At least 154,241 eligible voters had to sign up to hold a referendum (10% of the total number of registered voters in the country). Despite the efforts of the opposition to stall the amendments, the attempt failed

as only 35,191 signatures, or 2.28% of eligible citizens, were collected.²⁷ The amendments will come into force on 1 July 2024. According to the LGBT+ community, the amendments fail to address the issues of property relations and adoption.

Other systemic issues

Access to the territory for asylum seekers

Access to the territory for asylum seekers remained a concern due to the declared and extended emergency situation in the areas bordering Belarus since August 2021. Latvia was called upon by international organisations to ensure effective access to an asylum procedure.

In 2023, 13,863 people were prevented from illegally crossing the Latvian border, while 428 were admitted for humanitarian reasons. Most of these incidents occurred along the border with Belarus, where 5,286 crossing attempts were blocked and 217 people were allowed to enter Latvia on humanitarian grounds. In September 2023, the Silene border crossing point was temporarily closed due to the high

24 Saeima (2023). Amendment to the Law on Personal Income Tax (*Grozījums likumā "Par iedzīvotāju ienākuma nodokli"*), <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/B67C6E0B6FEF283EC2258A6E00507B6C?OpenDocument>

25 Saeima (2023). Amendments to the Law on State Pensions (*Grozījumi likumā par valsts pensijām*), <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/546F9D28345ACCC0C2258A6E004FE76B?OpenDocument>

26 Saeima (2023). Amendments to the law On Prevention of Conflict of Interest in Activities of Public Officials (*Grozījumi likumā "Par interešu konflikta novēršanu valsts amatpersonu darbībā"*), <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/195910ECBBF3FA28C2258A6E0050F5D8?OpenDocument>

27 Central Electoral Commission (2024). [Tautas nobalsošana par apturētā likuma "Grozījumi Notariāta likumā" atcelšanu netiks rīkota](#), 11 January.

volume of migration from Belarus. The number decreased significantly in December. In January 2024, there were multiple consecutive days with no reported crossing attempts.²⁸

In July 2023, the European Committee against Torture (CPT) published its 2022 report on its country visit to Latvia.²⁹ CPT recommends that the Latvian authorities take the necessary measures to ensure that irregular migrants arriving at the border or present in the territory of Latvia are not forcibly returned to Belarus prior to an individualised screening with a view to identifying persons in need of protection, assessing those needs, and taking appropriate action. CPT also emphasised that it is essential that foreign nationals have effective access to an asylum procedure (or other residence procedure) which involves an individual assessment of the risk of ill-treatment in case of expulsion of the person concerned to the country of origin or a third country, on the basis of an objective and independent analysis of the human rights situation in the countries concerned. CPT considers that the relevant provisions of the Cabinet of Ministers' Decree No. 518 on the Declaration of a State of Emergency should be revised accordingly.

The European Court of Human Rights case *M.A. and Others v Latvia*,³⁰ lodged on 6 January 2023, has been communicated to the Latvian authorities. Five Syrian nationals complained that from December 2022 to January 2023 they were returned to Belarus without their asylum claims having been registered and reviewed by the Latvian authorities. They also claim that Latvian officials intentionally subjected them to physical and psychological suffering to coerce them to abandon their intention to seek international protection in Latvia and that the conditions in the tent were inadequate (no basic amenities such as food, water, adequate medical care, appropriate shelter or new clothing). They also claim that they suffered violent and repeated pushbacks to Belarus.

On 10 August 2023, the Cabinet of Ministers issued an order declaring an enhanced regime of border protection for six months, from 11 August 2023 until 10 February 2024, in several regions bordering Belarus.³¹ On 28 November the enhanced regime was broadened and is now also in force in several regions bordering Russia due to some evidence that the persons who illegally cross the Latvian-Belarusian border and their traffickers often try to hide in these parts of the country.

28 <https://etias.com/etias-countries/latvia-etias>

29 European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (2023). *CPT/Inf (2023) 16. Report to the Latvian Government on the periodic visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 20 May 2022.*

30 *M.A. and Others against Latvia*, Application no. 1134/23, lodged on 6 January 2023

31 Latvijas Vēstnesis (2023). *Ministru kabineta rīkojums No 541 Par Par pastiprināta robežsardzības sistēmas darbības režīma izsludināšanu*

UNHCR expressed concern about the fact that amendments to the State Border Law and the State Border Guard Law will effectively authorise pushbacks³² – and therefore may lead to individuals not being granted effective access to territory and the right to seek asylum, which would constitute a breach of international and European law. The amendments authorise Latvian border guards to prevent entry to the country in a case where an asylum seeker has entered the territory in an irregular manner and without an objective reason for not crossing at an official border crossing point. UNHCR also expressed serious concern that the law amendments do not specify how assessments to refuse entry for asylum seekers arriving irregularly should be conducted, and that the assessments will be undocumented. This approach may lead to decisions lacking procedural safeguards, not being individualised nor appropriate with a risk of collective expulsions, where individual circumstances, rights and needs are not taken into account.

Criminalisation of humanitarian work

In 2024, a hearing began in the case involving human rights defender I. Raubiško from the NGO I Want to Help Refugees. Initially criminal proceedings were initiated against her and E. Grasmanis, but were later discontinued

against the latter, while a new case was opened against Raubiško under Article 20 and Article 284 (2) of the Criminal Law, namely for intentionally organising an illegal border crossing for a group of persons. According to her, the group of seven people she and her colleague were involved in helping had crossed the Latvian border with Belarus several times because they wanted to apply for asylum, but each time the border guards ordered them to return to Belarusian territory.³³

A statement was issued by the UN Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants,³⁴ who voiced their concern about the initiation of criminal proceedings as a direct response to their legitimate acts of solidarity with asylum seekers, undertaken with the sole aim of seeking to prevent human rights violations.

32 UNHCR (2023). *UNHCR concerned with new legislation in Latvia*, 27 June.

33 Puķe, Ieva, Eng.lsm.lv (2024). *Latvian activist could face charges for helping migrants*, 28 February.

34 Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants (2023), 2 March 2023. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27907>

LIBERTIES

RULE OF LAW REPORT

2024

LITHUANIA

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About the authors

Human Rights Monitoring Institute (HRMI)



Human Rights Monitoring Institute (HRMI) is a non-governmental, not-for-profit human rights organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations, and working to ensure that rights can be exercised in practice.

The team of HRMI experts carries out research, drafts legal and policy briefings, compiles reports to international human rights bodies, undertakes strategic cases before domestic and international courts, provides expert consultations, engages in various national and international projects, delivers conventional and distance training to law enforcement officers and other professionals.

Key concerns

There have been important changes in the legal system, and steps are being taken to ensure fair pay for judicial staff, prosecutors, and judges. But there's still room for improvement. The use of a transparency policy is also helping to reduce corruption. Providing specific training for lawyers who offer state-guaranteed assistance is making the legal system work more smoothly and efficiently.

Implementation of 2023 recommendations

Regarding the implementation of the European Commission's recommendations in their Annual Rule of Law Report, while legislative measures have been enacted, it remains challenging to gauge their effectiveness as tangible results are yet to materialise. Other laws have only taken effect as of 1 January 2024, making it premature to assess their impact. Although efforts are

acknowledged, there is still ample room for improvement.

Media Environment and Media Freedom

As it regards the media environment and media freedom, there was progress; one of the most significant developments was the establishment of the Media Support Fund, which for the first time will provide state funding to media projects. The composition of the Commission for Journalistic Ethics has been changed to provide for more diversity and impartiality. In other areas, no significant progress has been made in 2023.





Civic Space

Regarding civic space, there was no progress from the previous year. There were a series of legal, political, and societal developments in Lithuania during 2023. Key points include amendments to the Law on Assemblies to strengthen freedom of assembly, challenges faced by the LGBTQI+ community during protests, legislative efforts against hate crimes, impeachment proceedings against a member of the Seimas for anti-Semitic statements, rejection of a law amending protection of minors, challenges in managing irregular migration, disinformation concerns with legal responses, and initiatives for the removal of symbols promoting authoritarian regimes. This evaluation underscores a complex landscape involving legal reforms, societal tensions, and efforts to address issues such as hate crimes, discrimination, and disinformation.




Disregard Of Human Rights Obligations and Other Systemic Issues Affecting The Rule of Law Environment

When it comes to the disregard of human rights obligations and other systemic issues affecting the rule of law environment, there was also no progress compared to the previous year. Significant human rights challenges remain in Lithuania. Concerns include the legalisation of the expulsion of irregular migrants, violations of constitutional principles in the treatment of asylum seekers, shortcomings in transgender rights, the absence of legal recognition for same-sex partnerships, impunity for human rights violations, and delays in implementing judgements from supranational courts. The unresolved cases, such as *L. v. Lithuania and Macate v. Lithuania*, underscore the need for urgent action to address systemic issues, strengthen accountability mechanisms, and ensure compliance with international human rights standards.

State of play (versus 2022)

-  Justice system
- N/A** Anti-corruption framework
-  Media environment and freedom of expression and of information
- N/A** Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Justice system

Key recommendations

- *Conduct regular, specialised training sessions on human rights standards for judges, prosecutors, lawyers, and law enforcement personnel.*
- *Sustain efforts to ensure fair pay for judges, court personnel and prosecutors, while continually implementing effective measures for equitable workload distribution.*

Judicial independence

Allocation of cases in courts

On 29 June 2023, the Parliament (Seimas) endorsed a comprehensive overhaul of the judicial system. This reform is geared towards consolidating the caseloads of district and regional courts in major urban centres, with the overarching goals of enhancing the quality of justice delivery and streamlining the efficient use of financial resources within the court system by eliminating unnecessary expenditures on court infrastructure.

As part of the judicial reform, the plan involves merging the territorial jurisdictions of district courts or their respective chambers. The existing configuration of 12 district courts and 48 court chambers will be replaced by 11 district courts and 24 court chambers. Amendments to the Law on the Establishment of District Courts will facilitate the merging of territorial jurisdictions, with a general inclination

towards maintaining the infrastructure of the original court chambers.

Projections from the Judicial Council and the National Judicial Administration estimate that the implementation of this reform will result in approximately €4.35 million in savings over the three phases of the reform, extending until 2026. These financial gains are earmarked for initiatives such as the advancement of court personnel and the fostering of innovation within the judicial system.¹

Remuneration/bonuses for judges and prosecutors

On 11 May 2023, the Seimas of the Republic of Lithuania endorsed the proposed Law on the Civil Service, designed to establish a flexible, efficient, and contemporary civil service framework. The legislation aims to reinforce the managerial hierarchy, invest in enhancing the skills of civil servants, and refine motivation and reward systems.

¹ [Seimas approves reform of the judiciary: workload to be unified, five chambers to be abolished](#)

Notably, the seniority allowance for civil servants has been reinstated, addressing a key concern raised by trade unions. A consensus was reached, limiting the seniority increment to a maximum of 20% of the official salary, with a calculation rate of 1% for each year. For individuals entitled to a supplement exceeding 20% upon the law's enactment, a fixed amount will be determined and maintained throughout their tenure in the civil service. This applies even if they change positions or temporarily leave the service, and return as a civil servant at a later date.²

On 23 November 2023, the Seimas of the Republic of Lithuania sanctioned the proposed Law on the Prosecutor's Office, with the objective of enhancing the social guarantees for prosecutors and establishing a framework for salary increments. The decision was made to implement a salary increase for prosecutors, starting from 1 January 2024, ensuring it reaches a minimum of 75% of the salary earned by a judge at the corresponding level. Additionally, by 1 January 2025, the aim is to raise the prosecutor's salary to at least 90% of the salary received by a judge at the relevant level.³

Quality of justice

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

On 30 March 2023, the United Nations Committee on Economic, Social, and Cultural Rights expressed a primary concern regarding the absence of specialised human rights training for judges, prosecutors, lawyers, and law enforcement personnel. The Committee suggests that Lithuania should conduct regular training sessions focusing on human rights and enhance awareness among all pertinent state entities.⁴

On 29 June 2023, the Seimas of the Republic of Lithuania passed amendments to the Law on State Guaranteed Legal Aid, with the primary objective of enhancing the quality of legal assistance and optimising the efficiency of the system. The updated regulation places particular emphasis on cases demanding specialised legal expertise, such as those involving the representation of vulnerable individuals like victims of crime and minors. To equip lawyers with the necessary practical skills for handling sensitive cases, specialised training programs are planned.

The Lithuanian Bar Association is expected to play a significant role by offering recommendations in the form of good practice guidelines to lawyers delivering legal services in specific

2 [The Seimas approves the draft reform of the civil service after a debate](#)

3 [The Seimas approves a pay rise for prosecutors](#)

4 [United Nations Urges Lithuania to Address Human Rights Concerns](#)

domains. Furthermore, the association will be involved in evaluating the services provided by lawyers offering secondary legal aid. Specialised training initiatives for lawyers will be implemented by the Lithuanian Bar Association. The State Guaranteed Legal Aid Coordination Council will propose measures for enhancing quality, and the State Guaranteed Legal Aid Service will actively contribute to the specialised training of lawyers, along with organising surveys involving both service recipients and providers.

Marking a significant change, the law will double the remuneration for lawyers specialising in cases that require specific skills. Additionally, to ensure a balanced workload for lawyers, a methodology for the equitable distribution of their tasks is set to be adopted.⁵

Fairness and efficiency of the justice system

Corruption of the judiciary

On 27 January 2023, the Council of Judges of the Republic of Lithuania officially endorsed the Transparency Policy for Lithuanian Courts, signalling a commitment to zero tolerance for potential corruption. This comprehensive transparency initiative extends across the entire judicial system, encompassing general competence courts, specialised courts, and court administration.

The Transparency Policy explicitly prohibits the judiciary from tolerating any instances of bribery, influence peddling, misuse of office by staff, abuse of authority, or favouritism towards members of one's own party, close associates, relatives, and other connected individuals. Serving as a crucial tool, this policy of judicial transparency plays a pivotal role in combating various forms of corruption within the Republic of Lithuania's judicial system.⁶

5 [Qualitative changes to state-guaranteed legal aid approved](#)

6 [Lithuanian Courts Transparency Policy adopted](#)

Media environment and media freedom

Key recommendations

- *The Ministry of Culture should continue improving the legal environment and institutional practices for granting journalists and other disseminators access to information of public interest.*
- *The government should consider creating one institution responsible for handling of Freedom of Information (FOI) appeals.*
- *Various stakeholders should research the reasons behind the relatively low trust in the media and create policy measures to address the issues.*

Media and telecommunications authorities and bodies

Conditions and procedures for the appointment and dismissal of the head/members of the collegiate body of media and telecommunication authorities and bodies

The election of director of the LRT (Lithuanian Radio and Television), the national broadcaster, was unsuccessful twice due to a split vote of the LRT board - revealing fighting for influence amongst political bodies of national government. The new director was appointed in autumn 2023 after receiving the majority of votes. The complicated election of the new director caused a debate on whether the procedure for the election of the LRT director should be changed by introducing an open vote or changing the number of board members.

Existence and functions of media councils or other co- and self-regulatory bodies

On 25 May 2023, amendments to the Law on Provision of Information to the Public were passed, which reformed the composition of the Commission for the Ethics of Public Information.⁷ Previously, the Commission was composed only of the members of the Association for the Ethics of Public Information, and the number of members of the Commission as well as the number of the terms of office were not limited. The amendments provided that the Commission is composed of representatives of each member organisation of the Association, one representative from the national broadcaster LRT and three representatives from the Media Council. Candidates to represent the Media Council are delegated by universities that have a journalism study programme on their curriculum.

⁷ <https://www.e-tar.lt/portal/legalAct.html?documentId=3bd0e1c0ffb211ed9978886e85107ab2>

The members of the commission are appointed for the term of three years and for no more than two consecutive terms in office. The members of the Commission must have higher level education and no less than 5 years of experience of journalistic, legal or media related work experience. Such amendments are seen in a positive light as they provide that the members of the Commission come from a more diverse field of experts, have specific competence requirements and are limited to two terms.

Other

In March 2023, the Association of Professional Journalists was established as an alternative to the Lithuanian Union of Journalists (LŽS). The association was founded after several journalists expressed disagreement with the Union's public positions. The Association of Professional Journalists was established at the end of March after several well-known journalists left the Lithuanian Journalists' Union. They and other founders of the association did not support the accusations made by the LŽS and its chairman against journalism students seeking quality journalism studies at Vilnius University, and they did not support the position of the LŽS leadership on the election of the LRT director general. According to the founders, the main priority of the association is to improve journalists' and the public's access to information and respond to attempts to restrict freedom of expression.⁸

Public service media

Financing (including transparency of financing)

In 2023, by amending the Law on Public Information, a Media Support Fund was established which will provide state funding for media projects.⁹ The shareholders of the Fund are the Government, the Association for Journalistic Ethics and the Association for Culture Periodical Publications.

The Association for Journalistic Ethics includes the Lithuanian Journalists' Union, the Lithuanian Journalists' Society, the Internet Media Association, the Lithuanian Radio and Television Association, the Regional Television Association, the Lithuanian Cable Television Association, and the National Association of District and City Newspaper Publishers.

The Association of Cultural Periodicals, founded by the long-established cultural publications "Literatūra ir menas", "7 meno dienos" and "Metai", was registered on 11 May 2018. Soon after, the number of members increased considerably and it has already united more than 10 cultural publications ("Šiaurės Atėnai", "Naujasis Židinys-Aidai", "Artnews.lt", "Nemunas", "Dailė/Art", "Literaturas ir menas", "Metai", "Krantai", "Kinas", "7 meno dienos" and "Echo Gone Wrong").

⁸ <https://www.lrt.lt/naujienos/lietuvoje/2/2101116/zurnalistu-profesionalu-asociacijoje-kelios-desimtys-aktyviu-zurnalistu>

⁹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.29884/asr>

The funding will be allocated by way of tenders, announcing calls for application and selecting the best media projects. The Foundation Council, consisting of 10 members, determines the allocation of public support. One member is chosen by the Media Council from candidates proposed by journalism study programs at higher education institutions. The other members are appointed by organisations representing public information producers and disseminators. These include the Association of Cultural Periodicals, the Association of Lithuanian Art Producers, the Association of Internet Media, the National Association of District and City Newspaper Publishers, the Association “National Press,” the Lithuanian Journalists’ Association, the Lithuanian Union of Journalists, the Lithuanian Radio and Television Association, and the Association of Lithuanian Regional Radio Stations, as well as the Lithuanian Cable Television Association and the Association of Regional Television Associations, who reach an agreement.¹⁰

Experts, selected through public tenders, provide opinions on project funding, guiding the Foundation Council. Decisions on fund allocation are made public on the Foundation’s website. Prior to assuming roles, both Foundation Council members and experts must declare impartiality, sign a confidentiality agreement, and disclose private interests, adhering to the

Law on the Harmonisation of Public and Private Interests, as approved by the Foundation’s General Meeting of Shareholders.

The amendments specify that assistance will be provided to media outlets focusing on cultural, regional, national minority, and Lithuanian diaspora content, including news, investigative journalism, and educational projects. The support will be allocated based on programs proposed by the Council. Projects carried out by LRT or in collaboration with the national broadcaster, as well as those involving public relations, advertising, information agencies, research institutions, educational establishments, book, audio, video publishing, and political organisations, will not qualify for funding from the Fund. The Media Support Fund has the authority to grant financial support to journalists, oversee project implementation and financial accountability, evaluate the societal impact of project outcomes, conduct research, and compile and publish a comprehensive review of project results.¹¹

Public trust in media

According to the public opinion poll from December 2023, 50% of the respondents expressed trust in the media, whilst 46% expressed an opposite opinion.¹² It is a slight increase compared to the previous year, when

10 Ibid, 9.

11 <https://www.vz.lt/rinkodara/medijos/2023/04/25/seimas-patvirtino-nauja-ziniasklaidos-remimo-modeli>

12 <https://m.kauno.diena.lt/naujienos/lietuva/salies-pulsas/apklausa-isaugo-gyventoju-pasitikejimas-kari-uomene-1152935>

46% expressed trust and 50% of respondents claimed they did not trust the media.¹³ This indicates that the public is divided in two rather equal parts in terms of their trust in the media. However, no research has been identified in 2023 that would explain the reasons behind the relatively low level of trust.

Safety and protection of journalists and other media actors

Access to information and public documents

In June 2023, Reporters Without Borders (RSF) published a report on access to information in the Baltics.¹⁴ The study found low efficiency of Access to Information mechanisms in all three countries, due to such reasons as informal decision-making, misinterpretation of regulations, motives balanced towards data privacy, as well as lack of trust and discussion.¹⁵ Although in Lithuania the journalists are the most privileged in terms of access to information in comparison with the general public, in practice, the Lithuanian mechanism requires the most improvement because of a “complex web of norms that journalists find hard to

understand”.¹⁶ There is also a lack of a simple and easy to use procedure to appeal rejections of FOI requests, which, according to the study, is more important for the effectiveness of access to information mechanisms than professional privileges.

The study recommends that Lithuania’s media stakeholders choose one of the institutions for processing appeals against rejections of FOI requests. Currently, there are three institutions that handle such appeals - the Parliamentary Ombudsperson, the Commission for Administrative Disputes and administrative courts. The RSF report suggested that the Office of the Inspector of Journalist Ethics should become the dedicated institution for handling the appeals against rejections of FOI requests. The Inspector of Journalist Ethics¹⁷ is an independent public official whose mission, in short, is to ensure that human rights and freedoms are respected in the field of public information. It is a capable expert institution and it has responded positively to suggestions that it could be the main institution for handling FOI complaints, although this would require amendments to the legal base as the Inspector does not currently have the authority for such action.¹⁸ This would be a positive development.

13 <https://m.kauno.diena.lt/naujienos/lietuva/salies-pulsas/naujausias-instituciju-vertinimas-isaugo-pasitikejimas-ziniasklaida-kitu-instituciju-nepakito-1082259>

14 <https://rsf.org/en/access-information-baltics-rsf-asks-authorities-address-weak-spot-press-freedom>

15 Ibid.

16 Ibid.

17 <https://www.zeit.lt/en/the-office-of-the-inspector-of-journalist-ethics/262>

18 <https://m.kauno.diena.lt/naujienos/lietuva/politika/zeit-sutiktu-nagrineti-gincus-del-informacijos-nesuteikimo-bet-tam-reikia-keisti-istatyma-1131041>

The Inspector of Journalist Ethics is appointed by the Parliament for a term of 5 years from candidates presented by organisations that unite public information producers, disseminators and journalists, and whose members' activities are subject to the norms of the Lithuanian Code of Ethics for Public Information. The Inspector is an Ombudsperson. His/Her oversight would be prioritised over the courts', as the Ombudsperson could perform this task faster and with more relevant expertise. The courts would remain available for appeal procedures.

Other

In April 2023, the Inspector for Journalistic Ethics published recommendations to journalists and disseminators of public information on the key principles of personal data protection and cyber-security.¹⁹ The guide provides legal information as well as practical examples of the way personal data is to be processed in line with the key data protection requirements. It also provides practical advice and recommendations on IT security related with the use of various IT equipment.

Civic space

Key recommendations

- *The Ministry of Internal Affairs should conduct trainings for police officers on the right to freedom of assembly and its practical implementation.*
- *The Police Department should strengthen online hate speech identification and prevention tools.*
- *The Ministry of Internal Affairs/The National Border Protection Service should provide the necessary access to information for NGOs working with migrants and asylum seekers.*

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation in assemblies

On 1 April 2023, amendments to the Law on Assemblies came into force, which strengthened

the protection of freedom of assemblies.²⁰ The amendments shortened the term during which the organisers of an assembly of more than 15 people must notify the relevant authorities (the Mayor, or the Director of the Municipal Administration authorised by him/her) of the planned event from 5 to 4 days before the event.

19 <https://zeit.lt/data/public/uploads/2023/04/gaires-zurnalistams-2023-04-17.pdf>

20 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/43ac5640874e11edbdcebd68a7a0df7e?jfwid=hv33duzny>

The amendments also provided for specific terms within which the decisions of the municipal authorities can be appealed to court and have to be adjudicated by the courts. The appeal is to be filed within 2 working days to the first instance administrative court, which must issue its decision in 72 hours. The decision might be appealed to the Supreme Administrative Court within 2 working days, and the court's decision on the appeal must be issued in 72 hours. The law also included municipal mayors and directors of municipalities as officials responsible for smooth procedures for the coordination of assemblies, and removed the obligation on organisers to implement measures related to the assembly which cost financial resources (apart from tidying up the place of the event), and created administrative liability for mayors and directors of municipalities in case of violations of the Law on Assemblies.

Policing practices, including dispersion of protests, use of force

On 28 September 2023, the Association Lithuanian Gay League organised a protest near the Parliament regarding the law that censors information about LGBTQI+ people.²¹ The protest was disrupted by counter-protesters who prevented the participants of the assembly from speaking. The organisers appealed to police officers that were maintaining public order around the protest requesting them to take measures, however, the police officers

ignored the requests and failed to act, and the assembly had to be discontinued. The organisers later filed a complaint with the prosecution office regarding the interference with their freedom of assembly and expression, as well as threats received during the protest. In this case, the police failed to comply with the positive obligation to secure the effective enjoyment of freedom of assembly which, according to the case law of the ECtHR, is of particular importance for persons belonging to minority groups, because they are more vulnerable to victimisation. In this case, the police had an obligation to facilitate the conduct of the event by restraining the verbal attacks and physical interference by counter-demonstrators.

Freedom of expression and of information

Rules on hate speech and their enforcement

On 26 July 2023, the Prosecutor General of the Republic of Lithuania approved the Methodological Guidelines for the Pre-Trial Investigation of Hate Crimes and Hate Speech, replacing the 2020 Methodological Guidelines. These recommendations are expected to contribute to a more effective investigation of hate crimes and a more proactive response to such incidents.²²

On 16 November 2023, the Parliament voted to support the impeachment proceedings against

21 <https://www.delfi.lt/news/daily/lithuania/policijos-vadas-pripazista-kad-lietuvos-geju-lygos-mitingas-prie-sei-mo-nebuvo-suvaldytas.d?id=94684789>

22 [On Hate Crime And Hate Speech Pre-Trial Methodological Guidelines For The Investigation Of Hate Crimes](#)

Member of Parliament (Seimas) Remigijus Žemaitaitis. The Constitutional Court of the Republic of Lithuania has been tasked with evaluating whether the actions of the Member of the Seimas are in violation of the constitution. The initiation of the impeachment process stems from Žemaitaitis' public anti-Semitic statements and incitement to hatred.

He has been found to have made tendentious and biased assessments of both historical and contemporary events related to the Jewish people. Additionally, he openly expressed justification and support for expressions encouraging violence against the Jewish community. In response to these allegations, the Prosecutor General's Office is currently conducting a pre-trial investigation into charges of public contempt and incitement to hatred against any national, racial, ethnic, religious, or other group of people.²³

On 6 December 2023, the case involving Petras Gražulis, a Member of Parliament (Seimas), for stigmatising LGBTQI+ people, has been forwarded to court. The evidence collected during the investigation indicates that Mr. Gražulis acted deliberately, fully aware that his statements were being recorded, broadcast, and disseminated through online media.

The incident occurred on the day following the Seimas' approval of the draft Civil Union

Law, which aims to establish legal recognition for same-sex partnerships. When leaving the Plenary Chamber after the session, Mr. Gražulis encountered and insulted several representatives of the LGBTQI+ community.²⁴

Censorship and self-censorship, including on the use of symbols and slogans

In 2023, the Parliament (Seimas) rejected a draft law focused on amending the Law on Protection of Minors from Negative Impact of Public Information. The proposed law aimed to eliminate a provision that restricts the publishing of information that “denigrates family values” and promotes the LGBTQI+ family concept. Following this rejection, the Ministry of Justice of the Republic of Lithuania has initiated an appeal to the Constitutional Court to clarify whether this provision in the law discriminates against a particular segment of society.²⁵

Restrictions on access to information

Significant challenges for civil society organisations (CSOs) aiding migrants and asylum seekers arise from widespread public support for restrictive government policies. Only a minority of the public endorses a human rights-based approach to managing increased irregular migration. The government's consistent portrayal of migrants and asylum seekers as

23 [Seimas members agreed that there is a basis for the impeachment of Žemaitaitis](#)

24 [Prosecutor's office: Gražulis's case regarding LGBTQI+ insults was referred to the court](#)

25 [The Ministry initiates an appeal to the Constitutional Court on the prohibition to promote the LGBTQI+ family concept](#)

threats has significantly shaped public opinion, with 2021 opinion polls revealing a growing negative sentiment towards migrants and refugees. Consequently, civil society's advocacy efforts need to extend beyond addressing laws and policies, emphasising the importance of humanising the public narrative surrounding irregular migration.

Additionally, the scarcity of information poses a considerable obstacle for CSOs in evaluating the full implications of laws affecting asylum seekers. Official statistics only account for individuals pushed back on specific days, with no available data on those allowed entry and provided the opportunity to lodge asylum applications. Furthermore, critical demographic information such as countries of origin, gender, age, and other individual characteristics remains inaccessible. This lack of data hinders the identification of specific vulnerabilities among individuals who were pushed back.²⁶

When NGO Border Group asked for information from the State Border Guard Service, it consistently encountered uncooperative responses, creating significant hurdles for the group's work with migrants and asylum seekers. Specifically, inquiring about the number of individuals turned away, the Service responded by directing attention to its website, claiming it regularly discloses information about the refusal of entry to irregular migrants. However, the Service does not rule out the possibility that this reported figure includes individuals who, having repeatedly breached the state border of

the Republic of Lithuania, were subsequently turned away.

It's important to highlight that the State Border Guard Service fails to store personal data of aliens and asserts that no information is collected, leaving a significant information gap. Despite the NGO Border Group's efforts to obtain precise data, the State Border Guard Service provides vague and unsatisfactory answers, refusing to offer the necessary details. This lack of transparency not only obstructs the NGO Border Group's mission but also poses a challenge to effective human rights monitoring.

In response to the refusal to provide crucial information, the NGO Border Group has taken legal action, initiating proceedings in court. As of now, the case is pending, underscoring the ongoing struggle to compel collection of accurate and comprehensive data.

Spread of and responses to disinformation

In 2023, Lithuania faced a multifaceted challenge posed by disinformation. A draft law was introduced to amend Article 118-1 of the Criminal Code, targeting individuals who manipulate accounts on online social networking platforms to significantly amplify the dissemination of information against the Republic of Lithuania. This includes false narratives targeting its constitutional order, sovereignty, territorial integrity, defence, or economic power, with potential penalties ranging from fines and

26 [LITHUANIA: 'Civil society must humanise the public narrative around irregular migration'](#)

restrictions of liberty, to arrest or imprisonment for up to five years.²⁷

In 2023, Lithuania experienced a cyber false flag attack, during which various Lithuanian institutions received numerous emails containing fabricated threats of explosives being planted in schools, kindergartens, and municipal buildings. These threats resulted in the closures of some institutions, thus leading to economic and social disruptions. Additionally, this incident underscored the absence of clear guidance for civil protection authorities on how to respond to false reports and manage such cyberattacks.²⁸

Further exacerbating the situation, the National Crisis Management Centre identified 16 information incidents before and during the NATO Summit in Vilnius in 2023. The primary source of these incidents was traced back to individuals residing in Lithuania or organisations operating within the country. Particularly noteworthy was the manipulation of audio files through hacking into the systems of a regional radio station and a shopping mall in Vilnius. These altered audio files were then broadcasted, conveying messages opposing NATO and expressing anti-military aid sentiments towards Ukraine. This comprehensive disinformation campaign highlighted the urgency of addressing and mitigating the impact of deceptive information on national security and public perception.²⁹

Online content regulation

In 2023, the Police Virtual Patrol handled 7,020 reports related to various cyber offences. Among these, 331 cases led to administrative penalties, and in certain instances, criminal proceedings were initiated. Notably, 445 cases involving data were referred for clarification, comprising 73 cases of potential incitement to hatred and 264 cases of potential use of prohibited symbols.³⁰

In 2023, the Communications Regulatory Authority received 2,516 reports of internet content that is either prohibited or has adverse effects on minors through the internet hotline, marking a 65% increase compared to 2022. Legal proceedings were initiated in 1,475 cases, with the majority of reports—669 in total—pertaining to information related to child sexual exploitation.³¹

Other

As of May 2023, legislation in Lithuania requires local municipalities to eliminate monuments and symbols in public areas that promote totalitarian and authoritarian regimes. Within a span of 20 working days, local municipalities are obligated to provide the state-funded Genocide and Resistance Research Centre of Lithuania (LGRTC) with lists of public spaces

27 [The Republic Of Lithuania Supplementing The Criminal Code With Article 118-1 Legislation](#)

28 [Head of the NKVC: no more false reports of explosives](#)

29 [After the NATO summit, the spice of lies: thousands of residents received misleading messages](#)

30 [Police Virtual Patrol reports on the year: over 7000 complaints, 75 public warnings](#)

31 [RRT Internet Hotline Receives 65% More Messages In 2023](#)

containing such symbols. Enacted by the parliament in December 2023, this law prohibits the commemoration or representation of individuals, symbols, and information that endorse totalitarian or authoritarian regimes and their ideologies.³²

On 12 September 2023, the European Court of Human Rights rendered its judgement in the case involving Eigirdas and the entity “Demokratijos plėtros fondas” against Lithuania, determining a breach of Article 10 of the European Convention on Human Rights, safeguarding freedom of expression.

The applicants contested the 2015 rulings of the Ethics Commission for Public Information, which found them in violation of Lithuania’s Code of Ethics for Journalists and Publishers in two publications. The Court examined whether the Commission’s decisions, mandating the publication of its judgements, curtailed the applicants’ freedom of expression and whether such a restriction was justified in a democratic society.

The Court acknowledged the legally sanctioned nature of the restriction on freedom of expression and scrutinised its necessity in a democratic society. Regarding the first publication, it emphasised the clash between freedom of expression and Mr. VM’s right to privacy, honour, and reputation. Stressing the near impermissibility of restrictions on political

speech or public interest debates under Article 10 § 2 of the Convention, the Court found the restriction unreasonable, criticising the Supreme Administrative Court for failing to strike a proper balance.

Assessing the second publication’s circumstances, the Court noted the applicants’ twofold complaint: firstly, contesting the courts’ declaration of the statements as unethical, and secondly, asserting they were not obligated to grant People Magazine a right of reply. Echoing earlier findings on the first publication, the Court reiterated that VM, as a politician seeking publicity, rendered the applicants’ derogatory comments not an attack on VM’s son DM or the magazine “Žmonės”. It concurred with the applicant that granting the right of reply before publication would unjustifiably restrict freedom of expression. Considering the severe penalty, including high legal costs and the obligation to compensate the Journal Publishing Group, with potential deterrence on journalistic activities, the Court found a violation of Article 10, as the restriction lacked a social imperative need and proportionality to the pursued goals.³³

32 [Lithuania’s desovietisation law comes into effect, public spaces to be affected](#)

33 [The Instruction to Publish the Decisions of the Public Information Ethics Commission Unreasonably Limited the Applicants’ Freedom of Expression](#)

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

On 27 January 2023, the LRT portal published an article featuring commentary from Giedrius Mišutis, the representative of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania. The commentary focused on the activities of the public institution Border Group, with Mišutis referring to the volunteers of the NGO Border Group as “pseudo-volunteers”.

Given that the NGO Border Group is the sole non-governmental organisation operating on a voluntary basis at the Lithuanian border, the comment by the State Security Service representative raises concerns. It is likely that readers of the portal may interpret this characterization as casting suspicion on the activities of the NGO Border Group. The spokesperson’s remark appears to insinuate potential involvement of volunteers in criminal activities and/or aims to sow doubt regarding the transparency of the organisation’s funding. This is emphasised by drawing a contrast between the rhetoric of the volunteers and that of Belarusian propagandists.

In response to these allegations, the NGO Border Group promptly contacted the State Border Guard Service (SBGS) to refute the false information. However, the group received

a reply, indicating that the statements were not an attempt to communicate a derogatory message and instead of using “pseudo-volunteers”, they could have used “persons claiming to be volunteers” description, which still would denigrate the volunteering carried out by the NGO Border Group.

The NGO Border Group, known for actively and effectively contributing to the development of improved conditions and humanitarian assistance for migrants and asylum seekers, is facing unwarranted verbal attacks from officers of the State Border Guard Service. Officials from the State Border Guard Service have repeatedly referred to volunteers who work with migrants or asylum seekers at the border as pseudo-volunteers or persons posing as volunteers. State Border Guard officials also claim that volunteers use the same rhetoric as foreign propagandists, which is a completely false expression that denigrates the work that volunteers do.

Additionally, they criticise the organisation’s activities, suggesting they may compromise the core principles of volunteering. Several public records from the State Border Guard Service contain these disparaging terms, thereby undermining the positive contributions of the NGO Border Group.³⁴

Laurynas Kasčiūnas, a Member of the Seimas, reacted strongly and unfavourably to the NGO Border Group’s proposed amendment to the law. Kasčiūnas remarked, “As a smuggler, I

34 <https://vsat.lrv.lt/lt/naujienos/cepkeliu-pelkeje-pasienieciai-sulaike-pussimti-migrantu-ir-itariama-ju-vedli-baltarusi-foto/>

would also be content to establish a human rights organisation, potentially granting exclusive access to the border. I would undoubtedly pursue such an avenue if I had malicious intent, aiming to discredit border security. It is imperative for us to address and manage these potential risks.”³⁵

Public participation

Other

In March 2023, the Ministry of Social Security and Labour approved a procedure for tenders

for institutional strengthening of CSOs.³⁶ This measure is one of the measures foreseen in the 2023-2025 Action Plan for Strengthening of CSOs Activities, which was approved in 2022, and provides for such objectives as strengthening of CSOs’ institutional capacities and activity; promoting cooperation between public and CSO sectors whilst providing public services, increasing financial sustainability of CSOs; strengthening and developing voluntary activities; increasing public and CSOs’ participation in the decision-making process and participation in public policy, among others.³⁷

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *The Ministry of the Interior should amend the law regulating the practice of pushing back irregular migrants during extreme situations or states of emergency, addressing concerns raised by human rights organisations.*
- *Strengthen mechanisms to ensure accountability for human rights violations, particularly those affecting marginalised groups, by enforcing existing laws and regulations.*
- *Develop a defined timetable and expedite actions to implement outstanding judgements from the European Court of Human Rights, addressing the backlog and demonstrating commitment to human rights standards.*

35 https://www.youtube.com/watch?v=lvEfRRf_35g

36 <https://www.e-tar.lt/portal/lt/legalAct/cc265d20bf1811ed97b2975f7dad7488>

37 <https://www.e-tar.lt/portal/lt/legalAct/c8f1fd80300711edb4cae1b158f98ea5/asr>

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

In April 2023, the Lithuanian Parliament enacted a law legalising the practice of pushing back irregular migrants at the border during a state-level extreme situation regime or a state of emergency. These amendments, drafted by the Ministry of the Interior, formalise and consolidate the existing procedure for rejecting migrants at the border. This practice was initially introduced through a Minister of the Interior's order issued in 2021 and subsequently formalised by a government resolution.³⁸

However, these legislative changes have faced criticism from human rights organisations, which argue that the new law legitimises push-backs and expulsions—a practice deemed in violation of international law.

On 7 June 2023, the Constitutional Court of the Republic of Lithuania issued a ruling declaring that the provisions of the Law on the Legal Status of Aliens concerning the temporary accommodation of an asylum seeker in an Alien Registration Centre during a state of emergency are contrary to Article 20 of the Constitution, which enshrines the inviolability and protection of human freedom. The Constitutional Court has recognised that the

measure applied to asylum seekers, namely temporary accommodation in specified places without the right to move freely within the territory of the Republic of Lithuania, should be regarded as one of the most severe measures of restriction of the liberty of persons, which may amount to detention. The legislator has not complied with the requirements of the Constitution not to restrict a person's rights beyond what is necessary to achieve the objective and, when deciding on the application of measures restricting a person's liberty, to assess, as far as possible, the individual situation of each person. Although personal freedom is not absolute and may be restricted where necessary, such a restriction cannot be based solely on general grounds, for example, the imposition of a state of emergency. In each case, the authorities must be able to assess the real threat posed by the individual, but the current regulation and the applicant's situation show that asylum seekers in Lithuania have been accommodated in a confined space with restrictions on movement without taking into account the individual situation of each person. The provisions of the law were found to be unconstitutional as asylum seekers were not granted the guarantees applicable to detained persons, such as the right to apply to a court for an alternative measure to detention, and the restrictive measures imposed were adopted without a decision of the competent authority, without ensuring the possibility of a judicial review of the validity and lawfulness of the measures.³⁹

38 [Lithuania legalises migrant pushback](#)

39 [Concerning the temporary accommodation of an asylum seeker due to a mass influx of foreigners in the event of a declared state of emergency, state of emergency or state of war](#)

It is important to highlight that Lithuania is falling short in fulfilling its responsibilities towards transgender people. While the country does have administrative and judicial processes for changing personal names and gender markers on documents, and it is noteworthy that surgical intervention is not obligatory for such changes, nor is mandatory sterilisation a prerequisite for altering gender markers. However, Lithuania only complies with these four aspects among a total of 30 indicators. This statistical discrepancy highlights the concerning situation faced by transgender individuals in the country. The extent of effort exerted by certain segments of society, including politicians, to disseminate misleading information and deny the imperative to safeguard transgender rights is disheartening.⁴⁰

Legal recognition for same-sex partnerships is absent. Although a proposal to recognise same-sex civil unions faced insufficient support in a May 2021 Seimas vote, a year later, legislators decided to reconsider a modified version of the proposal. In May 2023, discussions commenced in the Parliament regarding a compromise legislation aiming to establish gender-neutral civil unions, intending to extend rights to same-sex couples. However, the matter of civil partnership remains unsettled.

The Parliament Ombudspersons' Office of Lithuania recently released a report on human rights at the Jurdaičiai social care home, offering insights into the broader situation in similar

facilities. According to the Ombudsperson Dr. Erika Leonaitė, while living conditions are generally satisfactory, the social care system faces persistent issues due to slow and ineffective institutional reorganisation. The Ombudsperson recommends initiating the process of deinstitutionalisation and a shift towards community living.

While the Jurdaičiai social care home provides accessible information and infrastructure for residents with disabilities, psychological services remain inadequate. Residents can engage in household activities with staff assistance, move freely within and beyond the premises, and visit family as desired. However, they lack essential skills for community living, such as using public transportation and financial literacy.

Lithuania currently has approximately 30 institutional care homes, accommodating around 6,000 residents with disabilities. The deinstitutionalisation initiative aims to establish 42 community residential homes for 300 people, aligning with Article 19 of the UN Convention on the Rights of Persons with Disabilities. This article emphasises the right of individuals with disabilities to live in the community on an equal basis. The challenge lies in ensuring that new community homes uphold human rights, individual needs, independence, and social inclusion without promoting further segregation.⁴¹

40 [Lithuania is failing to meet its obligations to transgender people](#)

41 [Lithuanian social care system should prepare individuals to live outside of care homes](#)

In April 2023, the Lithuanian Ombudsperson for Child’s Rights received a report on violations of a refugee child’s rights. The investigation found that five Syrian nationals, including an unaccompanied minor, were improperly detained at a State Border Guard post. The Ombudsperson highlighted key issues for the protection of unaccompanied minors, including prompt notification to relevant authorities, appointment of a guardian, representation during interviews, proper identification, legal representation, access to NGOs, and the need for immediate assessment and assistance. Compliance with children’s rights legislation is crucial, particularly for vulnerable groups like unaccompanied minors, to ensure their rights are respected during the migration process.⁴²

In late April 2023, the United Nations Committee on the Rights of Persons with Disabilities (UN CRPD) issued concerns about Lithuania’s combined second and third periodic reports. Key areas of focus included legislative alignment with the Convention on the Rights of Persons with Disabilities, the effectiveness of the disability assessment system, consistency in disability concepts across regions, promotion of universal design, and financing for services.

The UN CRPD also inquired about access to funding for disability organisations, particularly those in rural areas, and their participation in decision-making councils. Other highlighted

issues encompassed intersecting discrimination, media stereotypes, accessibility, identification and support for asylum-seekers and refugees with disabilities, guardianship, independent living, deinstitutionalisation, inclusive education, employment rates, and access to sports and cultural facilities.⁴³

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In 2023, Lithuania grappled with the implementation of 21 leading judgements from the European Court of Human Rights, maintaining a 21% backlog of main cases from the past decade. Over the course of the year, four new leading judgements emerged, while two were successfully implemented.⁴⁴

Notably, the case of *L. v. Lithuania* lingered in pending status. During 2023, the Vice-Ministers of the Committee of Ministers voiced deep concern regarding the prolonged legislative process for gender reassignment surgery and legal recognition, specifically in the context of the *L. v. Lithuania* case. Despite the establishment of an inter-institutional working group, more than 15 years after the judgement, significant progress remained elusive. The Vice-Ministers expressed apprehension over

42 [Children’s Rights Ombudsman Issues New Guidance to Ensure Rights of Unaccompanied Foreign Minors in Lithuania](#)

43 [UN: Lithuania still needs to work on the rights of persons with disabilities](#)

44 [Lithuania and the Council of Europe](#)

the absence of a defined timetable for future actions.⁴⁵

In the unresolved case of *Macatè v. Lithuania*, the focus was on the temporary suspension and subsequent labelling of a book depicting same-sex relationships. The distribution of the book was halted shortly after its 2013 release and resumed a year later, only after being labelled as potentially harmful to children under 14. This case marks the first instance of the Court assessing restrictions on literature specifically written for children about same-sex relationships. The Court unanimously declared that the actions taken against the book violated Article 10 of the European Convention on Human Rights, which safeguards freedom of expression. It concluded that the restrictions aimed to limit children's exposure to information portraying same-sex relationships as equal to heterosexual ones. The Court rejected the government's claim that certain passages in the book were sexually explicit, such as a princess and a shoemaker's daughter sleeping after their wedding. Additionally, the Court dismissed the argument that the book favoured same-sex families, emphasising that the tales promoted respect and acceptance for all members of society within the context of committed relationships.⁴⁶ The Ministry of Justice has prepared a draft law amending the impugned Article 4 of the Minors Protection Law to eliminate the discriminatory provision in question. The draft

law was considered at the inter-institutional meeting of the Government on 29 August 2023 and no additional remarks or suggestions were received. Despite the Ministry of Justice's draft law to amend the discriminatory provision, the Seimas rejected it in November 2023, prolonging the case's unresolved status.⁴⁷

Similarly, the Ancient Baltic Religious Association "*Romuva*" *v. Lithuania* continued to await resolution. Originating from the Parliament's denial of state recognition to a non-traditional religious association in 2019, the case highlighted insufficient and unclear reasons, constituting violations of Convention Articles 14, 9, and 13. Although a Ministry of Justice evaluation confirmed the association's alignment with recognition criteria, the Seimas rejected the proposal for state recognition in September 2023. The Seimas provided vague, non-substantial, and highly subjective arguments, perpetuating the uncertainty surrounding the case. Additionally, the newly established Article 6 of the Law on Religious Communities and Associations failed to safeguard the interests of the Ancient Baltic Religious Association "*Romuva*."⁴⁸

45 *L. v. Lithuania* 15 years on, still at the starting point

46 *European Court of Human Rights Rules Against Lithuania in Children's Book Case*

47 *Macatè v. Lithuania*

48 *The Seimas rejected the proposal to grant recognition to the ancient Baltic religious community "Romuva"*.

LIBERTIES

RULE OF LAW REPORT

2024

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About the authors

NJCM - Nederlands Juristen Comité voor de Mensenrechten (Dutch section of the International Commission of Jurists)



The NJCM was established in 1974 as the Dutch section of the International Commission of Jurists (ICJ). It has evolved into an authoritative organisation that is committed to and advocates for the protection of human rights in the Netherlands and Dutch foreign policy.



The Netherlands Helsinki Committee (NHC) is a non-governmental organisation that promotes human rights and strengthens the rule of law and democracy in all countries of Europe, including the Central Asian countries participating in the OSCE.



Free Press Unlimited (FPU) is committed to promoting and defending press freedom and access to reliable information, particularly in countries with limited (press) freedom. Together with over 40 local media partner organisations, Free Press Unlimited strives to give people the information needed to help them survive, develop themselves, and monitor their government.



Transparency International Nederland (TINL) strives for a world in which government services, the political world, business, civil society and citizens are free from corruption. The emphasis is on improving integrity, transparency and accountability in Dutch society.

Key concerns

Regarding the justice system, there has been no improvement from the previous year. In certain areas there is definitely progress (such as the allocation of cases in courts), but some areas have come to a standstill or are regressing. It is unclear what the progress has been related to the recommendations of the European Commission from the previous year. The digitalisation of the justice system has improved and is increasing (in the number of published judgments).

In the area of the anti-corruption framework, there has been potential regression from the previous year. We would like to draw the EU's attention to the recent election result. More specifically, the landslide victory of Geert Wilders' Party for Freedom. In the past, Wilders and his party members introduced legislation that is incompatible with the rule of law and the international treaties that the Netherlands has committed to. While Wilders has indicated to have moderated his tone, we believe that there is still a chance that the liberal values upon which the European Union is built – respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities – could come under increasing pressure. The progress in this area regarding the Commission's 2023 recommendations is not satisfactory. The government's performance, particularly in implementing GRECO recommendations related to lobbying transparency and post-term employment restrictions (such as the cooling-off period), is considered unsatisfactory.

As it relates to the media environment and media freedom, there has been no progress. There are areas with progress (Digital Services Act, PersVeilig Project, Criminalization of Doxing, and the Wet Open Overheid (Open Government Act)). However, with regards to media council reforms, media concentration, ethical standards in public service media, online content moderation, SLAPP cases, and political advertisements and micro-targeting, there are still challenges and areas for improvement. Despite some concerns regarding media pluralism and media freedom, no particular recommendations were made to the Netherlands in the 2023 Rule of Law Report regarding media pluralism and media freedom.







Regarding checks and balances, there has been regression compared to last year. Civic space is shrinking: consultation of stakeholders during the drafting processes of legislation or policies is criticised, several proposed bills put pressure on the independent role such organisations play within a democratic society, the right of peaceful assembly is under threat, and the use of force by police is worrisome. There were no recommendations from the European Commission in this area.

The civic space in the Netherlands is classified as open but has remained under pressure since the last report. There were no recommendations made by the Commission in this area last year.

Regarding the disregard of human rights obligations and other systemic issues affecting the rule of law environment, there was no progress

from the previous year. In light of the recommendations of the European Commission, change was unsatisfactory in this area. Despite the *Toeslagenaffaire* (childcare allowances affair), the Dutch government persists in using algorithms that jeopardise essential human rights like privacy and non-discrimination.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression No progress Progress



Justice system

Key recommendations

- *While embracing digitalisation in the justice system, ensure that accessibility remains a priority.*
- *Acknowledge the positive trend in increasing the number of published judicial decisions and continue to support this. Providing accessible and transparent information contributes to public understanding of judicial decisions and fosters trust in the legal system.*
- *In response to the legal aid system challenges, the government should consider comprehensive reforms. This includes addressing the financial incentives for litigation companies and ensuring fair compensation for legal aid professionals, especially concerning inflation and the time spent on each case.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

At Hof Den Bosch, some judges in the criminal and tax law teams were not sworn in correctly because the correct text was not used when

taking the oath of office. Instead of the form intended for judicial officers (judges and counsellors), the form for the swearing in of court officials (civil servants of the state) was used. Because of this imperfection, the Attorney General to the Supreme Court filed a cassation in the interest of the law. This raises the question of whether a judgement should be set aside

if it was (partly) rendered by a counsel who did not take the oath or promise in accordance with the form for judicial officers. The Tax Chamber of the Supreme Court, referring to a concurrent judgement of the Criminal Chamber (ECLI:NL:HR:2022:1438), answered this question in the negative.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The Minister for Legal Protection has decided to extend for three years the employability of judges and counsellors over 70 years of age. To this end, he submitted a bill to the House of Representatives on 16 May 2023. It was accepted without an official vote on 12 October 2023 (as a so-called ‘*hamerstuk*’, or ‘rubber-stamp agreement’).¹ Currently, the status of the bill is “awaiting a note in response to the report”, and it remains unclear when this bill will be implemented.²

Allocation of cases in courts

The information provided in the 2022 Rule of Law Report³ remains valid, namely:

“In January of 2020, the Judiciary published a Case Allocation Code, a principle-based instrument (not legislation). It aims to ensure that cases are allocated to a particular judge

based on predetermined objective criteria. The code should make it verifiable why a certain judge handles a certain case. As explained in the contribution to the Rule of Law Report from 2020, the Code incorporates the ECtHR rulings regarding clarity, transparency, judicial independence and impartiality of assigning court cases: important requirements for guaranteeing the right to a fair trial (article 6 ECHR). Article 3 of the Code dictates that the allocation of cases shall happen in an objective manner that ensures the impartiality and independence of timely and competent justice. Article 4 adds that allocation is to be done randomly.

“Since then, courts have adopted case allocation rules for different sectors, including exceptions: cases that are not allocated randomly because their allocation requires tailor-made solutions. Examples include (potentially) high-profile cases, ‘mega cases’ and cases that transcend jurisdictions. The Explanatory Memorandum accompanying the code does give examples of cases that require a tailor-made approach, but also states that a precise description of such cases cannot be given. This makes the category of ‘tailor-made cases’ potentially limitless and indeterminate, and calls into question the value of the code in the context of randomisation and thus fair administration of justice. According to a legal analysis in the Dutch Lawyers Magazine (*Nederlands Juristenblad*), ‘a first impression of the drafted case allocation schemes is not

1 https://www.tweedekamer.nl/debat_en_vergadering/plenaire_vergaderingen/details/activiteit?id=2023A06651

2 <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A36358>

3 https://dq4n3btxmr8c9.cloudfront.net/files/V6rDPx/NETHERLANDS_Rule_of_Law_Report_2022__1_.pdf

hopeful in this respect, as rather broad categories of tailor-made case allocation seem to be designated.”

Pursuant to Article 21 of the Judicial Organization Act, the board of each court adopts case allocation regulations. These determine for each place of session the categories of cases for which hearings are held in that place of session. In doing so, the board of the court takes into account the importance of good accessibility to justice.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

As mentioned in the 2022 report,⁴ “Judges cannot be held accountable for their rulings. There is a system of appeal and reversal by the Supreme Court. The mere fact that judges cannot be held accountable for their rulings results from the principle of judicial independence. There is a system of complaints procedure concerning complaints of treatment, primarily at the court where the judge is appointed.⁵ A system to file a complaint with a prosecutor is provided for as well.”

The national ombudsperson provides for a complaint system concerning the acts of the

Public prosecutor.⁶ For judges this is not possible. Also, the prosecutor can, as a ‘body’ of the state (not personally), be civilly sued (this is not common).

Remuneration/bonuses for judges and prosecutors

Judges’ and prosecutors’ remunerations are limited as stipulated in *Wet normering topinkomens* (Law on standardisation of high-level incomes). The judiciary and the prosecutor’s office publish an annual report that provides insight into salaries. The most recent reports concern the year 2022. The maximums are adjusted annually by ministerial regulation (indexed). In 2024, the general maximum is €233,000, including taxed expense reimbursements and employer pension contribution.

Remuneration differences in the judiciary

In his letter from 24 February 2023, reacting to the report “Research on Pay Disparities”, the Minister for Legal Protection noted the following:

- The report shows that female judges and prosecutors earn on average 3.5% less than their male colleagues at the start of their training. Upon appointment as a judge or prosecutor, this pay gap no longer exists. The study looked

4 https://dq4n3btxmr8c9.cloudfront.net/files/V6rDPx/NETHERLANDS_Rule_of_Law_Report_2022_1_1_.pdf

5 <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Over-de-Hoge-Raad/Bijzondere-taken-HR-en-PG/Paginas/Klachtbehandeling-volgens-de-Wet-op-de-Rechterlijke-Organisatie.aspx>

6 <https://www.nationaleombudsman.nl/openbaar-ministerie>

at all judges and prosecutors who started their training between 2016 and 2021.

- At that start, there appears to be an unadjusted difference of 7.7% on average in salary between men and women. That difference can be partly explained by factors other than gender, such as age, hours of work and experience.

- When corrected for these factors, an average wage gap of 3.5% remains in favour of men at the start of training. When further disaggregated, it can be seen that there are differences in the pay gap at age groups. At higher age categories, a larger average pay difference is found in favour of the male employee, while at the lowest age categories (26 to 35) no significant difference is found. Once judges and officers are appointed, there is no difference in salary between men and women.

Independence of the Bar (chamber/association of lawyers) and of lawyers

Currently, the bill “Adaptation of the Lawyers Act and some other laws in connection with the position of the legal profession in the legal order and revision of the supervision of lawyers (Law on the Position and Supervision of the Legal Profession)” is pending. According to the proposal, the advocate profession should come under the supervision of a single independent national regulator, the newly created Independent Supervisor of the Legal Profession (Onafhankelijke Toezichthouder Advocatuur,

OTA). In 2015, the Position and Supervision of the Legal Profession Act placed supervision with the 11 local deans.

The supervisor is to supervise and enforce all lawyers registered in the Netherlands, independent of both the government and the profession. The OTA will be a body of the public law professional organisation the Netherlands Bar Association (NOvA) but will carry out its work as supervisor independently of the legal profession. The supervisor will have the possibility to file a disciplinary complaint with the disciplinary court or to impose a fine or order under penalty. Lawyers cannot invoke their duty of confidentiality towards the supervisor, as the supervisor will have a similar duty of confidentiality and right to privilege.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

A good example of this are courts’ decisions on complex and sensitive matters impacting the policies of the state, such as climate cases revolving around state liability following the ‘Uganda case’. Critics argued that judges venture into the realm of politics. Other examples are: proceedings of “Vluchtelingenwerk Nederland” seeking improvement of the quality of the reception of asylum seekers, rulings of the Administrative Law Division of the Council of State on the Nitrogen Action Programme and proceedings about COVID-19 measures. In February 2023,

a parliamentary majority agreed⁷ to a motion⁸ to impose further representativeness requirements on interest groups representing general interests in lawsuits against the state.

In April, the minister for legal protection wrote a letter⁹ to the second chamber about the motion, in which he provides an explanation regarding the implementation of the motion and emphasises the importance of access to justice for interest groups undertaking collective actions. He also discusses the amendment of the Mass Damages in Class Actions Act (WAMCA), where the requirements for interest groups have been tightened, including the representativeness requirement. The letter mentions that the WAMCA will undergo an evaluation in 2025, with representativeness being a part of it. Additionally, reference is made to the annual meeting involving relevant parties to monitor the functioning of the new regulation.

In May, the commission for Justice and Safety submitted a report of a written consultation regarding the response to the amended motion from Member Stoffer.¹⁰ Since then, there have been no further documents submitted or mentions of the motion made. It is now to the government still to be formed to continue with the motion.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

The administration is considering measures aimed at removing the financial incentives for ‘no cure, no pay’ companies to initiate proceedings and reducing the litigation costs and intangible damages payable to them. The ‘no cure, no pay’ companies depend on the litigation fees paid and compensation for immaterial damages when the handling time of legal proceedings is exceeded. This is a *modus operandi* and revenue model that encourages as many eligible litigation acts as possible. On 23 March 2023, the State Secretary for Finance – Taxation and Revenue (*staatssecretaris van Financiën – Fiscaliteit en Belastingdienst*) sent a plan of action to the House of Representatives containing six measures to limit the aforementioned practices.

The Minister for Legal Protection (*Minister voor Rechtsbescherming*), in a letter dated 27 June 2023, set out the measures to improve access to justice. According to the Minister, access to justice means, namely:

- (i) having access to reliable information about rights and obligations: the Minister says he wants to contribute to objective information about citizens’ rights and obligations by

7 <https://open.overheid.nl/documenten/ronl-5a25c7f357c15d7e273284ae0ff94758ffa3b611/pdf>

8 <https://open.overheid.nl/documenten/ronl-5a25c7f357c15d7e273284ae0ff94758ffa3b611/pdf>

9 <https://open.overheid.nl/documenten/ronl-5a25c7f357c15d7e273284ae0ff94758ffa3b611/pdf>

10 <https://www.tweedekamer.nl/kamerstukken/detail?id=2023D22430&did=2023D22430>

ensuring better information about different ways of resolving disputes. That is somewhat different from information about rights and obligations, the pillar under which the Minister places this measure. This also shows that the Minister is expressly heading for conflict resolution, not by the courts.

(ii) being able to obtain advice and support in exercising rights: One of the measures referred to is the Legal Aid System Renewal (*De stelselvernieuwing rechtsbijstand*). Other measures include the encouragement of mutual agreement by increasing a starting fee for mediation from the judiciary and an exploration of Online Dispute Resolution (ODR).²⁸ The Minister is thus explicitly setting his sights on encouraging parties to find agreement.

(iii) resolving disputes; being able to obtain a decision from a neutral body: The Minister mentions a measure the provision of additional funding for the Foundation for Consumer Disputes Committees. Therefore, he provides additional money for out-of-court dispute resolution. Other measures mentioned concern the judiciary. For example, he wants to reduce court fees. The reduction of court fees can therefore contribute to external accessibility. The Minister has now

proposed a 25% reduction for claims under €100,000.

Legal aid system

On 20 April 2023, the Minister for Justice and Security sent a letter to Parliament detailing his plans for the legal aid system, which entail amongst others the raising of tariffs and the review of the amount of hours to be compensated per case.¹¹

As it stands, the plans prove to be insufficient to cover inflation. As stated by the Association of Legal Aid Attorneys (Vereniging Sociale Advocatuur Nederland - VSAN), the inflation since the year 2011 is 33%, whereas the tariffs have only been raised by 6.6%.¹² The association calls on the government to compensate the remaining 25% loss.

On 8 November 2023, the Minister sent another letter to Parliament detailing certain aspects of financial compensation of legal aid professionals.¹³ In this letter it was announced that the Minister is in the process of setting up a committee that will evaluate the average time spent on a case by legal aid professionals in 2022 and 2023 with the aim of possibly amending the system as of 1 January 2025. While we welcome this development, we deem

11 Minister van Veiligheid en Justitie, Kamerbrief - Plan van aanpak sociale advocatuur, 20 April 2023, <https://open.overheid.nl/documenten/ronl-88a9aa33359b661ea90415ef0e230dd84d6db3c3/pdf>.

12 VSAN, Brief de Voorzitter van de Tweede Kamer der Staten-Generaal, 21 April 2023, <https://www.vsanadvocaten.nl/nieuws/2023/reactie-kamerbrief-plan-van-aanpak-sociale-advocatuur>.

13 Minister van veiligheid en Justitie, Kamerbrief – Uitvoering motie Sneller – noodinvestering in de sociale advocatuur, 8 November 2023, <https://open.overheid.nl/documenten/dpc-7da10f91e4d6694691d5b3b3a7b622e-b3ac8f119/pdf>.

it unnecessary to create a separate committee. The necessary information may be more easily and efficiently obtained from the Council for legal aid (Raad voor de Rechtsbijstand) and the Dutch Bar Association (Nederlandse Orde van Advocaten).

Furthermore, also in 2023 the number of legal aid professionals has slightly decreased. In November and December 2023, 4,380 people were registered as active legal aid attorneys – ‘active’ meaning that the attorney has handled at least one legal aid case that month. Also, the training of young legal aid attorneys is lagging behind. The government has started subsidising the training of such attorneys, but the subsidy, coupled with the non-indexed tariffs, make it difficult for social law firms to train young attorneys. These factors also make the profession of legal aid attorneys very unattractive for young legal professionals.

Therefore, we urge the government to provide full compensation for inflation and a fair compensation for the time spent on each case. Moreover, we call upon the government to closely monitor the training of young legal aid attorneys and to increase the subsidies if needed. Whereas we welcome initiatives by commercial law firms to assist legal aid firms, like the VSAN we are opposed to the suggestion by the government that commercial law firms should be obliged to financially support legal aid firms. The duty and obligation to maintain a functioning legal aid system rests

upon the government, who cannot delegate or transfer this duty upon private parties such as other (commercial) law firms.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Digital developments of procedures are gradual and fragmented. Developments vary by jurisdiction and legal body:¹⁴

Criminal

The police, the Public Prosecutor’s Office, the judiciary and the prison system are aligning their digital systems. This allows them to exchange documents and other information with each other more quickly and easily.

Lawyers receive digital files in almost all criminal cases in the first instance. And also increasingly in appeals.

Administrative

As of 4 December 2023, digital litigation is possible on appeal, including appeals for all tax cases. This applies to citizens and to lawyers and other professionals. The Immigration and Naturalisation Service (IND) digitally exchanges information with the judiciary in immigration cases.

14 As stated on <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtspraak-in-Nederland/digitalisering-rechtspraak>

In regular immigration cases, lawyers can choose whether to litigate digitally or on paper. Lawyers have been required to litigate digitally in asylum and detention cases since 2017. From 4 December 2023, all administrative courts have facilitated digital proceedings.

Civil

Since 27 November 2023, you can litigate digitally in civil juvenile law (youth protection cases) and in custody and visitation cases at the District Court of Gelderland. Lawyers have been able to litigate digitally in summary proceedings in commercial and family cases at the District Court of Rotterdam since 16 October 2023. After a successful pilot program, the other courts will also start digital access for this case flow. Lawyers have been able to communicate digitally in compulsory care cases at all courts since 27 June 2022.

Since 11 April 2022, lawyers at the District Court of Midden-Nederland (location Utrecht) and the District Court of Overijssel (location Almelo) can submit a joint divorce petition digitally. Since 15 May 2023, this has also been possible at the Amsterdam District Court, and since 6 November 2023 at the district courts of Rotterdam, Limburg and Midden-Nederland (in Lelystad).

The Child Protection Council and certified institutions exchange digital information with the Judiciary in cases concerning supervision and removal from home.

Supreme Court

Digital proceedings (via webportal) are possible in criminal, administrative and civil proceedings. In principle, digital proceedings are mandatory at the Supreme Court.

Publishing more judicial decisions

According to the yearly report of the judiciary 2022 (the latest annual report) the number of published judicial decisions has increased from 45,100 to 49,800. The upward trend in terms of the number of judgments published on rechtspraak.nl continues. At the end of 2021, the More and Responsible Publishing program was launched. The goal of this program is to publish the vast majority of all court decisions. The program should gradually ensure that publication of judgments on rechtspraak.nl will be the starting point.

Anti-corruption framework

Key recommendations

- *The government should equip the body of oversight for the Code of Conduct of the House of Representatives (College Onderzoek Integriteit) with the ability to independently institute investigations and sanctions.*
- *Create an independent oversight body for the Eerste Kamer that is at an appropriate distance from day-to-day politics, and that can administer sanctions and can investigate breaches reported by citizens.*
- *Revise the current Whistleblower Protection Act and amend it to be in line with the EU Whistleblower Protection Directive (WPD).*

Levels of corruption

GRECO has published the second compliance report¹⁵ for the Netherlands regarding the recommendations made in its fifth round of evaluation.¹⁶ We regard recommendations four (iv) and six (vi) as the most noteworthy recommendations that have not been fully implemented.

Firstly, GRECO states that the government has to take further steps in regulating the contact between ministers or state secretaries (henceforth: public officials) and lobbyists. GRECO points out that regulating lobbying activities is still a key point of concern for the Netherlands, where not enough action has been taken. In line with GRECO, we believe that the government should take concrete steps towards increased transparency by introducing

a legally binding lobbying register. Research by Transparency International shows that lobbying transparency is still inadequate and lags behind other Western EU states. A majority of parliamentarians has already supported the idea of a lobby register. The issue was also mentioned on several occasions during the election campaign and gained traction in the public debate. Furthermore, the legislative footprint should be enshrined in law to make it a more effective tool that gives insight into the input from third parties that underlie decisions made in legislation. The existing legislation, publishing the agendas of public officials and the lobbying paragraph, is non-binding and inadequately implemented by the government. The government has promised to improve the existing rules. However, we believe that minor adjustments will be insufficient to address the

15 <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680acf3dc>

16 <https://www.coe.int/en/web/greco/evaluations/netherlands>

concerns about opaque interest representation in the Netherlands.

Secondly, GRECO states that more has to be done when it comes to post-term employment restrictions for public officials. Following GRECO's conclusions, our recommendation is that the body of oversight for post-term employment rules (the Advisory Board on the Legal Status of Public Officials) gains the ability to independently issue sanctions for public officials who neglect negative advice about post-term employment in the private sector after the end of their term. As they are no longer in function, this recommendation fits within the boundaries for sanctioning public officials that the Council of State has set with regard to the Constitution. This step will further aid in the successful implementation of GRECO's recommendation. Our reservations about the current commitment of the government on these points can be found under the next section.

In the field of corruption, the Commission recommended the Netherlands should "complete the revision of rules on revolving doors involving former ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities." The proposed revolving door legislation (*Wet regels gewezen bewindspersonen*), which is still up for consultation at the Council of State, includes non-binding cooling-off rules. The proposal prescribes that ministers and state secretaries request advice on the admissibility of a new function in the private sector. The advice

is provided by the Advisory Board on the Legal Status of Public Officials (*Commissie Rechtsregels politieke ambtsdragers, CPRA*). This committee bases its advice on a questionnaire to be filled out by a public official in advance. If the public official accepts their new position, the advice is publicly published online. As stated above, the body of oversight is unable to sanction public officials that do not adhere to the advice. The government argues that naming and shaming is seen as a sufficient deterrent.

Furthermore, the Commission recommended that the Netherlands should "establish stricter transparency rules on lobbying for members of the Government and Parliament." Since then, the government has commissioned a research report investigating the possibility of a lobbying register.¹⁷ Based on the report the government concluded that, instead of introducing a lobbying register, it is better to focus on further improving the publication of public officials' agendas and including a lobbying paragraph in each bill. The government argues that they are not able to effectively define a lobbyist and adds that a mandatory lobbying register would lead to an unwanted restriction of access for normal citizens to public officials. Again, our reservations about these decisions can be reviewed under the next section.

Interestingly, as noted above, both of these recommendations from the European Commission were flagged in GRECO's second compliance report as key points of concern that have not

17 <https://www.rijksoverheid.nl/documenten/rapporten/2022/12/01/afwegingskader-legitieme-belangenvertegenwoordiging>

yet been addressed sufficiently by the Dutch government.

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

As mentioned above, the government provided a proposal for the cooling-off period (*Wet regels gewezen bewindspersonen*).¹⁸ The bill is still up for consultation at the Council of State. We are concerned that the government does not follow international best practices. The proposal should include a mandatory cooling-off period with adequate sanctions to deter undue influence and prevent conflict of interest through the revolving door between the public and private sector. One of our primary concerns is that the advice on post-term employment is non-binding. The government argues that the mechanism of ‘naming and shaming’ provides enough of a deterrent for public officials to not neglect the advice. However, such a system relies too heavily on individual responsibility and outsources sanctioning to the public. The government hopes that the public will provide pressure to revisit a negative outcome. We argue that mandatory rules would set a clear standard and reduce ambiguity. In addition, the body of

oversight does not have the remit to conduct an independent review, instead it depends on the information provided by the public officials. This one-sided information position should be addressed by giving the advisory board sufficient investigative capacities. GRECO’s second compliance report has underlined that the proposed legislation fails to meet their requests and is not up to par with international best practices.

The *Wet gewezen bewindspersonen* contains an exemption clause that enables ministers to provide lenience with regards to the lobby prohibition (*het lobbyverbod*) and the revolving door rules (*draaideur*). However, if the minister deems it necessary to provide this leniency, we think that the advice from the Advisory Board on the Legal Status of Public Officials should be binding. It should not be possible for a minister to make this decision unilaterally. Currently, involving the Advisory Board on the Legal Status of Public Officials is optional.

Furthermore, for the second time, the body of oversight for the Code of Conduct of the House of Representatives (*College Onderzoek Integriteit*) advised the House of Representatives to vote in favour of a seven-day suspension of an MP for breaching the rules.¹⁹ The house voted in favour of a breach on 19 December.²⁰ Once more, the advice concerns a breach of failing to provide

18 <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/02/20/concept-wet-regels-gewezen-bewindspersonen>

19 <https://nos.nl/artikel/2496995-integriteitscommissie-kamer-wil-schorsing-drie-kamerleden-voor-democratie>

20 <https://www.nu.nl/politiek/6294750/volledige-kamerfractie-fvd-geschorst-vanwege-niet-melden-nevenfuncties.html>

ancillary positions and additional income, by the same MP (Thierry Baudet) who was sanctioned last year. However, this time the advice also includes the suspension of two other MPs from the same party. We are concerned about this development as the previous punishment clearly did not lead to a change in the MPs' behaviour. We continue recommending that the government equip the body of oversight with the ability to independently institute investigations and sanctions. The current process requires the House of Representatives to vote on the advice for sanctioning. This method of sanctioning is political in nature, which undermines the legitimacy of the results. If the oversight body would be able to independently sanction breaches, the integrity of the process gets protected from the allegation that the sanctions are politically motivated. On top of this, an increase in the penalty for neglecting the political integrity rules seems necessary, as the current regime is not sufficiently deterring violations.

We also emphasise the need for additional rules in the Senate (Eerste Kamer). Currently, there is no adequate sanctioning mechanism for integrity violations in the Senate. Based on the code of conduct, the president and vice presidents (Huishoudelijke Commissie) of the Senate play a supporting role in the assessment of breaches of the code of conduct and support Senators with declarations on the

Senate website. There is also a confidant people can speak to. However, we would recommend instituting an independent oversight body that is at an appropriate distance from day-to-day politics, that can administer sanctions and can investigate breaches provided by citizens.

There are no still no provisions on trading in influence in the Netherlands' legal framework. The legal framework does not make any specific mention that bans illicit enrichment.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

As noted above, the government focuses on improving the publication of public officials' agendas and including a lobbying paragraph in each bill.²¹ In June 2023 a stricter implementing directive was introduced to aid in improving the registration of the agendas of public officials. However, research from the NGO Open State Foundation has shown that the transparency of public officials' agendas has deteriorated over the past year.²² Only 12% of all registered meetings have been published with complete information. Furthermore, a large discrepancy between the number of registered meetings between the public officials gives rise to the question of whether all meetings even

21 <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/07/kamerbrief-verbetering-openbare-agenda-s-bewindspersonen-en-paragrafen-in-memories-van-toelichting>

22 <https://openstate.eu/nl/2023/11/onderzoek-open-state-wijst-uit-agendas-van-ministers-zijn-minder-transparant-geworden/>

get registered in the first place. With regards to the legislative footprint (*lobbyparagraaf* in Dutch), no systematic review has been undertaken (it has been announced), and we are yet to see improvement. In its current form, it is not compatible with GRECO recommendations and insufficient to detect undue influence via lobbying.

Amendments of the Political Finance Act (*Wet Financiering politieke partijen or Wfpp*) have led to the prohibition of financing or financial support for political parties by foreign entities, but Dutch citizens living abroad are excluded from these measures. Furthermore, a cap on donations was introduced at €100,000 from a single donor per year, and donations and gifts surpassing €10,000 from a single donor in one year have to be published within three days. The new Law on Political Parties (*Wet op politieke partijen or Wpp*), which is currently under consultation, bundles current provisions and adds new legislation. The law introduces small subsidies for local-level political parties and local departments of political parties have to comply with the transparency rules that apply at the national level. The new law further provides for an independent authority of oversight that will be responsible for enforcement of the rules and payment of subsidies. We consider the steps towards stricter legislation and independent authority as steps in the right direction.

However, we emphasise the need to involve civil society stakeholders in the policy-making process and want to stress the need to make financial information publicly accessible in an easy-to-read format or dedicated website. Centralised and easy-to-access information will aid civil society and the authority of oversight in their functions of supervision and control. Effective oversight with the ability to examine political financing is just as important as implementing stricter regulation.²³

The Netherlands is one of the worst performing countries in the EU with regards to beneficial ownership transparency. After the ruling by the CJEU, the Dutch government decided to stop the provision of information from the beneficial ownership register with immediate effect and announced it wants to definitively close it down for the public.²⁴ Currently, only a few parties, such as the investigative services and the tax authorities, can access the Dutch BO register. Following the ruling, only banks, notaries, certain authorities, journalists and civil society with a legitimate interest would be able to access the register under certain conditions. A recent study by Transparency International shows that one year after the CJEU ruling the Netherlands, along with Cyprus, Malta and Greece, has consistently denied access to the register, even if journalists and civil society demonstrate their legitimate interest.²⁵ A

23 <https://www.nporadio1.nl/fragmenten/geld-of-je-leven/57ad78da-eb89-403a-aa27-d0f325be30e4/2023-10-24-hoe-komen-partijen-aan-hun-campagnegeld>

24 <https://nos.nl/artikel/2498192-kabinet-wil-toegang-tot-anti-witwasregister-definitief-beperken>

25 https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access?utm_source=twitter&utm_medium=social&utm_campaign=dirtymoney

concern that is further amplified by the fact that the Netherlands holds the 12th place on the Financial Secrecy Index scoring extremely high on the scope the legal- and judicial system allow for financial secrecy.²⁶ In contrast, many other European countries still have a publicly accessible BO register or have sound provisions to facilitate access for journalists and civil society with a legitimate interest. We are concerned about this development, as beneficial ownership data allows journalists and civil society to detect conflicts of interest, trace hidden assets, as well as serving as a tool in sanctioning Russian elites. The access to the BO register for journalists and civil society in the Netherlands, and the rest of Europe, is therefore of indispensable value in the battle against corruption.

Rules on preventing conflict of interests in the public sector

In addition to the measures mentioned on the cooling-off period in the section above, the government published a handbook that promotes the integrity of public officials. The policy document is a bundling of existing rules; no new rules have been added. The same has been done for public officials in the lower levels of government (*province, municipality*). In addition, the code of conduct for public officials will be discussed yearly in the council of ministers, which will be preceded by integrity training. Furthermore, a confidant regarding potential conflicts of interest for public officials has been introduced. In doing so, the government has complied with GRECO's recommendation for

the provision of an ad hoc reporting mechanism dealing with situations of conflict of interest that have arisen.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In the Netherlands, the Whistleblower Authority (Huis voor Klokkeluiders) is responsible for the practical implementation of the law protecting whistleblowers, currently the Whistleblower Protection Act. This law came into effect in February 2023. It shifts the burden of proof to the employer and provides for the protection of a wider range of reporting entities. Furthermore, it makes it possible to directly report externally, instead of first having to report internally. Additionally, it provides an extension of the ban on disadvantage and provides stricter requirements for the internal reporting mechanism. However, research by Transparency International shows that the Netherlands is one of the 19 countries whose legislation is not up to par with the EU Whistleblower Protection Directive (WPD). We therefore strongly recommend the government to revise the legislation and amend it in line with the WPD. For the Netherlands this means strengthening further support for whistleblowers on a legal and psychosocial level, as well as including full compensation for the damages incurred on the whistleblower in the process and providing optimal and effective protection. Additionally, companies or organisations that actively sabotage whistleblowers

26 <https://fsi.taxjustice.net/>

should be sanctioned in the short term. When revising the legislation, the government should steer away from, once again, deciding on a minimal interpretation of the WPD, and strive for full implementation of the directive and compliance with international best practices. This calls for an urgent and transparent legislative process that timely includes relevant stakeholders and civil society.

Furthermore, we'd like to address the fraud involving EU funds by a foundation linked to the University Medical Hospital Leiden (LUMC). The Board of Directors of the hospital knew about the fraudulent practices of the foundation as early as 2018 after an internal investigation had concluded that the foundation knowingly committed fraud for financial gain.²⁷ Additionally, a PhD student, whose contract was affected by the scheme, blew the whistle on the fraudulent practices in 2022 and got no support from the responsible department. It was only after she reported it to the European Research Executive Agency (REA) in the same year that the fraudulent practices were uncovered. The case underlines the need for the sound implementation of internal whistleblowing mechanisms. Under the new Whistleblower Protection Act, procedures for internal reporting have been tightened. Its effectiveness, however, falls or stands with the compliance of organisations. The ability that the Whistleblower Authority has under the new legislation to issue administrative fines

when the Whistleblower Protection Act is breached should function as a deterrent *and ex post* punishment. All in all, this case should further ignite the government's urgency for getting its whistleblower legislation up to par with the EU WPD.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, health-care, other)

The Netherlands does not publish sufficient data on public procurement. An analysis by Follow the Money shows that more than 60% of procurement contracts are not published online.²⁸ This makes the Netherlands the worst performing country in Europe. The Netherlands only publishes contracts above the European threshold of €140,000, which leads to a low publication rate; less than 90% of the total amount of money spent on procurement is published online. Whereas other European countries have made efforts to improve procurement systems and the subsequent quality of the published data, the Netherlands has made no such efforts. This leads to inadequate reporting and substantial gaps in the visibility of public procurement contracts.²⁹ This is especially striking given that during the pandemic a contract had been awarded to a company providing faulty PPE masks. The Dutch

27 <https://www.omroepwest.nl/nieuws/4775713/onderzoek-top-lumc-wist-al-jaren-van-fraude-maar-deed-niks>

28 <https://www.ftm.nl/artikelen/nederland-meest-intransparante-eu-land-bij-openbare-aanbestedingen>

29 <https://dream.gov.ua/en>

government should improve transparency in public procurement contracts like many of its European peers have done. A recent example is the work done by the Ukrainian government, which has created an interactive platform where insight is given into the details of all public procurement contracts. This underlines that public procurement doesn't have to be opaque, and we strongly recommend that the government sets up or supports a similar transparency mechanism in the Netherlands.

Furthermore, in the Council of Ministers, the Netherlands should be a champion of the anti-corruption package proposed by the Commission. Modernising the existing EU anti-corruption legal framework and enhancing the sanctioning toolbox under the CFSP are key steps in the joint fight against corruption. At the same time, to effectively fight corruption, the Netherlands has to facilitate access for journalists and civil society with a legitimate interest to the UBO-register, as mentioned above. Additionally, the current law for the prevention of money laundering and terrorism financing provides that institutions and professional groups that deal with cash flows, or the purchase and sale of goods should monitor clients and report suspicious transactions. The new action plan for money laundering was set to further lay down a ban on cash payment for goods surpassing €3,000, improve the effectiveness of signalling suspicious transactions by improving the information exchange between banks and monitoring institutions. However, after the current cabinet resigned, these plans

have been marked as controversial, which means no action can be taken until a new cabinet has taken office. We strongly recommend that the baton in this legislative process is taken up as soon as possible. Going forward, the government should take up more responsibility in a coordinating role in the battle against money laundering, instead of a laissez-faire approach.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Transparency International finds in their 2022 annual report “Exporting Corruption” that the Netherlands still falls in the category of limited enforcement.³⁰ In the period 2018-2021, the Netherlands opened 11 corruption investigations, commenced two cases and concluded three cases with sanctions. The main weaknesses are the tendency to enter into settlements that are opaque; a failure to increase prosecution of individuals with responsibility for foreign bribery; the decentralised organisation of enforcement and the inadequacy of complaints mechanisms and whistleblower protection. There are no published, updated statistics on foreign bribery enforcement. An annual enforcement report contains overall developments, statistics and data but does not have separate foreign bribery enforcement data. Our recommendations are to publish clear statistics about foreign bribery cases; avoid settlements to allow for greater transparency in the enforcement of

30 https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf

foreign bribery and increase overall awareness and confidence in enforcement; further increase the protection of whistleblowers; and increase

transparency and involvement of stakeholders by publishing information about ongoing investigations and decisions/settlements.

Media environment and media freedom

Key recommendations

- *Enhance measures against harmful content.*
- *Address media concentration issues.*
- *Reform and strengthen media councils.*

Media and telecommunications authorities and bodies

Existence and functions of media councils or other co- and self-regulatory bodies

The main self-regulatory body for the media is the Council for Journalism (Raad voor de Journalistiek). This is an independent body, where interested parties can submit complaints about journalistic activities. The Council assesses whether a journalist has done their work carefully and whether a publication has exceeded the boundaries of journalistic ethics. The Council can only provide an opinion, and they do not have the ability to impose rectifications or sanctions. A number of media are no longer recognising the Council, as they argue that the Council is unequipped to assess complex investigative journalism. Furthermore, the Council has received criticism for ‘juridification’. Several media outlets argue that the Council is abused by some complainants as a ‘gateway’ for

a real trial. A hearing at the Council provides the complainant with a lot of information that can be useful later in a real trial and a ‘victory’ at the Council can be used by the complainant in court as an argument. Following these criticisms, the Council announced several reforms in November 2023 to address the concerns voiced. In December 2023, broadcaster BNNVARA (who suspended collaboration with the Council 3 years ago), announced they would be recognising the Council again.

On the digital front, an important development took place in August 2023 when the Digital Services Act (DSA) entered into force in all EU Member States for the largest digital services, including platforms such as Facebook/Meta, Twitter/X, Instagram, TikTok, LinkedIn and Youtube. The DSA is an important step forward in protecting press freedom and the safety of journalists in the online space. By 17 February 2024, all EU Member States need to have appointed a Digital Services Coordinator

for compliance supervision. In the Netherlands, this will be under the Dutch Consumers & Market Authority (Autoriteit Consument & Markt), which will monitor the compliance of platforms established in the Netherlands. A small part of the supervision regarding personalised advertisements will be under the Dutch Data Protection Authority (Autoriteit Persoonsgegevens).

Aside from the formal supervision, a public-private partnership was set up called the Online Content Moderation Project (PrOCOM)³¹ to ensure citizens, the government and the online sector can more easily act against online content that is illegal, causes damage, or has undesirable social impact. The majority of very large platforms (including Meta, Google/YouTube, Microsoft, and TikTok) are part of this partnership. X has not joined the partnership, which is concerning as there is significant illegal content on X. Furthermore, in cases where it impacts journalists, it has been cited that it is impossible to get into contact with X's content moderation team.

In line with the proactive action against illegal content via PrOCOM, we would welcome similar proactiveness for harmful content. Most online violence has not (yet) been defined as illegal in national legislation, even though it is incredibly harmful and can result in offline attacks and self-censorship. Additional measures are therefore needed to fight against the rise of harmful online content.

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

State advertisements are subject to specific regulations to ensure they are transparent, fair and not misleading. In the Netherlands, guidelines have been drawn up to regulate government communications. The Dutch Media Authority and the Advertising Code Committee (Reclame Code Commissie) supervise and enforce these guidelines.

Every year, the Dutch Media Authority (Commissariaat voor de Media) allocates the amount of airtime to political parties on radio and television. When there are elections for the House of Representatives, which was the case in November 2023, the Dutch Media Authority allocates election broadcasting time to political parties to ensure the airtime is distributed equally and balanced. The available times are allocated through a lottery system by an independent notary.

However, in the runup to the November 2023 elections, there were concerns with political advertisements on social media through microtargeting. The Dutch Data Protection Authority argued that the effects of this could lead to unfair election results. It is for this reason that the Ministry of Interior has been working on a law that would restrict micro-targeting

31 <https://hetccv.nl/themas/cyberveiligheid/online-aangejaagde-ordeverstoringen/project-online-content-moderatie/>

for political parties. The Political Parties Act (WPP) will include a special chapter on transparency rules for political advertisements and microtargeting.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

On a yearly basis, the Dutch Media Authority publishes a Media Monitor. The 2023 report signals that there is an increasing market share with fewer media companies. Furthermore, the Dutch media landscape is characterised by a high concentration of (foreign) media ownership.

In June 2021, RTL Group announced its intention to take over Talpa Network. In March 2023, the Dutch Consumers & Market Authority rejected the planned merger due to concerns over competition in the advertising market. The Consumers & Market Authority concluded that the merger would result in one party having too much power, which could enforce higher prices of television advertisements and the retransmission of channels.

In April 2023, Mediahuis announced the takeover of Radio Veronica from Talpa Network. The media company Radiocorp, the owner of 100%NL, Slam! and Sunlite, was also taken over by Mediahuis. In addition, Mediahuis announced the bundling of their various news companies in the Netherlands under one overarching organisation. Mediahuis Nederland (owner of *De Telegraaf* and Mediahuis Regional), Mediahuis Noord and Mediahuis Limburg merged into one organisation. NRC

Media, under the name Mediahuis NRC, will remain a separate entity.

In 2023, a cabinet decision on FM frequencies went into effect. This means commercial radio providers will be allowed to own a maximum of three FM frequencies to ensure it is not possible for one or two radio providers to dominate the market.

In December 2023, DPG Media announced its intention for an acquisition of RTL Group. This raises concern about the highly concentrated media landscape in the Netherlands, as this acquisition would lead to even further media concentration.

Public service media

The Dutch Media Authority (Commissariaat voor de Media) monitors compliance with the Dutch Media Law to ensure editorial independence and issues licences to broadcasters. By law, the Dutch Foundation for Public Broadcasting (NPO) is not mandated to concern itself with media content as public broadcasters have editorial autonomy. NPO does address compliance with (among other things) the journalistic quality requirements. As an example, in 2022, financial sanctions were imposed twice against broadcaster Ongehoord Nederland! (ON!) by NPO for violating the journalistic ethics code and for a lack of collaboration within the public broadcasting system. Following research into ON! by the NPO Ombudsperson, the NPO requested the Ministry to retract the broadcasting licence of ON!, which the State Secretary of Culture & Media declined to do, as she lacked legal grounds for such a decision. This

was confirmed by her successor, who stated that the ethical code of the NPO is not a compulsory requirement. The secretary considers ways to include compulsory signatory to the ethical code in the future. This demonstrates that there is a gap in the validating and sanctioning of ethical standards at the moment at the NPO.

In 2022, the Dutch Media Authority announced upcoming research into the processes at national public broadcasters that must guarantee the reliability of journalistic productions.³² This would be combined with research into editorial independence. In the recently published research, the Media Authority has made an inventory outlining the ways in which broadcasters guarantee the reliability of their productions. In the research, the Media Authority refrains from judging the actual reliability of the media offering, as this falls within the responsibility of the broadcasters. The study also does not assess the effectiveness of current safeguards. The results of the research have been discussed with the Dutch Foundation for Public Broadcasting, the College of Broadcasters (het College van Omroepen) and the editors-in-chief of all broadcasters. In addition, another research was conducted into conflict of interest risks for the media.³³ The Media Authority highlighted that while there are some measures to avoid conflict of interest, there is room for improvement. A

set of ‘good practices’ was identified and developed into a handout for media organisations.³⁴

Safety and protection of journalists and other media actors

Rules and practices guaranteeing journalist's independence and safety

In 2019, PersVeilig (PressSafe), a project and joint effort of the Dutch National Association for Journalists, the Dutch Society of Chief-Editors (Nederlands Genootschap van Hoofdredacteuren), the police and the public prosecutor was set up with the aim to reduce violence against journalists. After concerns about the vulnerability and sustainability of PersVeilig, in 2023, the Dutch government ensured structural funding for the initiative. Furthermore, funding was made available to increase the capacity of PersVeilig and reduce the vulnerability of it being led by one person only. The vacancy for this new position was announced in September 2023.

In July 2023, the Dutch Senate passed a bill to criminalise doxing. Doxing is widely used to intimidate journalists by distributing personal information (such as addresses, phone numbers, and information about family members) in app

32 <https://www.cvdm.nl/wp-content/uploads/2023/11/Overzicht-Inzicht-in-betrouwbaarheid-DEF.pdf>

33 <https://www.cvdm.nl/nieuws/tegengaan-belangenverstrengeling-krijgt-aandacht-van-sector-commissariaat-ziet-nog-wel-ruimte-voor-verbetering/>

34 <https://www.cvdm.nl/wp-content/uploads/2023/11/Handreiking-Voorkomen-van-belangenverstrengeling-bij-mediaorganisaties.pdf>

groups and on social media. This can lead to severe offline attacks and threats. The law will enter into force on 1 January 2024.

In October 2023, it was revealed that journalists from De Correspondent were wiretapped in 2022 by the Public Prosecution Office (OM) during a conversation with Sywert van Lienden and his business partners. Sywert van Lienden has been taken to court by the Dutch government for a disputed deal on providing face masks during the COVID-19 pandemic. At the time, De Correspondent was conducting a major investigation into the face masks deal. After the revelation, the Public Prosecution Office released a statement that it only became clear the evening before the meeting that journalists from De Correspondent would be present. They have argued that the wiretapping was allowed according to internal guidelines, even with journalists present.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

There are increasing concerns of transnational threats and repression of journalists in the Netherlands. Former China correspondent for the Volkskrant, Marije Vlaskamp, faced severe threats and harassment. However, many of these threats and harassment acts were subtle and not criminal offences. That makes the threshold for reporting them to the police high, even though it does have a chilling effect on journalists. In the case of Vlaskamp, false bomb threats were made under her name, including at the Chinese Embassy in The Hague. Following these particular threats, a criminal investigation was

opened by the Public Prosecution Service, but has been put on hold “for lack of further leads”.

This is not a standalone incident. In 2020, Pakistani exiled journalist Ahmad Waqass Goraya was attacked and threatened with his life in Rotterdam. Furthermore, there are reports of other foreign journalists, such as Turkish and Russian journalists, facing direct intimidation and threats in the Netherlands.

Foreign journalists in the Netherlands often fall through the cracks in existing support mechanisms such as those of the Dutch Journalist Association and PersVeilig whose mandate is restricted to Dutch journalists. Furthermore, investigating foreign threats (be it to Dutch or foreign journalists), especially when they are very subtle, is complicated. It needs to be ensured that law enforcement is well equipped to investigate and protect targets of foreign threats and intimidation.

Lawsuits and prosecutions against journalists (including) SLAPPs and safeguards against abuse

In March 2023, the Dutch National Association for Journalists and PersVeilig published a research on the legal intimidation of journalists in the Netherlands that shows almost 50% of journalists, and over 90% of editors have been legally intimidated due to a publication. The chilling effect of this is that journalists are more careful with publishing, adapt publications, or sometimes refrain from publishing at all.

Furthermore, the Coalition Against SLAPPs in Europe (CASE), the Media Freedom Rapid

Response (MFRR), and the Dutch National Association for Journalists identified and deplored a current SLAPP in the Netherlands: a case against Het Financieele Dagblad by business owner Willem Blijdorp that was initiated in April 2023. The organizations argued this case to be a SLAPP due to the abusive tactics that are being used. Blijdorp did not opt for summary or preliminary relief proceedings (kort geding), the common route in the Netherlands for cases legitimately aimed at limiting reputational damage following a publication, but instead started main proceedings (bodemprocedure, i.e. proceedings on the merits). These proceedings are much longer than a kort geding and will unnecessarily drive up the legal costs for Het Financieele Dagblad. Blijdorp also asked the journalists to present all their sources to the court. In addition, Blijdorp claims an excessive amount of €150,000 for non-material damages, while material damages will be calculated in separate proceedings. In a concerning development on June 20, 2023, Blijdorp filed a petition to summon witnesses, including the journalist and possible sources. Furthermore, several sources received letters from Blijdorp's lawyers – prior to the lawsuit – requesting them to urgently clarify which information the FD provided to them before giving their testimony.

Despite the concerning results from the survey, several ongoing SLAPP cases, as well as concerns in Parliament, the Dutch government has yet to start an investigation into the number and scale of SLAPPs in the Netherlands (this was supposed to start in 2019). Furthermore, the Dutch government has not yet announced any anti-SLAPP / anti legal intimidation measures

to address this rising concern for the safety of journalists, aside from transpositioning the EU Anti-SLAPP Directive that will be officially adopted in 2024.

Finally, slander and defamation remain punishable under the Dutch Criminal Code as well as Dutch Civil Code. This raises serious concern for the safety of journalists in the Netherlands. While in-depth research is needed on this, anecdotal evidence suggests that this does affect journalists and makes them the subject of criminal investigations.

Access to information and public documents

In October 2021, the new Open Government Act (*Wet Open Overheid*) was adopted and replaced the Government Information Act (*Wet Openbaarheid van Bestuur*) as of May 2022, after increasing pressure from civil society and the public following the childcare allowances affair. The Open Government Act is intended to create more transparency and to make government information easier to find, share and archive. However, concerns still exist regarding the actual improvement of this law, especially in terms of sensitive information. Also, the response time under the new law is still below average compared to Tromsø requirements and other countries.

Under the new law, there will be two types of information management: active and passive disclosure. Active disclosure is a new obligation and means that certain government information must proactively be made public. More specifically, as of May 2022 government institutions must start actively disclosing eleven categories

of information – including in relation to external legal advice, information requests, recommendations and subsidies. For all other types of information, passive disclosure will remain the norm, meaning that journalists will still need to request to retrieve information. In practice, this means that for the majority of (sensitive) information, nothing will change.

In 2023, a research was commissioned by the Advisory Board on Public Access and Information Management (ACOI) (Adviescollege Openbaarheid en Informatiehuishouding) to evaluate the

functioning of the new Open Government Act. The results highlight some important concerns from journalists. They have indicated that active disclosure has not yet improved and that government cooperation is not satisfactory when it comes to Woo requests. Furthermore, journalists expect deliberate, politically motivated delays when the legal deadline to process a new Open Government Act request is not met, and believe that the government does not always apply grounds for exception correctly.

Checks and balances

Key recommendations

- *Review and reform the consultation process, extending deadlines for civil society organisations to provide comprehensive input during legislative drafting.*
- *Implement measures to protect the right of peaceful assembly, including strict regulations against unlawful surveillance and excessive use of force during protests.*
- *Ensure consistency and transparency in publishing administrative decisions, aligning practices for disclosing public sanctions.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Shrinking civic space

Stakeholders and civil society are usually consulted during the drafting processes of legislation or policies, often by means of internet-based consultation. However, this has not remained without criticism. The excessively tight deadlines such organisations are sometimes given to

submit their views, for example, have remained an issue.³⁵

Civic space has also generally remained under pressure since the last report. Several bills have remained the source of concern for civil society, as these bills put pressure on the independent role such organisations play within a democratic society. Examples are the bill on the Transparency of Civil Society Organisations (wetsvoorstel Transparantie Maatschappelijke Organisaties)³⁶ and the bill on the criminalisation of staying in areas controlled by terrorist organisations (wetsvoorstel strafbaarstelling verblijf in door terroristische organisaties gecontroleerd gebied).³⁷

Furthermore, in 2023 the right of peaceful assembly has been under increased pressure. An investigation by several journalists revealed that the Dutch police systematically collect the personal data of protesters and activists, including their address, social security number (BSN) and date of birth.³⁸ Another report concluded that the police conducted unlawful surveillance of peaceful protesters.³⁹ Lastly, the use of force

by the police during peaceful protests has been a worrying trend.

Regime for constitutional review of laws

In 2022, the Minister of Home Affairs and the Minister of Justice drafted a memorandum outlining constitutional review. In 2023, a committee debate in the Second Chamber of the Parliament took place regarding this proposal. The Ministers committed to the Second Chamber to provide a clearer specification during the summer concerning which classic fundamental rights could be assessed. However, the Ministers have yet to fulfil this commitment. On 13 December 2023, a motion was passed in the Second Chamber of the Parliament regarding the establishment of a temporary committee for fundamental rights and constitutional review by the Second Chamber.

35 See the letter by the NJCM and several other NGOs to the government of 3 September 2021, <https://www.wo-men.nl/kb-bestanden/1630934478.pdf>.

36 See the letter by the NJCM and several other NGOs to the government of 29 June 2021, <https://njcm.nl/wp-content/uploads/2021/07/reactieconsortiumnotawijzigingWTMO.pdf>.

37 See the letter by the NJCM and Amnesty International to the government of 19 May 2021, https://njcm.nl/wp-content/uploads/2021/06/20210519_143-Wetsvoorstel-strafbaarstelling-verblijf-in-door-terroristische-organisaties-gecontroleerd-gebied.pdf

38 <https://www.platform-investico.nl/artikel/politie-verzamelt-op-grote-schaal-persoonsgegevens-demonstranten/>

39 <https://www.amnesty.org/en/latest/news/2023/05/the-netherlands-police-violate-rights-of-peaceful-protesters/>; <https://monitor.civicus.org/explore/police-use-water-cannons-on-climate-activists-new-report-reveals-surveillance-of-protesters/>

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

In Dutch public law, it is obliged to publish most administrative decisions online in the ‘Staatscourant’. Public sanctions are often not published, because that is seen as ‘naming and shaming’.

The area of prevention of money laundering and terrorist financing and enforcement of anti-money laundering regulations differs from the aforementioned principle. The (administrative) regulators of the Prevention of Money Laundering and Financing of Terrorism Acts,

in principle, have a publication obligation for penalty decisions (par Par. 4.3 Wwft.). Regulators are the Nederlandsche Bank (DNB), Authority for the Financial Markets (AFM), the Financial Supervision Office (BFT), the Netherlands Gaming Authority (Ksa) and the deans of the Netherlands Bar Association (NOvA), and a specific department of the Tax and Customs Administration.

Also, irrevocable penalty fines imposed by the Tax and Customs Administration for complicity in tax evasion and benefits fraud may be disclosed as of 1 January 2020. The Regulation on the Disclosure of Penalty Fines (Regeling openbaarmaking vergrijpboete) discloses the factors that the inspector or the Belastingdienst/Toeslagen must in any case take into account when weighing interests when disclosing a penalty.

Civic space

Key recommendations

- *Address concerns related to bills such as the Transparency of Civil Society Organizations and the bill on criminalising staying in areas controlled by terrorist organisations.*
- *Implement measures to address the reported challenges to the right of peaceful assembly.*
- *Address challenges in the funding landscape for civil society organizations (CSOs).*

Freedom of association

Civic space in the Netherlands is classified as open but has remained under pressure since the last report. Several bills remained a source of

concern for civil society, as these bills put pressure on the independent role such organisations play within a democratic society. Examples are the bill on the Transparency of Civil Society Organisations (*wetsvoorstel Transparantie*

Maatschappelijke Organisaties)⁴⁰ and the bill on the criminalisation of staying in areas controlled by terrorist organisations (*wetsvoorstel strafbaarstelling verblijf in door terroristische organisaties gecontroleerd gebied*).⁴¹

The motion from the MP Chris Stoffer that asked the government to impose further representativeness requirements on interest groups representing general interests in lawsuits against the state, as mentioned earlier in this report, is another example of the pressure on civic space. The proposal did not only potentially restrict the access of CSOs to a judge, but also questioned the legitimacy and independence of CSOs. In parliamentary debates and interviews at the time of the proposal the question was raised to what extent CSOs act in the public interest. Proposals like these therefore also contain a risk of stigmatising CSOs and damaging their reputation. Although the minister of legal protection dismissed the motion, it was supported by all parties that are now exploring forming a new government coalition. The need for an extra representativeness requirement was even explicitly mentioned in the BBB party programme.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

The same challenges in the funding landscape for CSOs as reported last year remain. In addition to this, large budget cuts were announced to the development aid budget which also affects funding for human rights work of a large number of Dutch CSOs.⁴² The election in November resulted in a big win for parties that expressed support for even bigger cuts in the development aid budget, making further reductions of the budget likely. While there are still other streams of government funding accessible for CSOs, this could have a big impact on the financial health and sustainability of many established human rights and development organisations and increase competition amongst CSOs for government funding.

Regulations against terrorism financing and money laundering are creating difficulties for

40 See the letter by the NJCM and several other NGOs to the government of 29 June 2021, <https://njcm.nl/wp-content/uploads/2021/07/reactieconsortiumnotawijzigingWTMO.pdf>.

41 See the letter by the NJCM and Amnesty International to the government of 19 May 2021, https://njcm.nl/wp-content/uploads/2021/06/20210519_143-Wetsvoorstel-strafbaarstelling-verblijf-in-door-terroristische-organisaties-gecontroleerd-gebied.pdf.

42 <https://www.partos.nl/nieuws/bezuinigingen-kabinet-treffen-allerarmsten-wereldwijd/>

CSOs to open bank accounts or receive and make bank transfers.⁴³

Freedom of peaceful assembly

In 2023 the right of peaceful assembly continued to be under pressure. An investigation by several journalists revealed that the Dutch police systematically collect the personal data of protesters and activists, including their address, social security number (BSN) and date of birth.⁴⁴ Another report concluded that the police conducted unlawful surveillance of peaceful protesters. The use of force by the police during peaceful protests has also been a worrying trend.⁴⁵

Municipalities regularly introduce restrictions or conditions to organisers of protests that are not proportionate to the scale of the protests. This can discourage groups from organising a protest.⁴⁶ Different groups of protesters are not always treated equally. Climate activists are particularly affected by the concerns mentioned above in comparison with other protesters. In January 2023, six climate activists from Extinction Rebellion (XR) were arrested and their houses were searched. They were arrested

the week before a planned peaceful protest, during which they wanted to block a road in The Hague, based on charges of incitement because they were promoting the XR road blockade. The climate activists were forbidden from going near the place of the protest. A group of almost 40 civil society organisations spoke out against these arrests, stressing the intimidating effect these arrests can have on people's ability to exercise their right to peaceful protest and freedom of expression.⁴⁷ The Dutch National Human Rights Institute also expressed their concerns.⁴⁸

43 <https://www.hscollective.org/assets/20220930-brief-tijdelijke-maatregel-de-risking-zonder-contactgegevens.pdf>

44 <https://www.platform-investico.nl/artikel/politie-verzamelt-op-grote-schaal-persoonsgegevens-demonstranten/>

45 <https://www.amnesty.org/en/latest/news/2023/05/the-netherlands-police-violate-rights-of-peaceful-protesters/>;
<https://monitor.civicus.org/explore/police-use-water-cannons-on-climate-activists-new-report-reveals-surveillance-of-protesters/>

46 <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

47 <https://www.nhc.nl/nhc-steunt-protest-om-recht-van-demonstratie-te-verdedigen/>

48 <https://www.mensenrechten.nl/actueel/nieuws/2023/01/31/demonstratierecht-onder-druk-blijkt-uit-aanhouding-klimaatactivisten>

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *Enhance and strengthen governance oversight and responsible use of algorithms, and create/strengthen proper frameworks for both.*
- *Implement policy reforms and institutional changes in youth care to minimise the misuse of freedom-restricting measures and standardise legislation.*

Systemic human rights violations

Widespread use of government algorithms

Despite the *Toeslagenaffaire*, the Dutch government persists in using algorithms that jeopardise essential human rights like privacy and non-discrimination. Moreover, transparency issues, highlighted in both the 2022 General Audit Office report⁴⁹ and the July 2023 Algorithmic Risks Report⁵⁰ by the new Department for the Coordination of Algorithmic Oversight (DCA) at the Dutch Data Protection Authority (AP), hinder the monitoring and addressing of these risks.

The DCA highlights several high-risk algorithms. First, the Crime Anticipation System (CAS) currently utilised by the Dutch police, which globally is the only predictive policing

system operating on a national scale. Its effectiveness and risk of group discrimination has been debated, e.g. in a 2022 report from the EU's Fundamental Rights Agency. Also, the DCA describes signals received by the National Coordinator against Discrimination and Racism (NCDR) in April 2023 regarding discrimination from financial institutions using algorithms to monitor Dutch payment transactions. Lastly, despite the SyRI-case (2020), municipalities in 2023 continue to recklessly deploy algorithms for assessing welfare fraud risks.

This DCA has been active since January 2023 to inter alia oversee the Dutch government's algorithm registry. However, work to fully set up DCA oversight is incomplete. In July 2023 the NOS reported: "Six months after its launch the algorithm registry is barely being filled in and the information it does contain is not very

49 <https://www.rekenkamer.nl/onderwerpen/algorithmes/documenten/rapporten/2022/05/18/algorithmes-getoetst>

50 <https://www.autoriteitpersoonsgegevens.nl/uploads/2023-07/Rapportage%20Algoritmerisico%27s%20Nederland%20-%20juli%202023.pdf>

accessible.” Granted, at that time the registry contained 123 algorithms, whereas today it contains 258. The completion is only projected for 2025, and if organisations do fill it out, often data on the criteria used for citizen selection, crucial to identify algorithmic discrimination, remains undisclosed.

In July 2023, the Netherlands Institute for Human Rights (CvdRM), published a position paper advocating for a legal obligation to provide transparency.⁵¹ According to the CvdRM, current governmental algorithm use creates an information gap and puts fundamental rights like due process and protection against discrimination under pressure. Also, the importance of confidentiality of fraud-detection methods may be recognised only when counterbalanced by a thorough and binding prior human rights review by an outside body. It seems the advice of the CvdRM has not yet been implemented. In December 2023, a publication standard⁵² and accompanying guide⁵³ for the algorithm registry was introduced, but no fields are mandatory yet, due to lacking legal requirements.

Also this year, a framework named ‘Responsible Use of Algorithms’⁵⁴ was initiated. It outlines

vital norms and actions for government organisations to align algorithm development with human rights, public values, and ethical data practices. It brings together existing instruments like the Human Rights and Algorithms Impact Assessment (IAMA)⁵⁵ and the ‘non-discrimination by design’ manual. However, its implementation is projected for the end of 2025.⁵⁶

In February 2022, it was agreed that the IAMA must become mandatory. However, the execution has been on hold pending the final text of the AI Act, as it will introduce comparable obligations with its conformity assessment and human rights impact assessment for high-risk AI-systems. In December 2023, an agreement was reached, but it will still not be binding for several years. Also, the compliance mechanism will largely be based on self-assessment by the provider (who might be a private party delivering systems to government agencies). Therefore, the DCA states it is important to already start considering ways to give way to the key provisions of the act already, e.g. by stimulating the use of the AIA.

It seems the State Secretary of Digitisation and Kingdom Relations is preparing discussions

51 <https://publicaties.mensenrechten.nl/publicatie/bf15558a-1b17-43d7-a60e-df9ff8847491>

52 <https://algoritmes.pleio.nl/attachment/entity/3f3de86f-6cc1-4229-92ba-658a7770291b>

53 <https://www.digitaleoverheid.nl/wp-content/uploads/sites/8/2023/12/Handreiking-Algorithmeregister-versie-1.0.pdf>

54 <https://open.overheid.nl/documenten/9b7b55fd-1762-499b-b089-2b7132c12402/file>

55 <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/25/impact-assessment-mensenrechten-en-algoritmes>

56 <https://www.digitaleoverheid.nl/kabinetsbeleid-digitalisering/werkagenda/iedereen-heeft-regie-op-het-digitaal-leven/algoritmes-reguleren/acties-prioriteit-3-3/>

involving the Senate, House of Representatives, government, judiciary, and supervisory bodies.⁵⁷ The aim is to assess the sufficiency of safeguards⁵⁸ for automated decision-making impacting human rights. In February 2023, the Rathenau Institute emphasised in a letter to parliament that while these measures contribute to responsible government use of algorithms, more steps are needed.⁵⁹ A lot can still be done to implement their recommendations⁶⁰ (p.2, 3rd in line with another motion⁶¹), as well as those of the CvdRM.

The still-pending Dutch Data Processing through Partnerships Act (WGS) remains contentious. This Act is supposed to help administrative bodies and private parties jointly process personal data for 'weighty general interests', but has faced strong opposition from human rights groups. Despite improvements, the AP criticised the accompanying implementing act (BGS) in November 2023, warning for the lack of a vital safeguard (prior judicial review)⁶² and emphasising the importance of transferring

certain BGS rules to the actual act, to ensure the protection of fundamental rights. The AP advises the Senate to hold out on voting until changes are made.

Other systemic issues

Freedom-restricting measures in general

In general, taking freedom-restricting measures is a violation of fundamental rights, such as Article 5 and Article 8 of the European Convention on Human Rights, and Article 3, Article 19 and Article 37 of the Convention on the Rights of the Child. Also, Article 15 of the Dutch Constitution stipulates that no one may be deprived of their liberty unless it is permitted by law. This means that freedom-restricting measures in youth care can only be deployed on a legal basis, such as the Youth Act,⁶³ by providers of closed youth care for children and young people, in case there has been a youth care authorisation issued by the juvenile court, and the measure is included in a treatment plan.

57 https://www.eerstekamer.nl/behandeling/20231113/brief_van_de_staatssecretaris_van/document3/f=/vm86lu-3e96uh_opgemaakt.pdf

58 vm1ueg59jyyu_opgemaakt.pdf (eerstekamer.nl)

59 https://www.rathenau.nl/sites/default/files/2023-02/Inzet_algoritmes_en_data-ethiek%20Bericht_aan_het_Parlement_Rathenau%20Instituut.pdf

60 https://www.rathenau.nl/sites/default/files/2023-02/Inzet_algoritmes_en_data-ethiek%20Bericht_aan_het_Parlement_Rathenau%20Instituut.pdf

61 <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2023Z00686&did=2023D01629>

62 <https://www.autoriteitpersoonsgegevens.nl/actueel/voor-aanvaardbare-wgs-ontbreekt-belangrijke-waarborg>

63 See Article 6.1.2 sub 2, sub 3, sub 4, sub 5, sub 6, sub 7 and sub 8 of the Juvenile law

From a study by Defence for Children ‘*Uithuisgeplaatst, en dan?*’,⁶⁴ it appears that freedom-restricting measures are applied in closed and open youth care in the Netherlands. The same research states that the rules and definitions regarding the application of freedom-restricting measures in institutions for youth care or psychiatric care, are unclear, which could be problematic since a stay in an institution for children is drastic enough. Freedom-restricting measures should be therefore avoided as much as possible. This research also shows that in practice it is not sufficiently clear what freedom-restricting measures are and when these measures are pedagogically permissible.⁶⁵ Defence for Children suggested therefore that a uniform definition of freedom-restricting measures is needed to be included in the legislation or regulations.⁶⁶ Hereafter, both the open as well as the closed residential youth care in the Netherlands will be discussed briefly.

Freedom-restricting measures in open residential youth care

The Inspectorate Health Care and Youth, and the AKJ held conversations with children, young people, and professionals during their visits to multiple open youth-care providers where these children and young people regularly face freedom-restricting measures.⁶⁷ It seems to be that these measures are sometimes taken, although it may not be clear for youth-care providers what the measure contains. When there is no appropriate help available, a freedom-restricting measure seems to be the solution.

Besides this, there seems to be a group of children and young people for whom their freedom is occasionally or temporarily restricted due to auxiliary reasons (for example, for their own safety). All these restrictions are usually happening with no legal basis. That is why the Inspectorate Health Care and Youth and AKJ are pointing out that legal changes are needed to make occasional restrictions on freedom of these children possible, if this is in the best interests of that child or young people.⁶⁸

64 M. Berger, J. de Groot van Embden and E. Huls, ‘Uithuisgeplaatst. En dan? Een onderzoek naar de toepassing van vrijheidsbeperkende maatregelen in zorginstellingen voor kinderen’, Defence for Children 2019

65 M. Berger, J. de Groot van Embden and E. Huls, ‘Uithuisgeplaatst. En dan? Een onderzoek naar de toepassing van vrijheidsbeperkende maatregelen in zorginstellingen voor kinderen’, Defence for Children 2019, p. 5

66 M. Berger, J. de Groot van Embden and E. Huls, ‘Uithuisgeplaatst. En dan? Een onderzoek naar de toepassing van vrijheidsbeperkende maatregelen in zorginstellingen voor kinderen’, Defence for Children 2019, p. 72

67 Inspectie Gezondheidszorg en Jeugd, ministerie van Volksgezondheid, Welzijn en Sport, ‘Vrijheidsbeperkende maatregelen in open residentiele jeugdhulp’, [Rijksoverheid.nl](https://www.rijksoverheid.nl) May 2023 www.rijksoverheid.nl (search on: vrijheidsbeperkende maatregelen jeugd ggz), p.1

68 Inspectie Gezondheidszorg en Jeugd, ministerie van Volksgezondheid, Welzijn en Sport, ‘Vrijheidsbeperkende maatregelen in open residentiele jeugdhulp’, [Rijksoverheid.nl](https://www.rijksoverheid.nl) May 2023 www.rijksoverheid.nl (search on: vrijheidsbeperkende maatregelen jeugd ggz), p. 1

The Council for the Administration of Criminal Justice and Protection of Youth states in its recent advice to the Dutch government that freedom-restricting measures cannot be used in open youth institutions except in cases of emergency. The RSJ notices that the restriction of freedom of young people is regulated differently in different laws: Chapter 6 of the Youth Act, the Compulsory Mental Health Care Act and the Care and Coercion Act.⁶⁹

Regarding the long term, the RSJ advises to combine all legislation for care and support for children and young people in residential youth care into one law and to strengthen their legal position. When a child is placed in an institution where deprivation of liberty is applied a court order is needed.

Freedom-restricting measures in closed residential youth care

Research by The Forgotten Child from 2022⁷⁰ shows that many children are isolated. For example, 78% of the young people that were surveyed spent time in solitary confinement. It is unknown what percentage was included in the assistance plan. Of this 78%, 38% were

taken to an isolation cell daily or weekly.⁷¹ The reasons for isolation were mental problems such as panic attacks, self-harm, or suicidal thoughts. It showed that the isolation was counterproductive because these young people were alone with their thoughts. In other situations, young people were taken to an isolation cell as punishment if they had said something wrong, were aggressive or didn't cooperate with their supervisors. For young people who were isolated daily or weekly, the report didn't mention any reasons other than the above. There were also cases where young people were isolated upon arrival in a closed institution.⁷² In addition, 89% of the children were sometimes locked in their own room. Of these children, 68% were locked in their room on a daily or weekly basis. This happened as punishment, for protection, or when care providers had to perform administrative work.

The Dutch government aims, with a legislative proposal, to improve the legal position of children and young people in closed youth care. It also prevents the restriction of freedom of children and young children as much as possible by having a policy plan drawn up by your care provider.⁷³ According to this legislative

69 'RSJ: Geen vrijheidsbeperking in open residentiele jeugdhulp', Nji.nl last seen 15th of December 2023, www.nji.nl (search on: vrijheidsbeperking jeugdhulp)

70 Het Vergeten Kind, 'Ik ben het niet waard, dus droppen ze mij maar hier. Een onderzoek naar de ervaringen van jongeren in en na de gesloten jeugdzorg', 2022.

71 Het Vergeten Kind, 'Ik ben het niet waard, dus droppen ze mij maar hier. Een onderzoek naar de ervaringen van jongeren in en na de gesloten jeugdzorg', 2022, p. 12

72 Het Vergeten Kind, "Ik ben het niet waard, dus droppen ze mij maar hier". Een onderzoek naar de ervaringen van jongeren in en na de gesloten jeugdzorg, 2022, p. 12

73 Article 6.3.1.3 of the legislative proposal, Kamerstukken II 2021/22, 35942, nr. 3

proposal,⁷⁴ a freedom-restricting measure may only be imposed if it is aimed at guaranteeing the safety of children, young people, or others, or at achieving the goals included in the care plan, or at averting danger to the health of children, young people or others.⁷⁵

The NJCM stimulates a change of culture and advocates that institutions need to set the ambition to use freedom-restricting measures as a last resort, assuring sufficient well-trained staff and aiming to close the isolation cells.

Fostering a rule of law culture

Efforts by state authorities

The parliamentary debates on the rule of law in the Netherlands and EU as mentioned in the previous report continues to take place. The third of November 2023 marked the 175th anniversary of the Dutch Constitution. Around this moment, several events were organised reflecting on the Constitution and a series of essays was published by legal experts.

The recent election outcome does raise some concern for the promotion of a rule of law culture in the Netherlands. The PVV, the party that won the elections, has been promoting

unconstitutional proposals that do not fit within democratic rule of law. Although they have promised to respect the Constitution and the rule of law if they form a government, it does not contribute to fostering a rule of law culture in the Netherlands.

Also other political parties presented plans in their party programmes that could lead to erosion of the rule of law or violate the fundamental rights of citizens. This is in particular the case for the plans related to migration, many of which are not in line with international and European human rights treaties. Multiple parties (for example VVD, NSC, BBB and PVV) suggest we should revise, ignore or choose and ‘opt-out’ for international and EU legislation and treaties. It remains to be seen if any of these plans will actually be implemented, but it does raise concern in the perspective of a global trend where the legitimacy of international human rights treaties is being called into question.

74 This will entry in force on the 1st of January 2024, see *Wet rechtspositie gesloten jeugdhulp van 17 mei 2023* (Stb. 2023, 182)

75 Article 6.3.1.1 lid 2 of the legislative proposal, *Kamerstukken II 2021/22, 35942, nr. 3*

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About the authors



The Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. The HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, the HFHR has had a consultative status with the United Nations Economic and Social Council (ECOSOC). The HFHR's objective is the protection and promotion of human rights.

Key concerns

Justice System

Regarding the justice system, the most important problem concerning the independence of the judiciary remains the functioning of the National Council of the Judiciary. Consequently, there is a growing number of judges who are potentially defectively nominated with its involvement, and their rulings will be open to challenge by the parties. Regarding the implementation of the European Commission's 2023 recommendations, progress was not satisfactory. The recommendation to separate the functions

of the Minister of Justice and the Prosecutor General has not been implemented. However, with the change of government in December 2023 there was a change of attitude and at the beginning of 2024 the current Minister of Justice presented the main ideas for the separation of functions.¹



Media Environment and Media Freedom

Regarding the media environment and media freedom, the previous parliamentary majority (in power until mid-December 2023) remained mostly reluctant to any demands for change to increase media freedom. The public media under its control often displayed a clear bias,

1 <https://www.pap.pl/aktualnosci/nastapi-rozdzielenie-funkcji-ministra-sprawiedliwosci-i-prokuratora-generalnego>

bordering on party propaganda. The National Broadcasting Council excessively prolonged procedures for renewing licences for media not favourable to the previous majority and imposed penalties on these media. Progress on the Commission’s recommendations was not satisfactory. The recommendation to ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets has not been implemented. The independent governance and editorial independence of public service media has not been strengthened in any manner.

State of play (versus 2022)

-  Justice system
- N/A** Anti-corruption framework
-  Media environment and freedom of expression and of information
- N/A** Checks and balances
- N/A** Enabling framework for civil society
- N/A** Systemic human rights issues

Legend

Regression **No progress** **Progress**



Justice system

Key recommendations

- *The new parliamentary majority should take urgent legislative action, in cooperation with a wide range of stakeholders (judges, prosecutors, lawyers, academia, NGOs etc.), to reform the National Council of the Judiciary in accordance with the case law of the European Court of Human Rights, the Court of Justice of the European Union and the Supreme Court.*
- *The legislator should more clearly separate the functions of the Minister of Justice and that of the Prosecutor General.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

On 23 November 2023, the European Court of Human Rights (ECtHR) delivered a judgement in the *Wałęsa v. Poland* case (application

No. 50849/21), finding, among other things, a violation of Article 6 of the Convention. The Court found in particular, as it has done in previous cases, that the Chamber of Extraordinary Review and Public Affairs, which had examined the extraordinary appeal, was not an “independent and impartial tribunal established by

law.”² In this judgement, the Court applied the pilot judgement procedure.

Moreover, in 2023, the Court of Justice of the European Union (CJEU) issued two rulings on the status of the new Supreme Court chambers created in 2018.

In the first of the judgements, delivered on 13 July 2023 (joined cases C-615/20 and C-671/20), the CJEU ruled on the removal of Judge Igor Tuleya from office and the lifting of his immunity by the Disciplinary Chamber of the Supreme Court in 2020.³ The CJEU held that the decision was incompatible with EU law. According to the CJEU, the court (which included Judge Igor Tuleya, who posed the question) was entitled to ignore the ruling of a body whose independence is not guaranteed (i.e. the Disciplinary Chamber) and pose the question despite the suspension resolution, and the bodies responsible for the allocation of cases in the court should not apply the resolution of the Disciplinary Chamber. Another panel of the court (in which Judge Piotr Gąciarek sat) should not apply the resolution of the Chamber, i.e. not hear the case taken away from the suspended judge and assigned to another judge. It should be noted that the Disciplinary Chamber of the Supreme Court was abolished in July 2022 and its duties were taken over by the Professional Responsibility Chamber. The latter chamber continues to be staffed by judges appointed by the new National Council of the

Judiciary (NCJ), but does not constitute the entire staff.

On the other hand, in the second ruling, issued on 21 December 2023 (case No. C-718/21), the CJEU refused to hear preliminary questions from the Chamber of Extraordinary Review and Public Affairs.⁴ In this case, the CJEU was responding to two questions from a panel composed exclusively of new judges, which was considering an appeal by a certain judge against a resolution of the NCJ, which had refused his request to continue to occupy the position of judge after he had reached the age for retirement, namely 65. The NCJ refused his request on the grounds that the judge had failed to meet the deadline for making such a declaration. The CJEU ruled that the questions did not come from a body with the status of an independent and impartial court previously established by law, as required by EU law, and consequently declared the questions inadmissible. The Court referred to a judgement of the ECtHR, which, in relation to two compositions of new judges, held that they did not constitute a court established by law and were not independent, as the appointment of their members was made in clear breach of the basic national provisions governing the procedure for the appointment of judges. The circumstances of the change in the composition of the NCJ in 2017 undermined its independence from the legislature and the executive, affecting its ability to propose independent and impartial candidates for judicial

2 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229366%22%5D%7D>

3 CJEU, *Judgement of the Court (Grand Chamber) of 13 July 2023*, joined cases C-615/20 and C-671/20.

4 CJEU, *Judgement of the Court (Grand Chamber) of 21 December 2023*, case No. C-718/21.

positions on the Supreme Court. Moreover, the judges in question were appointed by the President of the Republic of Poland on the basis of a resolution of the NCJ, the implementation of which was suspended by the Supreme Administrative Court at the time of their appointment pending an examination of the legality of that resolution, and the Supreme Administrative Court ultimately revoked the resolution.

On 20 December 2023, the Sejm of the Republic of Poland adopted a resolution addressing the situation of the NCJ.⁵ It indicated that the Sejm's resolutions regarding the appointment of judicial members of the NCJ were taken in flagrant violation of the Polish Constitution, the Treaty on the European Union (TEU) and European Convention on Human Rights. According to the Sejm, this prevents the NCJ from fulfilling its constitutional functions, including the task of safeguarding the independence of courts and judges. Furthermore, the Sejm called on improperly appointed members of the NCJ to immediately cease their activities in the Council. At the same time, it declared, with a general approach, its intention to take action to restore compliance with constitutional standards promptly.

The Helsinki Foundation for Human Rights (HFHR) prepared a report analysing judicial appointments made with the involvement of the NCJ, whose members were irregularly/unlawfully appointed by the previous Sejm

(hereinafter: new NCJ).⁶ The report reveals that between 2018 and August 2023, the President appointed 2,204 individuals to judicial positions based on the recommendations of the so-called new NCJ. This number does not include individuals appointed to trainee judge (asesor) positions.

Among the appointed judges are eighteen people who have been appointed by the new NCJ to the judiciary on as many as two occasions (the record holder received two consecutive appointments, to a district court and then to a court of appeal, with an interval of just over a dozen months). A comparison of the list of appointed individuals and the list of candidates endorsed by the NCJ revealed that 239 individuals appeared on both lists.

The majority of individuals appointed with the involvement of the new NCJ were appointed to district courts and regional courts (988 and 876 individuals, respectively). However, the highest percentage of appointments pertained to appellate courts (179 individuals) and the Supreme Court (56 individuals), constituting 39% and 42% of the composition of these courts, respectively.

HFHR also analysed the career paths of individuals appointed to judicial positions with the involvement of the new NCJ. The data collected indicate that 47% of those appointed previously held the position of judge, while 19% were trainee judges, and 34% came from other legal

5 <https://www.sejm.gov.pl/sejm10.nsf/komunikat.xsp?documentId=E2DE6E25A9B2F8EAC1258A8B006DDA45>

6 <https://hfhr.pl/publikacje/nowa-krs-krajobraz-po-reformie>

professions. In this last group, the most numerous appointees were court clerks (254 individuals), attorneys (159), assistant judges (111) and legal advisors (110).

At the same time, the HFHR analysed the ratio of judges appointed by the new NCJ to the total number of judges in several dozen courts. The analysis showed that this ratio ranged from 7% to even 63% in individual courts. HFHR identified courts and departments almost entirely composed of individuals appointed with the involvement of the new National Council of the Judiciary.

HFHR also examined whether individuals appointed to judicial positions as a result of the selection process had competitors. From the collected data, it appears that out of 1,782 analysed selection processes, there was only one candidate in 557 cases.

HFHR emphasizes that these data must be taken into account when designing solutions related to the status of individuals appointed with the involvement of the new National Council of the Judiciary.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

In June 2023, the District Court for Warszawa-Śródmieście ordered the reinstatement of Judge

Marzanna Piekarska-Drażek.⁷ At the end of 2022, Judge Piekarska-Drażek, along with two other judges, was transferred to another department by the president of the Appellate Court in Warsaw. The District Court concluded that the actual reason for her transfer was the application of judgements of the ECtHR and the CJEU, as well as questioning the status of individuals appointed to judicial office with the involvement of the new National Council of the Judiciary. The court also held that the transfer of Judge Piekarska-Drażek had been illegal because it did not take into account the length of her service in the position and her specialization. Similar judgements were issued in the cases of Judge Waldemar Żurek and Judge Paweł Juszczyzyn, who were also transferred by the presidents of their courts.

On 1 September 2023, all three judges returned to work in the criminal department. In contrast, in July 2023, Judge Rafał Jerka was transferred from the labour and social security department to the family department by the president of the Regional Court in Olsztyn, Michał Lasota.⁸ According to media coverage, he was probably transferred in order to create a vacant position that could be filled with the wife of a district court president, who is also a member of the National Council of the Judiciary. Judge Jerka has filed a complaint with the European Court of Human Rights, alleging that he was transferred unlawfully.⁹

7 <https://oko.press/wielki-sukces-sedzi-piekarskiej-drazek-sad-nakazal-schabowi-cofnac-jej-karne-przeniesienie>

8 <https://oko.press/czlowiek-ziobry-przymusowo-przeniosl-sedziego>

9 <https://www.rp.pl/sady-i-trybunaly/art39243761-sedzia-rafal-jerka-z-olsztyna-skarzy-polske-do-strasburga>

Minister of Justice Zbigniew Ziobro removed the Deputy Prosecutor of the District Prosecutor's Office for Poznań-Stare Miasto, stating that she did not exercise appropriate substantive supervision over the work of subordinate prosecutors and did not verify their legal qualifications.¹⁰ This decision was related to the conviction of two individuals found guilty of a homophobic-motivated robbery. The ruling of the criminal court in this case faced public criticism from the Ministry of Justice, which described it, among other things, as a 'judicial crime'.

Promotion of judges and prosecutors

In December 2023, the Court Watch Polska Foundation published a report emphasizing the need for a change in the system of appointing judges in Poland and advocated for a greater emphasis on the substantive preparation of judges for their roles.¹¹

Allocation of cases in courts

The new Minister of Justice, Adam Bodnar, submitted for public consultations a draft ministerial regulation amending the regulation on the functioning of common courts. The proposed changes indicate that requests for the disqualification of a judge based on the manner of their appointment will not be considered by judges appointed in the same manner. This

solution will prevent judges appointed by the so-called new National Council of the Judiciary from participating in the consideration of requests related to this circumstance.

In June 2023, the Supreme Administrative Court (file No. III OSK 4359/21) dismissed the previous Minister of Justice's cassation appeal against a judgement obliging him to provide the ePaństwo Foundation with copies of reports from the drawings of lots for the composition of the jury using the random case allocation system (*System Losowego Przydziału Spraw*). HFHR requested the disclosure of information including, at minimum, the name and surname of the randomly selected judge, the court and department where they serve, the case file number, and the date of the drawing. In April 2021, the Supreme Administrative Court ordered the disclosure of the system's algorithm.¹² The Ministry of Justice published the algorithm. However, based only on the algorithm it is impossible to assess if the entire system functions properly and is not subject to modification by external factors (e.g. political).

However, with regard to the source code for the random case selection system, which we wrote about last year, the case (II SAB/Wa 660/23) has not started before the Regional Administrative Court in Warsaw. The complainant, Sieć Obywatelska Watchdog Polska,

10 <https://tvn24.pl/polska/sprawa-skazanej-24-letniej-mariki-zbigniew-ziobro-zdecydowalem-o-odwolaniu-zastepcy-szefa-poznanskiej-prokuratury-rejonowej-7275993>

11 <https://amicus.courtwatch.pl/files/2023/12/Mapa-drogowa-reformy-konkursow-na-stanowiska-sedziowskie.pdf>

12 Poland, Judgement of the Supreme Administrative Court of 19 April 2021, case No. III OSK 836/21.

has requested the new Minister of Justice to publish the source code.¹³

As mentioned in the 2023 submission, in May 2022, the Supreme Administrative Court ruled¹⁴ that the source code of the Random Case Allocation System or RCAS (*System Losowego Przydziału Spraw*) constitutes public information and, therefore, should be disclosed by the Minister of Justice. RCAS is a network application based on a number generator used to designate members of adjudicating benches in common courts (in criminal and civil cases). It was introduced in 2017 to eliminate the possibility that a particular judge be allocated to a case arbitrarily. It was also supposed to guarantee an equal distribution of workload among judges. NGO¹⁵ and Supreme Audit Chamber¹⁶ reports cite numerous irregularities in RCAS functioning (e.g. lack of transparency, risk of manipulation, and unequal workload distribution). The judgement stemmed from actions taken by the Citizens Network Watchdog Poland (*Sieć Obywatelska Watchdog Polska*). In 2017, the network successfully petitioned the Ministry of Justice via a public information request for the source code's disclosure. The NGO complained about the Ministry of

Justice's failure to act before the Provincial Administrative Court in Warsaw. However, the court agreed with the Minister's position (stating that the code is information of a technical character and, as such, does not fall under the scope of the FOI act) and dismissed the motion.¹⁷ HFHR appealed against this judgement to the Supreme Administrative Court.

In the judgement of May 2022, the Supreme Administrative Court ruled the RCAS was not merely ancillary to the functioning of courts (as is the case of e.g. office programs).¹⁸ In the court's opinion, RCAS in practice replaces people in the task of allocating judges to cases, the outcome of which is an irreversible decision – therefore, RCAS performs public functions and the information about its source code should be disclosed.

In its decision in August 2022, the Minister of Justice refused to publish the source code of the RCAS.¹⁹

13 <https://siecobywatelska.pl/wp-content/uploads/2024/01/Ministerstwo-Sprawiedliwosci-algorytm-losowania-sedziow-pismo-zalacznik.pdf>

14 Poland, Judgement of the Supreme Administrative Court of 26 May 2022, case No. III OSK 1189/21.

15 Fundacja Moje Państwo, [Algorytm Losowego Systemu Przydziału Spraw](#).

16 Supreme Audit Chamber, [Post-Inspection No. P/19/038](#), 23 February 2019.

17 Poland, Judgement of the Provincial Administrative Court in Warsaw of 11 December 2018, case No. II SAB/Wa 502/18.

18 D. Gajos-Kaniewska, [NSA: kod źródłowy sądolotka jest informacją publiczną](#), Rp.pl, 29 May 2022.

19 Minister of Justice, Decision No. BK-IV.082.270.2022, 4 August 2022.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The National Council of Judiciary continues being responsible for the appointment and promotion of judges, while maintaining a critical stance towards the rulings of the European Court of Human Rights and the Court of Justice of the European Union (i.e. declaring that it will not adhere to these judgements). Shortly after the recent ECtHR judgement in the case of *Wałęsa v. Poland* (see above), the NCJ stated that “the judgement has no binding force in the national legal order”.²⁰

Furthermore, the NCJ has negatively responded to the Sejm’s call to cease its activity. In the resolution of 20 December 2023, the NCJ’s presidium identified the call as an attack on the independence of the NCJ.

Moreover, while describing the activities of the NCJ, one cannot ignore its presence on X (formerly Twitter).²¹ The social media account, described as ‘NCJ’, regularly attacks independent judicial associations, politicians from parties other than the Law and Justice (*Prawo i Sprawiedliwość*), as well as individual judges. Some of these attacks may be perceived as a threat to the independence of the judiciary.

Similar conclusions might also be drawn in connection with specific actions taken by the NCJ. On 14 March 2023, the chairperson of the NCJ made a sarcastic remark requesting the President of the Regional Court in Poznań to consider the possibility of sending a specific judge for training in constitutional law, particularly focusing on the protection of religious cults. The appeal was made in connection with the judgement issued by this specific judge that sparked public discussion.

In another case related to a robbery motivated by homophobia, the National Council of the Judiciary supported critical assessments of the judgement presented by the Minister of Justice Zbigniew Ziobro, and ordered a review of similar cases issued by the same court.

On 28 August 2023, during the extraordinary hearing of the NCJ ordered upon the request of the Minister of Justice, the head of the NCJ made a presentation criticizing specific judgements and accusing judges of politicizing their offices.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

On 7 July 2023, the European Court of Human Rights issued a judgement in the case *Tuleya v. Poland* (applications Nos. 21181/19

²⁰ <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9361238,krs-zajela-stanowisko-wobec-orzeczenia-ws-skargi-l-walesy.html>

²¹ https://twitter.com/KRS_RP

and 51751/20), in which it found that the Disciplinary Chamber of the Supreme Court, which ruled on the lifting of the immunity of Judge Igor Tuleya, was not an independent and impartial court established in accordance with the law.²² As a result, it found a violation of Article 6 of the Convention in relation to Judge Igor Tuleya.

The system of disciplinary responsibility for judges has not yet been adjusted to meet the requirements indicated in the case law of the Court of Justice of the European Union.²³ In 2023, judges faced repression through disciplinary proceedings multiple times. These cases involved, among other things, public statements in defence of the rule of law (e.g. Judge M. Piekarska-Drażek), decisions made by judges during proceedings (e.g. Judge T. Jaskłowski), decisions related to the management of the Supreme Court (Judge M. Gersdorf), the application of European law by assessing the independence and impartiality of judges appointed by the so-called new National Council of the Judiciary (Judges S. Bagiński, D. Tyrała, W. Maczuga), and the assessment of unlawful suspension of a judge (Judge K. Krygielski).

Remuneration/bonuses for judges and prosecutors

While analysing the situation regarding the salaries of judges and prosecutors in 2023, it is

essential to point out concerns about the level of their indexation.

According to the Law on the Structure of Common Courts and the Law on the Public Prosecutor's Office, salaries of judges and prosecutors should be dependent on the average earnings in the national economy in the second quarter of the previous year. Nevertheless, in the years 2021-2023, the Sejm adopted solutions that differently identified the base for calculating the remuneration of judges and prosecutors.

As a result, the indexation of judicial and prosecutorial salaries was disproportionately small, which negatively impacted the financial situation of judges and prosecutors, especially given the high inflation rate in Poland. This led judges and prosecutors to file lawsuits against the State Treasury.

On 8 November 2023, the Constitutional Tribunal declared the discussed provisions of the law on special solutions serving the implementation of the budget act for the year 2023 to be unconstitutional (case No. K 1/23). The ruling was issued without the participation of judges appointed to positions that were already occupied (i.e. without procedural defects).

²² [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-225672%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225672%22]})

²³ See in particular [Judgement of the Court \(Grand Chamber\) of 15 July 2021](#), case No. C-791/19.

Independence/autonomy of the prosecution service

On 27 December 2023, the Council of Ministers accepted the proposal of the Minister of Justice and Prosecutor General Adam Bodnar for Poland to join the European Public Prosecutor's Office (EPPO).

In December 2023, the Minister of Justice Adam Bodnar appointed 5 prosecutors associated with the Lex Super Omnia association to the National Council of Prosecutors. This association brings together prosecutors who, during the tenure of the previous Minister of Justice, were the most vocal critics of the changes he introduced and were, as a result, subject to disciplinary action or transfer to distant prosecution offices.

On the other hand, in July 2023, the previous Sejm (in view of a possible change of government after the general election of October 2023) adopted an amendment to the Law on Prosecution introducing changes to the prosecution service. According to these changes, the National Prosecutor (*Prokurator Krajowy*), as well as other Prosecutor General's deputies, might be dismissed from their functions only upon the written consent of the President of Poland.

Simultaneously, the aforementioned changes delegated the competence to appoint and dismiss regional, district, and local prosecutors from the Prosecutor General (*Prokurator Generalny* – superior of all prosecutors in Poland) to the National Prosecutor (*Prokurator Krajowy* – first deputy Prosecutor General).

Furthermore, the National Prosecutor gained the authority to perform tasks and exercise rights provided for in the Police Act and other laws regulating the work of secret services. As a result, the National Prosecutor is now competent to initiate surveillance.

Finally, the powers of the Prosecutor General to issue orders to subordinate prosecutors were significantly weakened. According to the new wording of Article 7 of the Law on the Public Prosecutor's Office, the Prosecutor General issues orders through the National Prosecutor's Office.

In HFHR's opinion, the adoption of the changes was not aimed at improving the work of the public prosecution service, as declared by the drafters, but at strengthening the political influence over the prosecution and making it more dependent on political changes. The discussed changes were not in any way linked to a change in the method of selecting the National Prosecutor, including ensuring the participation of the prosecutor's self-government and entities independent of political influences in this regard. At the same time, they strongly hinder the current parliamentary majority from making changes that would more extensively ensure the independence of individual prosecutors in the performance of their functions.

Independence of the Bar (chamber/association of lawyers) and of lawyers

The Constitutional Court dismissed, due to formal reasons, a case initiated by a group of Law and Justice party members aiming to declare certain provisions of the Law on the

Bar unconstitutional (case reference K 6/22; see the HFHR's input to the 2023 Rule of Law Report).²⁴ This case was critically assessed by representatives of the legal profession, who considered it a threat to the independence of professional self-government. The motion was considered an attempt from the governing majority to limit the independence of advocates and legal advisers, who often are at odds with the government when defending the rule of law in Poland, and to reshape the existing structure of the Bar in future.²⁵ In reaction to the MPs' motion, national bar associations of advocates²⁶ and legal advisers²⁷ adopted resolutions emphasizing that the Bar's autonomy and independence serve the right to defence and the right to a fair trial.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

On 13 December 2023, the Supreme Court, composed of seven judges of the Supreme Court (case reference I KZP 5/23), refused to adopt a resolution regarding the costs of unpaid legal aid. In the reasoning of its decision, the court referred to the legal situation of the Constitutional Court. It pointed out that decisions issued by the Constitutional Court

with the participation of individuals appointed to previously occupied positions do not have the effects envisaged in the Constitution (i.e. they are not binding). Therefore, they do not have a universally binding and final character.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

In 2023, the Parliament adopted changes in the Act on Courts' Costs in Civil Cases. The new regulation lowered the fees for delivering a reasoned court decision. Previously, the fees for delivering reasoned court decisions were the same for judgements as well as other categories of court decisions. Currently, the fee for delivering judgement with justification is PLN 100 (approx. €2), whereas in cases of other decisions PLN 30 (approx. €7).

Resource of the judiciary (human/financial/material)

In 2023, the employees of court and prosecution services organised a protest against low wages. According to the media reports, in 2023 among over 8,000 employees of prosecution service almost 1,300 employees received minimal

24 <https://trybunal.gov.pl/postepowanie-i-orzeczenia/postanowienia/art/12570-przynaloznosc-do-izby-adwokackiej-lub-izby-radcow-prawnych-na-podstawie-kryterium-miejsca-polozenia-siedziby-zawodowej-lub-miejsca-zamieszkania>

25 P. Rojek-Socha, A. Partyk, [Wyrok TK w sprawie samorządów może uderzyć w prawnicze dyscyplinarki](#), Prawo.pl, 16 May 2022.

26 National Bar Association, [Resolution No. 63/2022](#), 4 July 2022.

27 National Chamber of Legal Advisers, [Statement](#), 4 July 2022.

wage (PLN 3,490 with tax / €775). The proposal of the state budget for 2024 envisages a 20% wage increase for employees of courts and prosecutors.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

In November 2023, the previous Minister of Justice, Zbigniew Ziobro appointed Kamil Zaradkiewicz for a five-year term as the director of the National School of Judges and Prosecutors, responsible for the continuous education of judges and prosecutors, as well as trainees in the judiciary and prosecution.

Kamil Zaradkiewicz is a close associate of Minister of Justice Zbigniew Ziobro and a former director of the administrative department of the Ministry of Justice. He was appointed to the Supreme Court by the so-called new National Council of the Judiciary. Furthermore, his appointment occurred upon the personal recommendation of Minister of Justice Zbigniew Ziobro.

The decision of the Minister of Justice to appoint him as the director of the school raises doubts regarding compliance with the provisions of the law on the Supreme Court. The law prohibits judges from holding any official position or full-time employment other than as a scientific or teaching staff member in a higher education institution (whereas the National School is not one). Furthermore, according to the law, a judge of the Supreme Court appointed to serve

in state authorities must immediately resign from the judge's office, while retaining the right to return to the position held before the appointment.

What is more, during this period Judge Robert Pelewicz was appointed as the Deputy Director of the National School. In 2023, *Gazeta Wyborcza* published an article accusing him of attempting to influence the outcome of the judicial application exam by inciting the examiner to complete the test instead of the examined candidate (privately, the daughter of the then Law and Justice Senator, and currently the judge of the Constitutional Court, Stanisław Piotrowicz).²⁸

Fairness and efficiency of the justice system

Length of proceedings

The issue of prolonged judicial proceedings remains a systemic problem of the Polish justice system. The ongoing changes in the judiciary since 2015 have led to a significant increase in the average duration of proceedings. While in 2015 court proceedings before district courts took 3.9 months on average, by 2022 their duration had extended to 5.7 months. During this period, an increase in the duration of proceedings is observed in every category of cases, except for criminal cases heard by regional courts, where there was a decrease from 10.3 to 8.6 months.

28 <https://wyborcza.pl/7,75398,29479150,kamea-czarny-dlugopis-i-egzamin-corki-piotrowicza.html>

However, in comparison to 2021, there is a noticeable statistical acceleration in the pace of adjudicating cases in some categories before the common courts (*sądy powszechne* – district, regional and appellate courts that deal with criminal and civil cases; outside their structures, there are specialized courts – administrative and military ones). This is particularly true for civil cases heard by regional courts (decrease from 8.9 to 8 months) and civil cases heard by district courts (decrease from 7.6 months to 6.1 months). Significant decreases compared to 2021 were also observed in the statistics related to family cases (from 5.3 to 4.9 months) and

business cases (from 8.6 to 7.3 months) heard by district courts.

On the other hand, in comparison to 2021, the duration of proceedings before regional courts in the field of social insurance and labour law increased (from 12.6 to 13.3 months), as well as in business cases (from 11.1 to 11.7 months). An important increase should be noted for regional courts in cases related to social insurance and labour law (from 11.5 to 12.2 months).

The duration of criminal proceedings, both before regional and district courts, remains nearly unchanged compared to 2021.

Media environment and media freedom -

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

In 2023, there were no significant changes concerning the independence of the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*, NBC). As in previous years and also in 2023, NBC's actions showed political bias towards certain media outlets. For example, in August 2023, NBC issued a decision imposing a fine on Radio ZET. Radio Zet published

content informing about the American service's lack of confidence in the Polish service during an organisation of the transport of the Ukrainian President in Poland. According to NBC, this material was contradictory to the Polish *raison d'état*.

In August 2023, NBC issued a decision prolonging the concession for Radio TOK FM. The private station (part of the Agora media corporation) awaited the decision for over 9 months. After issuing the decision, NBC Chairman Maciej Świrski said that the positive decision was issued "to show there is freedom of speech".²⁹ At the same time, NBC issued

29 <https://www.tokfm.pl/Tokfm/7,103085,29942061,zeby-pokazac-ze-jest-wolnosc-slowa-maciej-swirski-o-przedluzeniu.html>

a decision imposing fines on the radio for the critical comments made by one of its journalists concerning the new school handbook 'History and the Present' ("*Historia i Teraźniejszość*"). The handbook ordered by the Ministry of National Education was strongly criticized for its conservative and discriminatory approach.

Furthermore, in February 2022, the Supreme Administrative Court ruled that NBC "grossly violated the law" by delaying issuing the decision on prolonging the concession of one of the private TV stations. TVN 7 applied for the renewal of the concession a year earlier, whereas the final decision was issued only 6 days before the former decision expired. The protracted proceedings were of interest to the Ombudsman, among others, who suspected the existence of non-legal factors influencing the non-renewal of the concession.³⁰

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies

In 2023, the Ombudsman appealed to the Speaker of the Sejm, Elżbieta Witek, to start the process of implementing the Constitutional Court judgement of 2016 concerning the competences of the National Media Council and the National Broadcasting Council.

In 2016, the Parliament adopted the Act on the National Media Council that transferred

some of the competencies of the National Broadcasting Council in respect of appointing the management of the public media to the newly created National Media Council (*Rada Mediów Narodowych*). In its judgement, the Constitutional Court ruled that bypassing the NBC in the process of appointing the management of the public media is unconstitutional. Regardless of the decision, for almost seven years the Parliament did not implement the judgement.

In December 2023, after the forming of the new government, the Minister of State Assets undertook steps to change the management of the public media. Relying on the provisions of the Commercial Companies Code (*Kodeks spółek handlowych*), the Minister dismissed the public media supervisory boards and the media chiefs. This process was heavily contested from the perspective of its legality. According to the opinion of the HFHR, such actions "raised serious legal concerns".³¹ In its statement, the HFHR pointed out that the model of appointing the management of the public media by a member of the government violated the Council of Europe standards.

Responding to these actions, President of the Republic of Poland, Andrzej Duda, decided to veto the legislation increasing the budget of the national media. In reaction to this, the Minister of State Assets decided to start the process of liquidation of the companies: Public TV, Public Radio and the Polish Press Agency. According

30 <https://bip.brpo.gov.pl/pl/content/rpo-krrit-koncesja-tvn7>

31 <https://hfhr.pl/aktualnosci/stanowisko-hfpc-ws-zmian-w-mediach-publicznych>

to the Ministry, this process would secure the functioning of the media and undertake the needed reorganisation without the necessity of collective dismissal of employees.

Transparency of media ownership

Rules governing transparency of media ownership and public availability of media ownership information, and their application

No legislative changes as regards transparency of media ownership and public availability of media ownership information took place.

At the same time, research for the local press in this area has been done. According to research carried out by the Media Forum Foundation, a significant proportion of readers make very little distinction between private local media and local government-owned media. Whereas as many as 45% of respondents stated that they had a positive view of media published by the local government (whose right to report on its activities is not questioned), only 23% said that the local government media is a propaganda tube, i.e. that local government media are a propaganda mouthpiece of the local government.³²

In 2023, HFHR published a report ‘From the regional press to Orlen Press’. It is the first study analysing the journalistic freedom and freedom of speech in regional media after acquisition of

Polska Press by state-owned company Orlen in March 2021. The report, based on interviews with journalists who work or worked in Polska Press, shows several key trends that pose a threat to journalists’ freedom that occurred after the acquisition. Firstly, the study revealed practices of favouring the former ruling party (Law and Justice) and its politicians in editorial coverage. Furthermore, the interviewed journalists indicated the practice of marginalizing the political opposition in the media coverage and limiting the choice of topics that were considered sensitive from the perspective of the former ruling majority. Finally, the study also revealed examples of substantial interference with the texts prepared by the journalists and the familiarity of editorial management with politicians associated with the former ruling majority.³³

In 2023, the Supreme Audit Chamber (Najwyższa Izba Kontroli - SAC) published a report from an audit of the Public TV finances. The Chamber’s report indicated numerous violations of the legality and scrutiny in managing the public funds by the public TV. According to the Chamber, “the scale of the irregularities, their financial dimension, as well as their nature, which indicates that such actions may be repeated, does not allow the SAC to give the state station a positive assessment in the scope covered by the audit”.³⁴

32 <https://www.press.pl/tresc/79474,lokalne-media-niezalezne-slabo-odrozniane-od-mediow-samorzadowych>

33 <https://hfhr.pl/en/news/from-the-regional-press-to-ornen-press>

34 <https://www.nik.gov.pl/aktualnosci/funkcjonowanie-i-finanse-tvp.html>

Public service media

Independence of public service media from governmental interference

No legislative changes that increase the independence of the media from political influence took place. However, elections and the change in the public media (namely, the change of management boards of public companies Polish Television and Polish Radio), which have been criticized as legally questionable, have triggered an acceleration in civic work around public media reform. All drafts stress the independence of these media from politicians.

A topical issue is press publishing by local governments. In 2023, this topic was repeatedly discussed in the community of independent local media publishers. Towards the end of the year, publishers of local media began to call for a ban on press publication by local authorities. The ban would be included in local government laws at all levels and would apply to the press as defined in the Press Law.³⁵

In addition, in June 2023 the editor-in-chief of one of the leading news portals, *Wirtualna Polska*, published a column informing about alleged efforts to influence the outlet's editorial independence by state actors.³⁶ According to the article, after *Wirtualna Polska* began publishing investigative reports, a state-owned company made an offer to acquire the portal. As the

offer was rejected, another offer was allegedly made, that of business cooperation – which was also rejected. Afterwards, a head of a state institution allegedly made a suggestion to a member of the board of the portal's publisher, specifying which named journalists should be fired and hired. According to the column, once all such offers were refused, a state regulator issued seven requests relating to various business activities of the portal's publisher in a single week, a few days only after the head of the state agency expressed dissatisfaction with *Wirtualna Polska's* editorial line.

Also in June 2023, an editor-in-chief of another news portal, *Onet*, published an article describing similar behaviour. According to the article, a person close to the government had suggested in a conversation with the editor-in-chief that *Onet* hire a new deputy editor-in-chief to represent the government's viewpoint, who would directly report to the portal's management board rather than the editor-in-chief.

On 28 June 2023, the editors-in-chief of 67 media outlets in Poland issued a joint declaration denouncing the pressure reported by *Wirtualna Polska* and *Onet* as latest efforts to restrict the independence of Polish media.

35 <https://www.press.pl/tresc/79474,lokalne-media-niezalezne-slabo-odrozniane-od-mediow-samorzadowych>

36 <https://www.wirtualnemedial.pl/arttykul/wirtualna-polska-redaktor-naczelnny-pawel-kapusta-naciski-wladza-pis-mateusz-morawiecki-jaroslaw-kaczynski>

Safety and protection of journalists and other media actors

Rules and practices guaranteeing journalists' independence and safety

In 2023, the Parliament adopted the Law on the State Commission for Investigating Russian Influences on the Internal Security of the Republic of Poland between 2007-2022 (Law on the State Commission).³⁷ Although the law was commonly referred to as 'Lex Tusk' as it was mainly targeting the leader of the then opposition (now Prime Minister), Donald Tusk, nonetheless media and civil society expressed concerns that this legislation would also influence media freedom. According to the law, the commission was granted competences to hear journalists, compel them to reveal their sources and submit motions to launch criminal proceedings against journalists. According to the former deputy Minister of Defence, "Many journalists who operate under Russian influence should be summoned by the commission."

After the general election in October 2023, the new Parliament dismissed the members of the commission. The representatives of the new governing majority announced that the Parliament would appoint new members and introduce a new scope of the commission's work.

On 8 May 2023, the European Commission informed it was launching infringement proceedings against Poland with regard to the adoption of the (Law on the State Commission).³⁸ In the Commission's view, the adopted law violates the principle of democracy (Articles 2 and 10 of the TEU), the principles of legality and non-retroactivity of sanctions (Article 49 of the EU Charter of Fundamental Rights - Charter) and the general principles of legal certainty and *res judicata*, as well as the right to effective judicial protection (Article 47 of the Charter), *ne bis in idem*, the protection of professional secrecy (Article 7 of the Charter) and the requirements of EU law relating to data protection (General Data Protection Regulation and Article 8 of the Charter). As of the date of drafting this report, the proceedings are pending.³⁹

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

In March 2023, the European Court of Human Rights communicated to the Polish government the case of two journalists, Maciej Moskwa and Maciej Nabrdalik.⁴⁰ While covering the humanitarian crisis on the Polish-Belarusian border, the journalists were harassed by soldiers (aggressively stopped, handcuffed and searched). The investigation into this case was never opened. In their application to the ECtHR, the journalists raised the violations

37 <https://www.gov.pl/web/premier/komisja-ds-badania-wplywow-rosyjskich>

38 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3134

39 EC, [Information about Commission decisions on infringements](#) (accessed: 15.02.2024).

40 *Maciej Nabrdalik v. Poland*, Application No. 30614/22; *Maciej Moskwa v. Poland*, Application No. 30848/22.

of, among others, Article 5 (right to liberty and security), Article 10 (freedom of speech) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In 2023, the District Court in Hajnówka sentenced a journalist who commented on the works of the Border Guard in the context of the humanitarian crisis on the Polish-Belarusian border. According to the journalist, the Border Guard officers “who forbid the delivery of water and doctors’ visits to migrants can attach SS patches to themselves”.⁴¹

Another example of a SLAPP lawsuit relates to an article published in the environmental magazine *Zielone Wiadomości* on 18 August 2023 by Nawojka Ciborska, a member of the collective of environmental activists ‘Bombelki’. The article reported on a protest by ‘Bombelki’ against plans by Gaz System S.A., the state-owned company operating Poland’s gas network, to build a terminal for natural gas delivered by sea. The article criticised the Gaz-System’s plans to build an LNG terminal in Gdansk, indicating that gas has a significant impact on global warming and for this reason, fossil gas should not act as a transition fuel towards decarbonization. The article also quoted an unnamed activists saying that “gas is a dangerous fossil fuel that we need to move away from, not invest in [...]”

Gaz-System are a bunch of criminals who are pushing us straight to disaster for their profits”. In response to the article, on 28 October 2023, Gaz System filed a defamation lawsuit against both the author of the article and the publisher of the magazine. The plaintiff demanded an apology and PLN 20,000 compensation (c.a. €4,500). The case is currently pending before the District Court in Warsaw.

41 https://www.press.pl/tresc/75931,piotr-maslak-skazany-w-niejawnym-procesie_-dziennikarz-tok-fm-rzeko-mo-mial-znieslawic-funkcjonariuszy-strazy-granicznej

LIBERTIES

RULE OF LAW REPORT

2024

ROMANIA

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About the authors

Association for the Defence of Human Rights in Romania - the Helsinki Committee (APADOR-CH)



APADOR-CH is a non-governmental, generalist human rights organisation, working since 1990 in Romania to promote and protect civil rights, the civic space and the rule of law. Its mission is to take action for the protection of human rights and the establishment of equilibrium when they are in danger or infringed upon. Its vision is a society in which human rights are respected, for everyone, always.

APADOR-CH uses four main tools to achieve its objectives: legislative advocacy, strategic litigation, public communication/watchdog, and monitoring/research. It advocates for access to information of public interest, transparency in the decision-making process and good governance. It documents police abuses and follows up on the implementation of police law. APADOR-CH is also working for the development of efficient legal and institutional mechanisms for respecting human rights and continues to advance the right to freedom of association and assembly, as well as freedom of expression.

Key concerns

Concerning the Justice Laws, significant changes were adopted at the end of 2022. In 2023, Romania did not finalise the process initiated in view of taking into account the recommendations in the opinion of the Venice Commission on the Justice Laws. The panel of high-level experts created in May 2023 has produced a working document in order to start a comprehensive internal evaluation on how to implement the recommendations

of the Venice Commission, made in Opinion No. 11061/2022, regarding the country's three laws of justice that entered into force at the end of 2022. This document is in the process of internal evaluation, subject to analysis at the level of specialised departments within the Ministry of Justice (it is not public).

Regarding the anti-corruption framework, Romania adopted a new law on the protection of whistleblowers in 2022 as part of the national framework to prevent and combat

corruption, but its implementation at the institutional level lags behind. Parliament's failure to fulfil its constitutional duty to replace a law found unconstitutional in a timely manner has also led to the cessation of legal action in more than 5,000 court cases, many involving politicians and businessmen charged with corruption.





In the area of media environment and media freedom, against the backdrop of a national press weakened in recent years due to being funded by political parties, censorship actions such as those alleged by the Ringier journalists have raised further questions about the editorial independence of Romania's media. The saga of journalist Emilia Şercan continued into 2023, when the Public Prosecutor's Office finally closed all the cases concerning the threats and reputational damage levied against the journalist, who published investigations about the plagiarism of former Prime Minister Nicolae Ciucă.

As regards checks and balances, no progress has been made to establish a National Human Rights Institution taking into account the UN Paris Principles. The applications lodged by the Romanian Institute for Human Rights (RIHR) and by the Ombudsperson before the Global Alliance of National Human Rights Institutions' (GANHRI) Sub-Committee




on Accreditation (SCA) are still pending and are due to be considered in 2024.

In the area of civic space, the targeting of civil society organisations that have challenged Bucharest authorities over real estate developments is alarming, and has led to the closure of one organisation and the near closure of a second. The dissolution of civic organisations that pressure the authorities to do their duties as public officials deprives civic space of actors that are essential in a democracy.

State of play (versus 2022)

-  Justice system
- N/A** Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
- N/A** Systemic human rights issues

Legend

- | Regression | No progress | Progress |
|---|---|---|
|  |  |  |

Justice system -

Key recommendations

- *The Ministry of Justice should speed up the process of internal evaluation regarding the manner of implementing the recommendations formulated by the Venice Commission and make public any information on how (and if) these will be integrated at the administrative and legislative level.*

Judicial independence

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In 2019, the acting mayor of Bucharest Sector 5, Cristian Piedone, was sentenced to eight years and six months in prison for abuse of office concerning the fire that took place in 2015 at the Colectiv Club in Bucharest, which killed 65 people and injured 150.

Subsequently, in May 2022, the sentence was reduced to four years imprisonment on appeal and then enforced.

In June 2023, in an extraordinary appeal (appeal in cassation), Piedone was acquitted¹ by the High Court of Cassation and Justice, the country's Supreme Court, on the grounds that the criminal offence imputed by the accusation did not exist. Convicting someone for a non-existent offence is one of the biggest mistakes (if not the gravest) the judicial system

can make. In this case, not only was there a conviction, but the convicted person was also incarcerated for one year and one month following his conviction.

It should be noted that none of the three courts involved in the case (the tribunal, the Court of Appeal and the High Court of Cassation and Justice) agreed with the sentences given out by the lower courts. Indeed, courts don't have to agree on all cases, because this would make appeals useless. However, when there are significant discrepancies between court judgments issued in the same case and based on the same material evidence, there is a striking difference between the initial eight-a-half-year initial conviction and the final acquittal, on grounds that the charges did not exist. The public has every reason to doubt the objectivity and professionalism of the courts, thus affecting public confidence in the judicial system.

1 <https://www.hotnews.ro/stiri-esential-26347971-fostul-primar-cristian-popescu-piedone-pus-libertate-condamnat-4-ani-inchisoare-este-achitat.htm>

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

The Romanian whistleblower legislation (Law 361/2022) provides that whistleblowers will receive free legal aid to defend themselves against harassment which they are subjected to as a consequence of their whistleblowing. Also, according to national legislation regarding public legal aid, in such cases, free legal aid is granted regardless of the material situation of the whistleblower.

Despite this, in 2023, a whistleblower notified APADOR-CH that the Bacău Bar Association refused to grant him legal aid and asked him

to send documents showing his financial situation.² He claimed that he was not the only whistleblower who was refused legal aid by the Bacău Bar Association. At the end of August 2023, the Bar Association finally accepted, after the third attempt, the whistleblower's request and assigned him a lawyer without asking him for proof of his financial situation.

At APADOR-CH's request, the National Association of the Romanian Bars stated that it will consider the option of informing all Romanian bar associations about the provisions of the new whistleblower legislation and the method of uniform application.

Anti-corruption framework N/A

Framework to prevent corruption

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In December 2022, Romania adopted a new law on the protection of whistleblowers as part of the national framework to prevent and combat corruption.³ Its implementation at the institutional level lags behind. For example,

the Romanian police, the Gendarmerie as well as the Ministry of Internal Affairs, all failed to undertake a review of the current legislation on whistleblower rules and procedures in order to make them compliant with the new law on the protection of whistleblowers (according to the assessment of APADOR-CH, and also underlined by the 2023 GRECO⁴ report).

The National Integrity Agency (ANI) remains insufficiently resourced. In October 2023, ANI had only 4 integrity officers to handle

2 <https://apador.org/en/tara-in-care-nici-barourile-de-avocati-nu-respecta-legea/>

3 <https://whistleblowingmonitor.eu/country/romania>

4 <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a9c84f>

537 whistleblower complaints (according to an FOIA reply sent to APADOR-CH in October 2023).

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

The Parliament's failure to comply with a constitutional obligation has led to a legal controversy and compromised the prosecution of several criminal cases.

The Criminal Code contains a provision ("the interruption of the statute of limitations") which allows the statute of criminal liability to be extended for a certain period and allows for criminal punishment of a person, even after an extended period has passed since the crime was committed.

In 2018, the Romanian Constitutional Court (CCR) decided through judgement 297/26.04.2018 that this provision of the Criminal Code was unclear and thus unconstitutional. According to the Romanian Constitution,

the Parliament was obliged to replace the unconstitutional text with a constitutional one within 45 days of the publication of the CCR decision. From 2018 to 2022, the Parliament violated its constitutional obligation by not replacing the unconstitutional provision with a constitutional one.

In 2022, the Romanian Constitutional Court issued a new decision (No.358/26.05.2022) regarding the issue of the interruption of the statute of limitations and established that, given the 2018 decision, no legal provision allowing the extension of the period of prescription had existed since 2018. It was only after this decision that the Parliament amended the text of the Criminal Code on the interruption of the statute of limitations, which became constitutional.

Some courts disagreed with the decision that no legal text allowed the interruption (extension) of the statute of limitations between 2018 and 2022. As a result, the matter was referred to the CJEU, which delivered judgement C-107/23 on 24 July 2023. In this decision, it was established, among other things, in answer No.3, that if they invoke the principle of supremacy of Union law, the national courts no longer have to respect the decisions of the Constitutional Court of Romania nor those of the High Court of Cassation and Justice.⁵

5 "The principle of the primacy of EU law is to be interpreted as precluding national legislation or a national practice pursuant **to which the ordinary national courts are bound by decisions of the national Constitutional Court and binding decisions of the national supreme court and may not, for that reason and at the risk of committing a disciplinary offence, of their own motion disapply the case-law resulting from those decisions**, even if, in light of a judgement of the Court of Justice, they take the view that case-law is contrary to Article 2 TEU, the second paragraph of Article 19(1) TEU, read in conjunction with Article 325(1) TFEU, in application of [Decision 2006/928]." - Judgement C- 107/23 of July 24th 2023.

However, in criminal cases where the question of the intervention of the statute of limitations for criminal liability has been raised, national courts have almost unanimously preferred the application of national decisions, namely CCR (358/2022) and ICCJ (HP decision No.67/2022) decisions, which establish that in the period 2018-2022, there was no legal text allowing the interruption (extension) of the statute of limitations. As a result, in several cases, the trial was halted due to the determination that it was no longer possible to pronounce a judgement of acquittal or

conviction, as pertained to the case. The press reported that the number of cases “cleared” in this manner amounted to more than 5,000 and included politicians and businessmen charged with corruption.

All these issues could have been easily avoided if the Parliament had fulfilled its constitutional obligation to replace a law found unconstitutional by the Constitutional Court with a constitutional one within the 45 days provided for in the Constitution, not four years later.

Media environment and media freedom

Key recommendations

- *APADOR-CH recommends that the current draft law 334/2006, subject to public debate, on the financing of the activity of political parties and electoral campaigns should be supplemented with a provision stating that, where the services are provided through intermediaries (in which case the contractor is not the final provider), the list of suppliers submitted must include each intermediary as well as the person or persons who will directly provide the service, i.e. each final provider. More specifically, the obligation to declare must relate to the name of each natural or legal person in the chain of service providers, indicating the purpose, the value and the date of payment for each one. The consequence of this change would be improved public confidence in the media, which is suspected of being bought to a significant extent by political parties through the use of state subsidies.*

Public service media

Independence of public service media from governmental interference

Ringier and press freedom in Romania

A press scandal started in the summer of 2023, involving two media outlets - Gazeta

Sporturilor (GSP) and Libertatea, both owned by the Swiss media Group Ringier. GSP’s editor-in-chief was fired by Ringier’s management on the grounds of ‘differences in strategic vision’. In response, 95 GSP and Libertatea journalists published an editorial denouncing repeated editorial interference by some of Ringier Sports Media Group’s top managers and their desire to change newsroom

procedures to favour betting companies that are advertising clients, something that the journalists rejected. Following the dismissal of the GSP editor-in-chief, the newspaper's print edition was discontinued for financial reasons and limited to online publication.

Censorship actions such as those alleged by the Ringier journalists have raised serious questions about the editorial independence of Romania's media. The series of layoffs at Ringier Romania publications continued. In December 2023, the editorial coordinator of Libertatea, Cătălin Tolontan (who had previously been removed from his position as editor-in-chief of GSP), and the two deputy editors-in-chief of Libertatea, Iulia Roșu and Camelia Stan, were dismissed. In addition, the publication has announced a series of redundancies in its editorial team as it moves to focus more on digital content, because print media no longer generates sufficient revenue.

These developments come against the backdrop of a national press weakened in recent years due to being funded by political parties, and the actions of Ringier, one of the last Western media investors in Romania, give a clear signal of the company's commercial interest prevailing over journalism in the public's interest.

Financing (including transparency of financing)

Transparency in the use of public subsidies received by political parties for the press

The European Commission's Rule of Law Report 2023 concludes that, "There have been no significant improvements on the transparency of media⁶ financing, particularly audiovisual media, by political parties."

Given that half of the state subsidies received by political parties are spent on media and political propaganda, the increase in transparency should primarily concern how political parties finance the media. One consequence would be improved public confidence in the media, which is suspected of being bought to a significant extent by political parties through the use of state subsidies.

An excellent opportunity to increase transparency could be the adoption of the draft law to amend and supplement Law No.334/2006 on financing political parties and election campaigns. The Senate passed the draft law and it is currently under debate in the Chamber of Deputies, registered under No.PL-x516/2023. So far, the Chamber of Deputies has not adopted the draft, as the opinions of several parliamentary committees are still pending.

The draft law provides, among other things, for the introduction of a new article (Article 27/1) to the Law No.334/2006, which obliges political parties which receive state funding to submit to the Romanian Permanent Electoral Authority an itemised statement of expenses incurred from state subsidies in the previous month, until the 25th of each month. According to the draft law, the "itemised

6 <https://expertforum.ro/wp-content/uploads/2023/08/PB153subventii.pdf>

statement of expenses” also includes “the list of suppliers and the value of provided goods or services”. This new provision is a step towards better transparency but does not help to reveal the complete chain of service providers paid by political parties from state subsidies. This regulation only provides for the disclosure of the first service provider but not that of the final provider, the one actually performing the service. Thus, the true service provider (the final/real beneficiary of the party funds) may be hidden by introducing one or more intermediaries in the service supply chain. If political parties are required to publish the identity of the first supplier (the intermediary, the main contractor), but not the identity of the final supplier, then it cannot be argued that there is full transparency regarding the beneficiaries of payments made from state subsidies to political parties.

APADOR-CH recommends that Paragraph 3 of Article 27.1 should be supplemented with a provision stating that, where the services are provided through intermediaries (in which case the contractor is not the final provider), the list of suppliers submitted must include each intermediary as well as the person or persons who will directly provide the service, i.e. each final provider. More specifically, the obligation to declare must relate to the name of each natural or legal person in the chain of service providers, indicating the purpose, the value and the date of payment for each one.

Otherwise, the real beneficiary of the sums paid by the party will remain unknown, as only the intermediary (possibly a front company) will be known, not the subcontractor or the person who actually provides the service. When it

comes to media, the need to communicate the whole chain of providers is even more significant, so the public can assess whether there is a relationship between the funding received by a media entity and a particular editorial policy.

Safety and protection of journalists and other media actors

Rules and practices guaranteeing journalist's independence and safety

Law enforcement's capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

The saga of journalist Emilia Șercan, known for her investigations regarding the academic plagiarism of people at the top of state institutions, continued in 2023. Last year, the Public Prosecutor's Office finally closed all the cases concerning threatening and defamation of Șercan, who published investigations about the plagiarism of former Prime Minister Nicolae Ciucă.

In early 2022, Șercan reported that several personal photographs stolen from her were published on various adult sites and news sites. The journalist managed to have the photos taken down through personal efforts and with the help of international organisations, only for them to re-emerge on websites belonging to controversial Romanian owners with ties to politicians. At present, more than a year later since the situation was reported, the Romanian authorities have thus far failed to delete the photos or investigate the culprits.

In the summer of 2023, APADOR-CH submitted a memorandum to the Attorney General⁷ of the Prosecutor's Office of the High Court of Cassation and Justice (ICCJ), asking them to take the necessary steps to ensure that the subordinate institutions uphold the law in Şercan's case. More specifically, to comply with their legal obligation (under Article 306, paragraph 1 of the Code of Criminal Procedure) to take the necessary steps to limit the consequences of criminal offences for which a complaint has been logged.

The prosecutor never submitted an official response to the memorandum, which was signed by multiple NGOs; instead the photos 'miraculously' disappeared from the indicated websites, without the investigators taking any credit. However, the prosecution's case concerning the defamation of the journalist, perpetrated by the very people within the police force, who should have investigated the digital theft and the publication of the photographs, was closed in November 2023, after dragging on for over a year without identifying the perpetrators.

The same happened in a separate case concerning the threats received by Şercan after she exposed the academic plagiarism in then Prime Minister Nicolae Ciucă's doctoral thesis. This file was closed on the grounds that further investigation was 'not in the public interest'. Şercan appealed the decision of the Prosecutor's Office in court, which reopened the case.

In the memorandum sent to the Public Prosecutor's Office, APADOR-CH pointed out that the criminal prosecution body's failure to take action in Emilia Şercan's case may lead to the conclusion that the state lacks the adequate practical means to stop certain types of crimes, or, even worse, that it fails to provide the appropriate legal protection to a very incisive investigative journalist, who through her investigations and revelations regarding the malfeasances committed by very important public persons (politicians, Members of the Parliament, Ministers, and Prime Ministers), has upset many powerful decision-makers.

Checks and balances

Electoral framework

Limitations on the right to vote

Elections managed by the Romanian Intelligence Service

Romania's National Security Law (L51/1991) was amended in early 2023 by Law 58/2023 on Cybersecurity. The amendments include the definition of new types of threats to national security, such as those listed under Article 3, letter p of the new law: "actions carried out

⁷ <https://apador.org/en/19-ong-uri-ii-cer-procurorului-general-sa-respecte-legea-in-cazul-emilia-sercan/>

by state or non-state entities, by carrying out cyber propaganda or disinformation campaigns aimed at changing the constitutional order.”⁸

APADOR-CH has pointed out since the public debate of the law that the ambiguous wording of this article raises constitutionality issues because it could be used to transform any opinions, political or not, presented to the public by anyone (individual, association or political party running for election) into national security threats (which can also be qualified as offences under Article 404 of the Criminal Code). For example, if these opinions contradict or break the ‘official’ line of thinking set out by the public authorities, these can be seen as threats to national security or punishable crimes.

Nevertheless, Law 58/2023 was passed and enacted with this ambiguous wording. The Ombudsperson appealed the law to the Constitutional Court (CCR), but the court ruled that the law was constitutional.⁹

A few months after the law was passed, Anton Rog, head of the Romanian Intelligence Service (SRI) and the head of the National Cyberint Center, explained in an interview¹⁰ how the Romanian Intelligence Service interprets Article 3, letter p of the new law, admitting that even the political discourse of the opposition parties during election campaigns

can qualify as a national security threat if this discourse can change the constitutional order, as well as the will of the voters, showing how SRI was ready to intervene in ‘counteracting’ these new types of threats: by surveillance operations or censorship of websites.

In 2024, a year with four elections (European, parliamentary, local and presidential), Romanian citizens cannot freely vote for a party or candidate they believe represents them. They will only be able to elect parties or candidates that the Romanian Intelligence Service deems ‘worthy’ to run, i.e., those who do not ‘disinform’ or ‘spread propaganda’ during elections. This is a clear violation of the following constitutional rights: freedom of expression (Article 30), the right to information (Article 31), the right to vote (Article 36), the right to be elected (Article 37-38) and the right of association (Article 40).

Given the worrying statements made by the SRI head, APADOR-CH again urged the Ombudsperson to appeal the amendments to the law on national security to the Constitutional Court, but the Ombudsperson considered that a new intervention was not necessary and asked the Intelligence Service if there were legal guarantees that it would not abuse the new law.¹¹ The Romanian Intelligence Service responded that these legal guarantees exist.

8 <https://apador.org/en/mos-parlament-vine-cu-amenzi-uriase-si-puscarie-pentru-cine-ameninta-cu-vorba-securitatea-cibernetica-a-statului/>

9 <https://apador.org/en/cerem-avocatului-poporului-sa-atace-la-ccr-legea-care-anuleaza-alegerile-libere/>

10 <https://www.youtube.com/watch?v=dlijLKLrAno>

11 <https://apador.org/en/avocatul-poporului-ne-apara-de-abuzurile-sri-intreband-sri-ce-parere-are/>

Civic space –

Key recommendations

- *APADOR-CH recommends that the Ministry of Justice initiate a draft law that would eliminate the possibility of an NGO becoming insolvent (consequently leading to its dissolution), because it goes to court to resolve a matter of public interest. The legislative solution proposed is the introduction in the Code of Civil Procedure (for example, adding a new paragraph to Article 453), or in the special laws that regulate the respective matters (Law 544/2001, regulations in the field of urban planning and the environment), a provision that, in the case of lawsuits whose object is free access to information of public interest or urban planning or environmental issues, court expenses should not be borne by the party that loses the lawsuit, as is the rule, but by exception to the rule in Article 453, paragraph 1 of the Civil Procedure Code that each party should bear its own court costs.*

Freedom of expression and of information

Restrictions on access to information

The secrecy surrounding President Iohannis's travel expenses

Throughout 2023, civil society organisations as well as the media tried to determine the public cost of the President's foreign trips by sending information requests to public institutions, as per law 544/2001.¹² Details have been made public about the rental of private luxury planes used by President Iohannis for various official trips, as well as information that the entire travel budget was spent only in the first half of 2023, i.e. €5 million, and that this budget was supplemented at the end of 2023.¹³ This

public interest information has become a closely guarded national secret, although there is no legal basis for the secrecy concerning the flight costs (and no national security reason either).

The correspondence between the Presidential Administration and the General Secretariat of the Government of Romania (SGG) on this issue was ridiculous and absurd, as the two institutions refer to each other to determine who classified the public documents in question.

The Presidential Administration first responded that the information was classified "because of" an old government decision from 1998, but that decision only classified the President's flights, not their cost. Until a few years ago, these expenses were public, as they

¹² <https://apador.org/en/vin-alegerile-cum-facem-sa-nu-mai-iesim-pacaliti-si-in-2024/>

¹³ <https://romania.europalibera.org/a/cheltuieli-avion-iohannis/32488672.html>

should be. Then, the General Secretariat of the Government of Romania (SGG) responded that Government Decision 755/1998 was indeed secret, and thus it could not say what it contained, as it was a secret.

The SGG refused even to say which institutions were the initiators of GD 755/1998 and which interested public institutions had been informed of this decision, claiming that even this information was classified. This makes Romania an EU country in which the cost of presidential visits is kept secret through a document that is classified by secret institutions, the secrecy of which is also unjustified since it is impossible to find out who issued this document, why it was kept secret and what it contains using democratic mechanisms.

An investigation by the media outlet Recorder estimated the President's travels in the past year, tallying all the private luxury aircraft against the cost to other EU counterparts.¹⁴ Without any official information, Recorder called on the public to email a petition to the Presidential Administration requesting the disclosure of these public expenses. This initiative gathered over 40,000 requests submitted to the Presidential Administration.¹⁵ Despite public pressure, the President, who at the end of the year was touring several African countries, where he also flew in several private aircraft, refused to disclose the information.

APADOR-CH has initiated legal proceedings for the declassification of this information.

Attacks and harassment

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

Dissolution of NGOs due to the loss of lawsuits

The Salvați Bucureștiul Association and the Spiritual Militia are two NGOs that, over the years, have challenged in court a series of urban planning documents issued by the local Bucharest authorities in relation to several real estate developments.

The court cases started in 2017, and the real estate developers One United Properties and Auchan – beneficiaries of the authorizations issued by the Capital City Hall and the National Environment Agency – also intervened in the lawsuits. During the lawsuits, NGOs often accused real-estate developers of intimidation campaigns against them and local residents, as well as a clear disproportion of resources between the civic organisations and the real estate developers who were represented in court by the law firm of a former Justice Minister.

After successively winning and then losing the lawsuits, finally in 2022 the organisations that

14 <https://recorder.ro/deasupra-tuturor-cat-costa-zborurile-pe-care-presedintele-le-tine-secrete/>

15 <https://recorder.ro/transparenta/>

represented the interests of the residents lost definitively, and the court determined that they should pay court costs to the developers, to the amount of approximately €60,000.

As they were unable to pay the full amount, developer One United Properties sued to dissolve the organisations on the grounds that they had become insolvent. It should be mentioned that the law (Article 56, paragraph 1 letter d of OG 26/2000 on associations and foundations) provides that an NGO that has become insolvent can be dissolved, by court decision, at the request of the Public Ministry or any other interested person.

In 2022, the court decided to dissolve one of the associations – namely the Spiritual Militia – and at the end of 2023, it also decided to dissolve the Salvați Bucureștiul Association, although the decision was not final and subject to appeal. Both civic organisations are about 20 years old.

At the end of 2023, the amount necessary to cover the damage was collected from donations – the court costs requested by One United Properties – allowing the Salvați Bucureștiul Association to be saved from the dissolution, on appeal.

The dissolution of some civic organisations, which in this case tried to force the authorities to do their duty to the citizens, deprives the civic space of essential actors in any democracy.

It should be mentioned that there have been previous court cases, that had as their objective free access to information of public interest

(Law 544/2001), several instances in which NGOs or ordinary citizens who lost the court case were forced to pay very high court costs. This creates a deterrence to turn to the courts to resolve issues of obvious public interest, such as obtaining information of public interest.

APADOR-CH believes there is a relatively simple solution to eliminate the risk that NGOs or ordinary citizens, who address the courts in matters that clearly concern the public interest, will be obliged to pay exorbitant sums under the title of court expenses should they lose the case. The rule in civil cases is that the party who loses the lawsuit bears the court costs incurred by the other party who won the lawsuit. There are already exceptions to this rule, provided in the Civil Procedure Code, namely that for certain procedures, each party bears its own court costs. The same derogatory system for bearing legal costs (each party bears its own legal costs) should also be provided for court cases that have as their objective the pursuance of Law 544/2001 on free access to information of public interest, and for trials regarding urban planning issues or the environment. Should this change happen, we would not be in the current situation where ordinary citizens or NGOs have to pay exorbitant fees to law firms hired by the opposing party. Going into insolvency for the simple reason that an attempt was made to resolve an issue of obvious public interest in court is a consequence incompatible with a functioning democratic system.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment N/A

Other systemic issues

In early 2023, several press investigations¹⁶ revealed serious abuses,¹⁷ ill-treatment and human rights violations committed over a long period of time in several nursing homes for the elderly and people with special needs near the country's capital (Voluntari, Ilfov). The care centres were private but received public funding for the service they provided, and the journalists' investigations, which continued in the following months, also exposed links between the managers of the centres and politicians in power.

The media investigations were prompted by several reports by the Centre for Legal Resources (CRJ), a non-governmental organisation that conducts unannounced monitoring visits to such centres. During these monitoring visits, the organisation's experts observed multiple human rights violations:¹⁸

- Arbitrary deprivation of liberty and unlawful confinement;
- Lack of appropriate treatment for people with intellectual and psychosocial disabilities;

- Lack of access to justice - several people have complained, in writing, without receiving a response;
- Poor living conditions, lack of hygiene, bedbugs, and lack of access to personal care products.

The situation had already been reported by CRJ at the end of 2022, but the only action taken by the authorities, who were supposed to monitor these centres and ensure their proper operation, was to prohibit CRJ from carrying out monitoring visits. In this instance, the Ministry of Labour, which approves the operation of these centres, decided to terminate the protocol with CRJ, based on the UN Convention on the Rights of Persons with Disabilities, which allowed the organisation to make visits and thus report dysfunctionality.

At the request of the press and the CRJ, the Public Prosecutor's Office opened a criminal investigation, which confirmed the issues raised. In the summer of 2023, the authorities raided several centres in Ilfov. Patients were transferred to hospitals and 24 people involved in the scheme were arrested. The only person still denying knowledge of what was taking

16 <https://www.investigatiimedia.ro/investigatii/lagarele-cristinei>

17 <https://www.investigatiimedia.ro/investigatii/armonia-oamenilor-gabrielei-firea>

18 <https://www.crj.ro/dosarul-azilelor-din-ilfov-d-i-i-c-o-t-recunoaste-calitatea-procesuala-a-crj-in-apararea-drepturilor-si-intereselor-persoanelor-cu-dizabilitati-si-varstnice/>

place under his watch was the Minister of Labour.¹⁹

Evidence of the involvement of key political figures in this scheme to defraud public funds and torture people with special needs unable to defend themselves continued to emerge. This information revealed that a whole system of public institutions, whose responsibility it was to authorise the operation of these care centres, monitor them, and ensure that the rights of the persons in their care were protected, failed to uphold these duties, and were even defrauded by officials with ties to politicians. The scandal eventually led to the resignation of the Labour Minister, and the head of the Bucharest PSD and Minister for Family, Youth, and Equal Opportunities, Gabriela Firea. Her sister, her best friend and the driver were involved in managing these care centres.

Despite the scandal, the issue disappeared from public view in less than a few months, and by the end of 2023 there was no information on the progress of the investigation. The patients were released, and the accused politicians began to return to public life by distancing themselves from the scandal. In the aftermath of these events, a proposed legislative amendment was put forward by the Ministry of Labour to stop care homes making a profit.²⁰

According to the Ministry of Labour, there are 745 homes for the elderly in Romania. Of these, more than 200 are limited liability

companies. Under the planned changes, these centres are to become social enterprises and the managers will be obliged to reinvest 90% of the profits in the development of the centre.

19 <https://www.investigatiimedia.ro/stiri/toti-stiau-episodul-3-minciuna-lui-budai>

20 https://mmuncii.ro/j33/index.php/ro/transparenta/proiecte-in-dezbatere/7027-20230908_proiect-lege-modific-completare-acte-normative-asistenta-sociala

LIBERTIES

RULE OF LAW REPORT

2024

SLOVAKIA

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About the authors

VIA IURIS



VIA IURIS is a non-partisan, not-for-profit organisation, officially registered in Slovakia as a civic association since 1993. Its main office is situated in Banská Bystrica (Central Slovakia), and a regional office is located in the capital city, Bratislava (Western Slovakia). We operate on a national level. Our mission is to use the law as an instrument of justice, create systematic solutions, and promote the equal application of law for all. Our activities can be categorised into three pillars:

- **Citizen:** Our aim is to promote effective public participation in decision and policymaking. Citizens should be able to participate effectively in various impact assessments and permission procedures on decisions and policies affecting their lives, such as the building of public and private infrastructure. They ought to have access to information and access to justice in matters of public interest, such as environmental protection and accountability of state institutions and municipalities. We support and provide assistance to people who are threatened while advocating for issues of public interest.
- **Civil society:** Authentic civil society, as one of the cornerstones of freedom and democracy, is jeopardised by non-systemic legislative proposals, populist statements of politicians and disinformation campaigns spearheaded by conspiracy media. Our role is to defeat myths about NGOs, critically analyse civil society and protect the legislative environment so that, in the future, Slovak citizens have the right to freely express, associate and actively participate in and control the administration of public affairs.
- **Rule of law:** VIA IURIS aims to promote systematic measures to strengthen the political independence of courts, public prosecution and the police. These institutions are fundamental elements of the rule of law and are crucial in securing equality before the law and enforcing justice. They ought to guarantee the exercise of public power via elected officials in compliance with public interest, not the private interests of oligarchs. They have to guarantee that everyone is held accountable for overstepping the law, even politicians.

Key concerns

The problematic elements of the judicial system already identified in the EU Commission's 2023 report remained unchanged - the power of the Prosecutor General under Section 363 of the Criminal Procedure Code to quash decisions of prosecutors and police, the problem of removability of non-judicial members of the Judicial Council of the Slovak Republic, the crime of "Abuse of law" under Section 362a of the Criminal Code.

The new government is intervening in the judicial system through proposals to abolish the Special Prosecution Office and extensive changes to the Criminal Code.

There are several other pending legislative amendments representing a serious risk of creating a legal environment conducive to corruption, including the highly damaging draft amendment of criminal acts currently under discussion, which lowers the standard of protection against socially harmful behaviour. No progress has been made in terms of adopting legislation regulating lobbying or strengthening legislation on conflict of interest and asset declarations.

In 2023, the financing of the public media RTVS - Slovak Radio and Television - was changed: instead of the abolished concession fees, RTVS will be financed from the state budget. In the approved budget for 2024, RTVS will already receive less money. Another threat to the independence of RTVS is the government's announced

plan to split RTVS into two separate parts - Slovak Television and Slovak Radio.

No progress has been made in the process to establish legislative and other safeguards to improve the physical safety and working environment of journalists, including the reform of defamation law. Instead of strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media, they have been weakened.

There is a regular abuse of the fast-track legislative procedure for government draft laws, where there is no objective and legal reason to do so. This persistent problem has been exacerbated by the arrival of the new government. The National Council approved an amendment to the Competence Act, which includes changes to the rules on the process of the selection of the position of chairman in certain mainly checks and balances institutions, which interferes with the principle of the separation of powers and poses a threat to the independence of these institutions and their watchdog function towards the government.







The civil sector is under constant threat due to attacks on NGOs from those in positions of power, but after the parliamentary elections in September 2023 and the entry into office of a new government that is openly opposed to the civil sector, the situation has worsened, and the civil sector finds itself in a climate of insecurity and threat.

Instead of increasing protection for the LGBTI+ community and their rights, there has been a decrease. Moreover, the LGBTI+ community continue to be stigmatised within public discourse, influenced by statements made by representatives of some political parties.

Plan for Creating an Enabling Environment for Civil Society has not yet been brought. The level of participation and access to decision-making for the interested public remains unsatisfactory. There were cases of criminalisation and SLAPPs against civil society organisations and activists.

The persisting lack of efficient investigation into human rights violations continues to undermine the rule of law. No progress has been made in revising the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organised Crime.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression **No progress** **Progress**



Justice system

Key recommendations

- **Amendment of § 363 of Act No. 301/2005 Coll. Criminal Procedure Code**

We recommend specifying the legislative regulation of Section 363 of Act No. 301/2005 Coll. Criminal Procedure Code, which allows the Prosecutor General to annul decisions of police officers and prosecutors in preparatory proceedings (investigate phase) which violate the law or which are the result of proceedings in which the law has been violated, in order to make its use more transparent, more predictable, and at the same time to preserve the extraordinary nature of this remedy.

Section 363 of the Criminal Procedure Code should at least provide an exemplificatory list of the types of decisions of a prosecutor or police officer that the Prosecutor General may overrule through this provision.¹ At the same time, the regulation of this provision should also include a qualitative requirement for a decision that can be overruled, namely that it should be a decision that constitutes a substantial error that could have affected the outcome of a case. In particular, it should be a final decision in the preparatory phase of criminal proceedings. The possibility of quashing the charge order issued by the police under Section 363 should be regulated more strictly, and it should be done only on serious substantive or procedural grounds, which could not be rectified at all or only with difficulty during the criminal proceedings. We also recommend shortening the time limit for submitting a petition² under Section 363 and also the time limit for the Prosecutor General to decide to quash a decision.³

In particular, the proposed changes are intended to enhance legal certainty through increased transparency and predictability of the Prosecutor General's actions.

- ***Reform of the prosecutor's office***

We recommend adopting measures that will contribute to increasing the transparency of the prosecutor's office, improve the accountability of the Prosecutor General, and strengthen public scrutiny. We consider the current model of the Slovak prosecutor's office to be functional and in line with European standards regarding its creation and functioning, therefore we recommend maintaining this model and specifying provisions that will meet the above objectives.

Thus, we propose, particularly in respect of the framework for reforming the public prosecutor's office, the following suggestions:

- 1 In particular, these should be decisions that bring criminal proceedings to an end, e.g. a decision on suspension of criminal prosecution, a decision on conditional suspension of criminal prosecution, or a settlement.
- 2 According to the section 364 par. 1 of the Criminal Procedure Code, a petition/a motion to quash the decision under the section 363 can be submitted by:
 - the accused (charged) in favour of him/herself
 - persons who could appeal in favour of the accused (e.g. relatives)
 - the aggrieved against the accused
 - "the interested party" (a person from whom a thing or a part of property may be or has been confiscated).
- 3 The current time limit for submitting a motion to quash a decision under the Section 363 is three months after the decision has become valid. The Prosecutor General has the time limit of six months after a decision has become valid to decide whether to quash the decision under the Section 363 of Criminal Procedure Code.

- Strengthen the autonomy of individual prosecutors and their responsibility for the criminal cases they handle.
- Modify the position of the Prosecutors' Council, the highest executive body of the self-government of prosecutors whose main mission is to protect the interests of the members of the prosecution from within, by changing its composition to allow its members also include persons from outside the prosecution service, and additionally by modifying its competences in order to strengthen its position, particularly its capacity to balance the power of the Prosecutor General within the prosecution service.
- Increase the professionalism and credibility of the prosecution service by introducing a requirement for everyone to undergo a selection procedure, including prosecutors in waiting, who can currently become prosecutors without a selection procedure, requiring only appointment by the Prosecutor General.⁴ In the context of selection procedures, we propose placing greater emphasis on the moral qualifications and integrity of the candidate for the post of prosecutor.
- Simplify the process for initiating disciplinary proceedings against the Prosecutor General, which is currently available only to the President, and three out of five members of the National Council.
- Introduce random electronic allocation and reassignment of cases to individual prosecutors in the same way as files are allocated in courts, thereby increasing guarantees of objectivity, strengthening the principles of a fair trial and reducing the risk of corrupt behaviour.⁵

- ***Ethical rules for judges***

We recommend the adoption of new (more elaborate) rules on judicial ethics or a review of the wording and effectiveness of the current ones so that they provide answers to specific life situations. Moreover, the ethical rules should reflect the genuine will of judges to uphold the values and principles set out therein, thereby ensuring compliance. The ethical rules will only be respected by judges if they committed to upholding them.

4 “Prosecutors in waiting” are the prosecutor “trainees” or “associates” who have to pass exams to become prosecutor trainees. After fulfilling the period of three years of serving in this position, they are entitled to take a professional examination. If they pass the exam, the Prosecutor General shall appoint them to the prosecution office. They are no “selection procedures” for the individual prosecution positions.

5 The proposals for the reform of the prosecutor’s office are part of our recommended [Proposals for Strengthening the Rule of Law in Slovakia](#).

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The selection procedure for the office of judge is conducted by the Judicial Council of the Slovak Republic. The Judicial Council is composed of nine judicial members elected among the judges, and nine non-judicial members elected by the National Council and appointed by the government and the president. During the selection procedure, the Judicial Council examines the prerequisites of judicial competence of candidates for the office of judge. The procedures continue to be publicly available through the online live stream of the Judicial Council meetings (available on the Judicial Council website), with subsequent access to the audio recordings of the Judicial Council meetings also published on the Judicial Council website. There was no change introduced in these proceedings last year.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Having taken effect since 1 June 2023, the reform of the judicial map created three first instance administrative courts, thus making the administrative judiciary separate from the general courts. The reform and the creation of the administrative courts did not change the process of filling the newly created judicial

positions (e.g. by transferring judges without their consent, etc.) - the standard selection procedures by which the new administrative courts are gradually filled have been maintained.

However, it should be noted in this context that the newly created administrative courts are not yet fully staffed, which, while not hindering the overall functioning of these courts, may cause problems for their performance. The former Minister of Justice, who introduced this reform in August 2023, stated that she expects these courts to be fully operational within the next two years.⁶ However, the selection process for the courts continues to be conducted in the standard manner and at the standard speed.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Since the adoption of the amendment to the Constitution of the Slovak Republic in 2021, which introduced the possibility for the National Council, the government and the president to dismiss at any time and without any reason members of the Judicial Council who are not judges and who were elected or appointed by these branches of power, there has been a debate among the professional public about the independence of the Judicial

6 TASR, The administrative court in Banská Bystrica is already functioning, but it lacks several judges, 16 January 2024.

Council. One current opinion holds that if non-judicial members are removable at any time, this exposes the Judicial Council, and therefore the entire judiciary, to the risk of political influence through the introduction of persons who will collaborate with the respective nominating branch of state power. This part of the spectrum of opinions is based on the view that the Judicial Council, as a body of judicial legitimacy, should be absolutely independent of (political) power, in the same vein as the judiciary itself is. On the other hand, the alternative opinion holds that the Judicial Council, by its very nature, cannot (and should not) be independent in the same way as judiciary itself because it is composed of judicial members elected by the judges and non-judicial members elected and appointed by the government, the National Council and the president to implement a kind of judicial politics; it is supposed to be a “bridge” between the three branches, and through the non-judicial members, the democratic legitimacy of the people is supposed to pass through the Judicial Council via its competences in relation to the judiciary, and reach the individual courtrooms.

It seems that the nature and role of the Judicial Council in Slovakia is not yet settled. This unclear nature inevitably leads to tension not only within the Judicial Council between its individual members, who are clearly divided into judicial and non-judicial counterparts (nine members on each side), but also outside it.

Thus, the independence of the Judicial Council may or may not (given the prism through which we view the Judicial Council) be called into

question precisely through the ability to dismiss its non-judicial members at any time and without cause. The nature of the government and the context in which the government has acquired power and pursues its policies is also an important factor in this assessment. After the early elections in September 2023, which were won by the SMER - SSD party led by Róbert Fico, there was, in fact, an immediate replacement of the members of the Judicial Council appointed by the previous government. The new government did so even before it had gained confidence in the National Council. The members were dismissed without any reason given, relying on the aforementioned ‘controversial’ wording of the Slovak Constitution. Immediately after the dismissal, the members of the Judicial Council announced that they would appeal to the Constitutional Court with a complaint about the violation of their right to remain in elected/appointed office.⁷

In this specific case, we consider problematic not the replacement of the members of the Judicial Council itself, which is after all allowed by the Constitution and which is also legitimate in principle (and in the context of the Constitution of Slovak Republic), but the manner in which the government took this step - immediately after assuming power and, in particular, before gaining the confidence of the National Council. It is therefore questionable whether such a replacement of the members of the Judicial Council, and the newly appointed members themselves, enjoy sufficient democratic legitimacy.

7 For more context on the dismissal of Judicial Council’s members, see e.g. <https://balkaninsight.com/2023/11/10/democracy-digest-self-styled-czech-patriot-uses-demo-donations-to-buy-gold-bars/>

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Disciplinary regime of judges and prosecutors

After the establishment of the Supreme Administrative Court of the Slovak Republic in 2021, disciplinary proceedings of legal professions (judges, prosecutors, notaries and executors) have been transferred from previous bodies, with the above-mentioned jurisdiction over particular professions, to the Supreme Administrative Court. At the same time, the powers of the Judicial Council in the disciplinary field in relation to judges were strengthened - the Judicial Council's power to investigate judges' assets was strengthened and, in the event of failure to prove the legal way of acquiring a judge's assets, the Judicial Council may refer the judge for disciplinary proceedings before the Supreme Administrative Court. The Judicial Council used this enhanced power for the first time ever in 2023 against a judge who failed to clarify the origin of his assets, which did not correspond to a significant extent with his documented income.⁸

The Supreme Administrative Court of the Slovak Republic is also a disciplinary court for prosecutors. In disciplinary proceedings before the Supreme Administrative Court, the disciplinary chamber always includes representatives of the legal profession from which the disciplinary defendant is a representative. However, in the case of prosecutors' disciplinary proceedings, the Supreme Administrative Court expressed doubts about the compatibility of such a regulation with the right to a fair trial (right to an independent and impartial court) and with the independence and impartiality of the courts, and on 13 January 2023 the Court submitted a proposal to the Constitutional Court to assess the compatibility of this regulation with the Constitution. The Supreme Administrative Court argued that since the prosecutor's office is a hierarchical body in which prosecutors are in a relationship of superiority and subordination to each other and which is headed by the Prosecutor General, to whom all prosecutors are subordinate, the composition of the disciplinary chamber, which in this case is part of the judicial power, does not guarantee its independence, since its prosecutorial members remain subordinate to their superior prosecutors and, at the same time, to the Prosecutor General. And an aspect of the relationship of superiority and subordination is

8 More information about the case available from the statement of the chairman of the Judicial Council of Slovak Republic for the press agency SITA: <https://sita.sk/mazak-prehovoril-o-disciplinarke-voci-sudcovi-chalup-kovi-ktory-nevedel-vysvetlit-670-tisic-eur/>; Reaction of Via Iuris to the above-mentioned actions of the Judicial Council available at - [https://www.linkedin.com/feed/update/urn:li:activity:7031965698943795201?updateEntityUrn=urn%3A%3A%3Afs_feedUpdate%3A%28V2%2Curn%3A%3A%3Aactivity%3A7031965698943795201%29](https://www.linkedin.com/feed/update/urn:li:activity:7031965698943795201?updateEntityUrn=urn%3A%3A%3Afs_feedUpdate%3A%28V2%2Curn%3A%3A%3Aactivity%3A7031965698943795201%29;); Documents of the Judicial Council related to this case available at: <https://zasadnutia.sudnarada.sk/konanie-vo-veciach-majetkovych-pomerov-sudcu-na-zaklade-podnetu/>.

the authority of superior prosecutors (and the Prosecutor General) to impose instructions on subordinates and the obligation of subordinate prosecutors to carry out those instructions. This may put pressure on prosecutors who are part of the disciplinary chamber that is trying a disciplined prosecutor.

The Constitutional Court did not grant the application of the Supreme Administrative Court.⁹ In its ruling of 14 June 2023, the Court stated that prosecutors in the position of associate judges in the disciplinary chambers do not exercise the powers and tasks of the prosecution, but of the court or, in this case rather, disciplinary court. Their independent functioning in these disciplinary chambers is guaranteed by a number of legal institutional, personal and procedural guarantees, which are, moreover, covered by the prohibition of arbitrariness and abuse of power in the sense of the principle of the legitimacy of public authority immanent to the rule of law and enshrined also in the Constitution of the Slovak Republic. The Constitutional Court considered the concerns of the Supreme Administrative Court to be “an absolutization of the hypothesis of certain aspects of abuse of power in the system of the prosecutor’s office, stemming from

its hierarchical structure and, on that basis, the presumed exercise of a distorting influence on the independent decision-making of associate judges in disciplinary proceedings”.¹⁰ Moreover, the Constitutional Court stated that the participation of prosecutors in disciplinary proceedings against prosecutors is essential for a thorough and professional assessment of the prosecutor’s misconduct in office, and therefore dismissing that participation would negate the purpose of the participation of associate judges from the relevant legal profession in the disciplinary chambers of the Supreme Administrative Court.

Criminal liability of judges for the crime of ‘abuse of law’

In 2023, there was the first and so far only conviction of a judge for the crime of ‘Abuse of law’ under Section 326a of Act No. 300/2005 Coll. Criminal Law.¹¹ The case concerned a judge who was taken into custody in 2020 as part of the large-scale police action called ‘Storm’, during which 13 judges and several other lawyers were taken into custody on suspicion of corrupt conduct. The judge was the first to confess to the acts she was accused of, she cooperated with law enforcement authorities, and is the

9 Decision of the Constitutional Court of the Slovak Republic, No. PL. ÚS 2/2023 from 14 June 2023, available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2023/292/20230719#>

10 See point 99 of the Constitutional Court’s decision in [Proposals for Strengthening the Rule of Law in Slovakia](#).

11 The wording of the crime ‘Abuse of law’ according to the section 362a of the Slovak Criminal Code (Act No. 301/2005 Coll.) available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/20231020#paragraf-326a>

first person from this police action to be legally convicted.¹²

There has been no amendment adopted to the ‘Abuse of law’ crime under Section 326a of the Criminal Code. The conditions of this offence are formulated too vaguely,¹³ which does not correspond to the requirement of legal certainty as one of the key elements of the rule of law. This is all the more serious in the context of criminal law, where the element of legal certainty is reflected in the fundamental criminal law principle of *nullum crimen sine lege*. Criminal offences should be constructed in an intelligible and clear manner, without undue doubt as to their interpretation, so that the addressees of the law know which conduct may be punished. The ‘Abuse of law’ crime is also individual to its specific subject, which is the judge. It is precisely the legal uncertainty created by the vague wording of the conditions of this crime, coupled with its special subject, which raises concerns about its potential abuse. However,

these concerns have not yet been confirmed in practice.

The ‘Abuse of law’ crime was also discussed by the Judicial Council of the Slovak Republic, which, at its meeting on 16 February 2023, approved a resolution recommending the Ministry of Justice to withdraw the above-mentioned section from the Criminal Code and thus to abolish this crime altogether.¹⁴ No such effort has been announced on the part of the Ministry of Justice. The new current government has committed itself in its Government’s Programme Statement, as a medium-term priority in the field of national criminal policy, to consider repealing or substantially amending this crime,¹⁵ but that commitment is not part of the government’s published plan of legislative tasks for its next term in office.¹⁶

12 Because of her cooperation with the law enforcement authorities, the judge was sentenced to a suspended sentence of 2 years’ imprisonment, together with a ban on exercising the function of a judge for a period of 4 years. The judgment No. 4T/1/2023 is available at: <https://www.justice.gov.sk/sudy-a-rozhodnutia/sudy/rozhodnutia/3af3dea1-4fe1-4c3f-b8d6-f677e94d671e:26ed92f3-d277-4bc2-b32a-a5c6de3e73b3/>

13 According to the section 326a par. 1 of the Criminal Code, the crime of ‘Abuse of Law’ reads as follows: “Whoever as a judge, an associate judge or an arbitrator of an arbitral tribunal arbitrarily applies the law and therefore harms or favours another, shall be punished by imprisonment for one to five years.” The problematic vague term “arbitrarily applies the law” lacks a settled interpretation and is susceptible to multiple variations of an interpretation.

14 The Judicial Council has publicly issued decision No. 63/2023 on the crime of abuse of law, as stipulated in Section 326a of the Criminal Code, from 16 February 2023, available at: <https://zasadnutia.sudnarada.sk/data/att/12514.pdf>

15 Programme Statement of the Government of the Slovak Republic, pg 65.

16 The Slovak government’s Legislative Task Plan.

Independence/autonomy of the prosecution service

The government approved a draft amendment to the Criminal Code, which also includes a systemic modification of the prosecutor's office, namely the abolition of the Special Prosecution Office, which, as part of the prosecution, is its specialised branch. The Special Prosecution Office deals with the most serious crimes that fall within the competence of the Specialised Criminal Court and for this purpose it is endowed with a certain degree of autonomy - it is headed by a Special Prosecutor. Although subordinated to the Prosecutor General, he is not allowed to give instructions to either the Special Prosecutor or the prosecutors of the Special Prosecution Office, nor is he allowed to carry out tasks for the Special Prosecutor or the prosecutors of the Special Prosecution Office.

With the abolition of the Special Prosecution Office, according to the proposal, the prosecutors of the Special Prosecution Office are to come under the General Prosecutor's Office and the cases that were under the jurisdiction of the Special Prosecution Office will be under the jurisdiction of the regional prosecution offices. Live cases that are still pending are also to be transferred to the regional prosecution offices, but the Prosecutor General has publicly stated that he will use his powers to ensure that these cases remain with their original prosecutors.

The proposal to abolish the Special Prosecution Office has sparked a huge wave of opposition from both professionals and the general public. The problem is not the systemic change of the prosecution office, which in principle

is perfectly legitimate, but the way in which it is taking place and the context in which it is taking place. The amendment to the Criminal Code, of which the abolition of the special prosecution office is a part, was submitted to the National Council, together with a proposal to discuss it in a fast-track legislative procedure. The proposal has not been the subject of any wide-ranging debate, has not been the subject of an inter-ministerial comment procedure and, in fact, none of the statutory grounds for a fast-track legislative procedure have been met. The abolition of the Special Prosecution Office is mainly a political and power tool of the current government and is the result of mutual animosity and personal antipathy between the current Special Prosecutor and some high-ranking officials and politicians of the current government.

The government has been strongly criticised for this intention, not only by persons from within the prosecution (individual prosecutors, the Council of Prosecutors as a self-governing executive body) and representatives of other legal professions, but also by the European Public Prosecutor's Office (EPPO), which on 18 December 2023 sent a letter to the European Commission containing concerns expressed by the European Chief Prosecutor about violations of the general regime of conditionality for the protection of the budget of the European Union ("Conditionality Regulation") pointing at recent legislative amendments proposed by the Slovak government concerning the Criminal Procedure Code, the Criminal Code, the Act on the Public Prosecution Office and the Act on the Whistleblowers Protection. The European Chief Prosecutor concluded that, "based on a thorough analysis of the

combination of the proposed amendments, they constitute a serious risk of breaching the rule of law in the meaning of Article 4(2)(c) of the Conditionality Regulation.”

Moreover, in the whole context of proposed amendments to the above-mentioned acts, he stated that,

“the speed with which the Slovak government intends to proceed with these amendments casts serious doubts as to its compliance with its obligation of sincere cooperation (Article 4(3) TEU). Finally, given that the proposed amendments would decrease the criminal law deterrence as regards offences falling under the competence of the EPPO, the Slovak government’s intention to fulfil its duty to effectively protect the Union budget (Article 325 TFEU [Treaty on the Functioning of the European Union]) is also put into question.”¹⁷

In addition to professional criticism, civil society is reacting to the government’s actions with mass protests across the country¹⁸ and various signature campaigns¹⁹ calling on the government to abandon its plan to abolish the Special Prosecution Office and refrain from interfering in the rule of law.

Significant developments capable of affecting the perception the general public has of the independence of the judiciary

Prosecutions in major corruption cases in the judiciary remain ongoing and are at various stages of the process. An exception is the case of the convicted judge mentioned above, which resulted in a final conviction.

In the summer of 2023, information about the relationship between a well-known journalist and a prominent judge of the Specialized Criminal Court became public. The information about their close relationship raised heated discussions and questions about the ethical standards of judges in their relationship with journalists.²⁰ Despite the fact that the judge in question attended a meeting of the Judicial Council in which she explained her relationship with the journalist in question, the Judicial Council was not able to adopt any opinion in which it would express its view on the ethical standards of judges in their relationship with journalists. The inability of the Judicial Council to reach consensus in relation to important issues of judicial independence and credibility has become the rule rather than the exception (see also below on the case described in the

17 The European Chief Prosecutor’s letter addressed to the European Commission, [Statement regarding the legislative amendments proposed by the Slovak government](#), 18 December 2023.

18 SME, [There were even more of them, From Prague to Prešov more than 35 thousand people protested against Fico, Pellegrini and Danko](#), 11 January 2024.

19 A [signature campaign](#) initiated by NGOs and a [signature campaign](#) initiated by the opposition political party Progressive Slovakia

20 The item on the agenda of the Judicial Council’s meeting, [“Opinion of the Judicial Council of the Slovak republic on ethics of judges in their relations with journalists”](#) on its 10th meeting, 17 October 2023. The judicial council did not adopt any of the proposed resolutions.

‘other’ section). The absence of a clear position of the Judicial Council as a body of judicial legitimacy and the inability of the Council to collectively stand up for judges and the judiciary, or conversely, to condemn obviously harmful conduct in the judiciary when necessary, are not conducive to public confidence in the judiciary. The above is a manifestation of the internal division of opinion and a split of the members of the Judicial Council.

Other

In November 2023, the new Minister of the Interior verbally attacked a judge of the Bratislava IV Municipal Court, expressed suspicion that he might have committed a crime of ‘Abuse of law’ and threatened him with possible disciplinary prosecution, all because the judge had issued an urgent measure in a case in which the Minister of the Interior had a certain legal or political interest.²¹ The Judicial

Council discussed the incident at its meeting on 14 November 2023, but, as in the case described above, was unable to find a consensus and was unable to issue a clear, consensual and condemnatory opinion in defence of the judge concerned.²²

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

On 19 December 2023 an amendment to Act No. 71/1992 Coll. on Court Fees was approved, which increased some court fees set at a fixed amount. The amendment was adopted as part of the so-called ‘Consolidation measures’, i.e. acts adopted in connection with the increase in public debt and the deteriorating state of public finances. The amendment will be effective from 1 April 2024.²³

21 This was a case of criminally prosecuted police officers who were under the protection of the Whistleblower Protection Office, which protected them from termination or other adverse actions by their employer, or in this case, the Service. The Minister, as head of the interior affairs and the police force, suspended these police officers, disregarding the Whistleblowers Protection Office’s decision to grant whistleblower protection - the Minister should have sought the Whistleblowers Protection Office’s approval for this action prior to making his decision. As he failed to do so, the police officers concerned have taken the matter to the courts with applications for urgent measure. Different courts (and different judges) issued several of them. One of them was the judge in question.

22 The judicial council discussed two alternative resolutions in this case, but did not adopt either of them. The first proposed resolutions available at: <https://zasadnutia.sudnarada.sk/a-nepripustne-zasahy-politikov-a-advokatov-proti-konkretnym-sudcom-ako-reprezentantom-jednej-z-troch-moci-v-state/> and the second available at: <https://zasadnutia.sudnarada.sk/b-stanovisko-sudnej-rady-slovenskej-republiky-k-medializovanim-utokom-na-rozhodovaci-cinnost-sudcu-mestskeho-sudu-bratislava-iv-michala-kubisa-vo-veci-tohto-sudu-sp-zn-16cpr22023-45/>

23 For more information see the adopted and promulgated act No. 530/2023 Coll. amending certain acts in connection with the improvement of public finances (so-called “Consolidation measures”) available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=537563>

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems during the COVID-19 pandemic)

The EU Recovery and Resilience Plan under the ‘Efficient Public Administration and Digitisation’ component foresees the implementation of the ‘Centralised Court Management System’ project, which is intended to completely replace the current court information system. This project was advanced in 2023 with the launch of a tender for its implementation.²⁴

Geographical distribution and number of courts/jurisdictions (‘judicial map’) and their specialisation

On 1 June 2023 a new judicial map came into force. The changes brought about by the reform of the judicial map are the reduction in the number of courts and the consequent increase in the size of the judicial districts, which will allow room for greater specialisation of judges in specific domains of law. The specialisation of judges should in turn lead to an increase in the quality and speed of decision-making, which should ultimately have a positive impact on citizens’ confidence in the judiciary and the administration of justice in Slovakia.

The new judicial map has been in force for only a few months, therefore the impact on the pursued objectives and its effectiveness can only

be assessed in time. The new judicial map has temporarily slowed down the performance of the courts, but this is understandable given the scope of the reform and the necessary technical steps involved (e.g. transfer of files).

From 1 June 2023, as part of the new judicial map, new administrative courts with seats in Bratislava, Banská Bystrica and Košice, which together with the Supreme Administrative Court of the Slovak Republic constitute a separate part of the judiciary specialized exclusively in administrative law, have started to operate. The competence and jurisdiction of the administrative courts is regulated by Act No 162/2015 Coll., the Administrative Court Procedure Code.²⁵ Administrative courts operate where previously administrative colleges of the relevant regional courts operated. Thus, this change has not led to substantial changes in the competence of the administrative courts. Jurisdiction has been adjusted in relation to the number of administrative courts, which is now three, whereas previously there were eight regional courts dealing with administrative matters.

Other

The use of the power under Section 363 of the Criminal Procedure Code by the Prosecutor General remains problematic. The Prosecutor General has faced criticism for controversially using the power to intervene in special prosecution cases and exonerate persons in cases

24 Documents regarding the tender available at website of the Public Procurement Office: <https://www.uvo.gov.sk/vyhladavanie/vyhladavanie-dokumentov/detail/3308995?cHash=c6c8073d59cd740c47f001ba38c285c4>

25 [Sections 8–17 of the Administrative Court Procedure Code](#)

involving high-ranking politicians and state officials.²⁶

Due to the ongoing controversy, in the spring of 2023 the President requested from the Prosecutor General all decisions of the Prosecutor General's Office both granting and not granting applications under Section 363 of the Code of Criminal Procedure. The President substantiated her request on her constitutional duty to "ensure the orderly functioning of constitutional organs" in connection with her appointment and oversight powers vis-à-vis the Prosecutor General.²⁷ The Prosecutor General did not grant the President's request, arguing that the Constitution does not authorize the President to assess the quality of the Prosecutor General's constitutional authority and does not impose a duty on the Prosecutor General to cooperate with the President. In September 2023, the President appealed to the Constitutional Court with a request to interpret the constitutional articles at issue and to answer the question whether the Prosecutor General is obligated to comply with such a request.²⁸ The Constitutional Court has accepted the request, but has not yet issued an interpretation.

The President is entitled to initiate disciplinary proceedings against the Prosecutor General,

and if the Prosecutor General commits an act which, according to the decision of the disciplinary court, is incompatible with the performance of the office of Prosecutor General, the President would recall him from office on the proposal of the National Council, i.e. the parliament.

Fairness and efficiency of the justice system

Length of proceedings

The European Commission's EU Justice Scoreboard report for 2023 shows that compared to the previous year 2022, the estimated time needed to resolve civil, commercial and also administrative cases, at all court instances has increased, which means a decline in the efficiency of the Slovak justice system.²⁹ The 2023 report, however, reflects on the data obtained for 2021, which means that the COVID-19 pandemic also had an impact on the decline of the efficiency of the justice system. Increasing the efficiency is one of the objectives of the reform of the judicial map, the achievement of which we will only be able to evaluate in the coming years.

26 For more context see e.g. VerfBlog, [General Prosecutor, the Supreme Leader of the Slovak Republic?](#), 2 September 2021

27 Art. 101 par. 1 in conjunction with Art. 102 par. 1 s) and t) of the Constitution of Slovak Republic. See at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/>

28 Press release of the Constitutional Court of Slovak Republic No. 82/2023 regarding the information on accepting the motion for further proceedings.

29 See Figures 5 – 9 of the [EU Justice Scoreboard 2023](#) for comparison with Figures 6 – 10 of the [EU Justice Scoreboard 2022](#).

Anti-corruption framework

Framework to prevent corruption

Rules on preventing conflicts of interest in the public sector

There has still been no progress in the legal regulation of lobbying, although the debate on the topic has been in the public space for a long time. In its Programme Statement, the new government commits itself to,

“strengthen transparency and prepare anti-corruption legislation to regulate public officials’ contacts with persons representing the interests of individuals and organisations” and to “comprehensively support the conduct of a comprehensive analysis of the application problems with the implementation of the Constitutional Act on the Protection of Public Interest and propose the adoption of the necessary changes to the legislation.”³⁰

Measures in place to ensure whistleblower protection and encourage reporting of corruption

On 6 December 2023 the government approved and submitted to the National Council the draft amendment to Act No. 54/2019 Coll. on the Whistleblower Protection Act,³¹ which brings about a reduction in whistleblower protection

and changes that may discourage people from reporting corrupt conduct.

The draft amendment allows for retrospective review of protected whistleblower statuses already granted, with the possibility of revocation, which exposes whistleblowers to legal uncertainty, strengthens the position of employers to the detriment of employee whistleblowers by introducing a review mechanism for the grant of protection that can be requested by the employer, and changes the definition of a qualifying disclosure by introducing a ‘necessity’ condition - only disclosures that are necessary to clarify a serious anti-social activity or necessary to identify or convict the perpetrator are to be considered as such. In addition, the draft amendment also provides for the obligation to state the reasons for granting protected whistleblower status, which directly contradicts the purpose of granting protection.

The draft amendment also completely exempts members of the police force from the protection of the Act. Moreover, it acts directly retroactively against those police officers who have protected whistleblower status by revoking that status and removing the protection altogether.

All of these changes, if adopted, are likely to act as a deterrent to potential future whistleblowers and send a signal that it is easier and

30 [Government’s Policy Statement of the Government of the Slovak Republic](#), page 70.

31 See the [draft amendment to Act no. 54/2019 Coll. the Whistleblower Protection Act](#) submitted to the parliament the National Council.

more certain to remain silent about anti-social activity. Rather than fostering courage, they expose whistleblowers to greater uncertainty and make it more difficult for them to pursue justice.

The draft amendment is so far only a threat, but given that it is a government proposal, it is expected to be adopted in the National Council.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

The government's draft amendment to the Criminal Code, which also includes the abolition of the Special Prosecution Office, radically reduces the rates of imprisonment sentences, especially in cases of property and economic crime, including corruption offences. The reduction of imprisonment sentence rates, the raising of the minimum amount of damages (as a condition for qualifying an act as criminal) and the preference for alternative punishments, together with the shortening of limitation periods and the proposed procedural amendments to the Criminal Procedure Code, amount to a radical devaluation of the punishment of corruption and other crimes, reaching the level of 'threatening the internal security of the country'.³² These changes, but especially the changes in the level of penalties, create a risk that the

criminal law will not have a sufficient deterrent and preventive effect in relation to the commission of crimes (not limited to corruption).

The amendment to the Criminal Code (and related laws), as mentioned in the previous section, was submitted to the National Council without prior discussion, together with a proposal to discuss using the fast-track legislative procedure. This means that the draft amendment was not discussed with any stakeholders, experts, practitioners, public authorities that will be affected by the changes in practice (especially prosecutors or police investigators), nor the public.

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including with regard to the implementation of EU funds

Ongoing investigations into corruption (and other) crimes will be severely compromised following the adoption of the amendment to the Criminal Code described above, in the context of one of the fundamental criminal law principles of the application of the later more favourable law. Moreover, the current government is also implementing personnel changes in the leadership of key bodies with powers to investigate and prosecute crime. In December 2023, it appointed a new police president, who

32 The interview with the former Minister of Justice V. Karas analysing the proposed amendments of the criminal acts. Dennik N, 12.1.2024. Available at: <https://dennikn.sk/3768293/za-opakovanu-kradez-vina-ma-byt-vazenie-za-kradez-auta-podmienka-varuje-exminister-karas/?ref=list>

subsequently implemented personnel changes in the National Criminal Agency (“NAKA”), which is the branch of the police specialised in combating the most serious forms of crime (including corruption); there has also been a replacement of the director of the Office of Inspection Service (so-called “Police inspection”), which is the branch of the police authorised to investigate criminal offences committed by members of the police force.

As a result of these personnel replacements, together with the changes in the criminal acts (i.e. the lower severity of punishment) and the abolition of the Special Prosecution office (i.e. the elimination of the unit with a prosecutorial specialisation in the most serious crimes), the investigation of these crimes is in jeopardy.

Media environment and media freedom

Pluralism and concentration

Levels of market concentration

The level of concentration in the media market increased in 2023 after News and Media Holding bought the most widely read tabloid magazine *Nový čas* and the related portal *cas.sk*. The publishing house, owned by the financial group Penta, is the largest publisher of print titles on the Slovak market. In addition to *Nový čas*, the publishing house is also owner of the second most widely read tabloid *Plus 1 deň*. Due to its volume, the transaction was not subject to the control of the Anti-monopoly Office.³³

Transparency of media ownership

Rules governing transparency of media ownership and public availability of media ownership information, and their application

The Ministry of Culture of the Slovak Republic is obliged to create a publicly accessible register of information and data on media providers, services and products within 30 months of the adoption of the new media laws. According to the Ministry’s website,³⁴ it has not yet published such a list. There has been no progress on the above matter in 2023.

33 [Denník N, Penta publishing buys the daily newspaper Nový čas and the website cas.sk](#), 10 October 2023.

34 [Lists and Registers maintained by the Ministry of Culture](#).

Public service media

Independence of public service media from governmental interference

In 2023, the financing of the public media RTVS - Slovak Radio and Television was changed.

On 17 February 2023, the National Council of the Slovak Republic approved a law on the abolition of the payment of the RTVS fee, i.e. the so-called 'concession fees'. The amendment entered into force on 1 July 2023.

Under the original funding regime, every natural person registered with an electricity supplier, as well as employers who employ three or more employees in an employment or similar employment relationship, were obliged to pay the concession fee directly to the RTVS. This obligation ended on 30 June 2023.

An amendment to Act No. 532/2010 on Radio and Television of Slovakia, adopted by the National Council on 20 June 2023, introduced a new mechanism of public funding for public radio and television from public sources. The eligible contribution for RTVS will be provided annually from the state budget, amounting to 0.17% of GDP.

On 19 December 2023, the so-called 'Consolidation measures'³⁵ were adopted by the

National Council. Under this framework, the contribution to RTVS from the state budget was reduced from the original 0.17% of GDP to at least 0.12% of GDP.

The change in the financing of the public service media by linking it to the state budget poses a threat of increasing the risk of interference with the content and functioning of the public service media, especially regarding news, by representatives of the government.

In addition, the current government has announced another plan for change in the functioning of RTVS, to which it also committed itself in its Programme Statement,³⁶ consisting in the division of RTVS into two separate media institutions - a separate public television and public radio. The change has not yet taken concrete form in the form of a legislative proposal. However, once it is put into practice, together with the changed funding regime, it may pose a further threat to the independence of the functioning of the public service media, as the division of RTVS inevitably entails changes in the director(s) and members of the control bodies of the public service media. The bodies of the current RTVS – the Director General and the Board – are elected and dismissed by the National Council (on the proposal of the competent committee of the National Council) by a simple majority of the present member of the National Council, so the ruling political power

35 The adopted and promulgated [Act No. 530/2023 Coll.](#), amending certain acts in connection with the improvement of public finances.

36 The Manifesto of the Government of the Slovak Republic, page 52.

would have a substantial and direct influence on the selection of the persons.

Public trust in media

According to 2023 Reuters' Digital News Report, the general public trust in media declined from last year's 37% to 27% which, according to the report, 'reflects decades of interference by business and political leaders.'³⁷ The report further states that "TV stations, including the public broadcaster RTVS, tend to enjoy relatively high levels of trust, whereas digital-only brands are less trusted, even when they have high reach (e.g. Topky). However, one digital-only brand, Aktuality, stands out for its high reach and relatively high trust."³⁸

Another report conducted by GLOBSEC - GLOBSEC Trends 2023 - points out an interesting paradox:

"Slovaks further reaffirmed their proneness to believing disinformation in other areas too, with majorities agreeing with a narrative demonising LGBTI+ people and rejecting the notion that liberal democracy is good for their country. Paradoxically, despite only 37% of respondents trusting the media, nearly two thirds considered media outlets to be free, representing the largest gap between the two measurements in the region."³⁹

Safety and protection of journalists and other media actors

According to the 2023 Reporters Without Borders' World Press Freedom Index, which evaluates the environment for journalism, level of freedom of press and media in 180 countries around the world, the Slovak Republic moved up in the rankings from 27th place to 17th place.⁴⁰ Despite this positive progress, it can be concluded that journalists continue to work in a hostile work environment, mainly because of "the former prime minister Igor Matovic and the current one Robert Fico who have been among the sources of political attacks on the media, with the latter going so far as to launch baseless accusations of criminal activity against investigative journalists."⁴¹

Frequency of verbal and physical attacks

As Reuters Institute's 2023 Digital News Report states,

"verbal attacks on journalists by politicians from opposition and government parties continue. While some politicians defend press freedom, journalists and media organisations have been compared with organised crime syndicates and accused of corruption, media criticism has been likened to the Nazi propaganda machine, and

37 [Digital News Report 2023](#), Reuters Institute, page 97.

38 Ibid.

39 [GLOBSEC Trends 2023 Report](#), page 15

40 [Reporters Without Borders' World Press Freedom Index 2023](#), report for Slovakia.

41 Ibid.

female reporters are labelled prostitutes. Early this year, the female presenter of an RTVS political discussion programme received credible death threats following verbal attacks against her by a leading politician.”⁴²

Smear campaigns

The verbal attacks on journalists are part of a continuous smear campaign against journalists and the media by representatives of the current government, especially the strongest ruling party SMER-SSD and its chairman and current Prime Minister Robert Fico, and also by the SNS as its coalition partner. Attacks on journalists include, in particular, labelling them as enemies of the country, foreign agents, and accusing them of alleged bias against the ruling power (especially in the case of the media, which can be considered more ‘liberal’).

Part of the smear campaign is also the decision of the ruling party SMER-SSD not to communicate with selected opinion-forming media, including not answering journalists’ questions at press conferences and also the decision not to participate in political debates in some media (e.g. TV Markíza).⁴³

One of the sharpest moments of this smear campaign was the Prime Minister’s announcement that he would not allow certain ‘enemy media’ to enter the Office of the Government of the Slovak Republic. Subsequently, he corrected his statement to the effect that he was cutting off all communication with these media.⁴⁴

42 Digital News Report 2023, Reuters Institute, page 96.

43 [Press release of the Office of the Government of the Slovak Republic](#), 20 November 2023.

44 The ruling parties SMER-SSD and SNS describe the daily newspapers SME, Denník N, the online news portal Aktuality and the news television TV Markíza as ‘enemy media’. See for example the statement of the prime minister Robert Fico published on 13 November 2023 on his official Facebook account where he openly speaks about the “enemy media” and his decision to restrict their access to the Office of the Government of Slovak republic. The statement available at: <https://fb.watch/pOefOjEr9P/> (from the minute 5:11). The media in question are generally regarded as objectively critical and credible.

Checks and balances

Key recommendations

- *To refrain from the overuse and abuse of the fast-track legislative procedure and use it only where there are genuine grounds for its application, as provided for in the Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

In December 2022, the previous government, headed by former Prime Minister Eduard Heger, changed the wording of the Legislative Rules of the Government concerning public participation in the legislative process during the inter-ministerial comment phase of the legislative process (in the preceding phase the law submitted to the National Council). The change concerned two points: 1) comments within the commenting procedure can be submitted exclusively through the portal Slo-lex (an electronic system/website of the Collection of Laws and portal on which legislative intentions, legislative processes with the possibility of commenting, and information regarding the legislative activity of the state are published),

whereas previously it was also possible to submit comments via other formats e.g. in the form of paper sheets; and 2) support for mass comments (special instrument for public participation - if any amendment introduced by the public aka NGOs or individuals - gain support of 500 people, this amendment is considered as if it was submitted by public authority such as a ministry) can be collected exclusively through the Slo-lex portal, whereas previously it was also possible to collect support through various petition portals. These changes have made it significantly more difficult for the public to participate in commenting on legislation, as the process has been limited to the Slo-lex portal: the portal is not user-friendly and not well-structured, it is also inaccessible to a certain proportion of Slovak citizens - statistics show that approximately 14% of Slovak households do not have access to the internet and would therefore completely lose the opportunity to participate in the comment procedure.⁴⁵

In response to these changes, in July 2023, the newly appointed interim government reversed

⁴⁵ VIA IURIS, together with a number of other NGOs, reacted to these changes by putting pressure on the government for several months to change this harmful regulation and addressed an appeal to the government to this end: <https://viaiuris.sk/aktuality/vlada-e-hegera-potichu-zmenila-pravidla-pripomienkovania-zakonov/>

the changes by adopting a resolution and modified the government's legislative rules to their original mode so that the public can continue to collect the public support of the amendments through portals other than Slov-lex.⁴⁶

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

According to the statistics available on its website, the newly elected National Council in the IXth electoral term (i.e. from October 2023) has so far approved 12 bills by the end of December 2023, all of them proposed by the government. Of these, 11 were approved in the fast-track legislative procedure.⁴⁷ Statistically, therefore, of all the government bills, 91.67% were passed with the fast-track legislative procedure. By comparison, in 2020 (the first year of the pandemic), the National Council passed a total of 124 bills between March and December 2020, of which 59, or 47.58% of the bills, were passed through the fast-track legislative procedure. This means that the coalition is now passing laws in the fast-track legislative procedure even more recklessly than when it was justified by the global pandemic.⁴⁸

The reasons for the fast-track legislative procedure are often insufficiently substantiated or proven, in some cases they are even completely absent or the grounds given do not meet any of the requirements for the fast-track legislative procedure provided for by law (Act no. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic).

In addition, the Government Legislative Rules state the obligation to carry out a comment procedure even if the discussion of a law is to be shortened. In such a case, the comment procedure is also shortened,⁴⁹ but it shall not be shorter than seven working days. This condition was not met in the case of the government bills in question, and therefore the public (general and professional), as well as state bodies and organisations, did not have the opportunity to comment on these bills.

Among the government bills that have been approved or are currently being discussed in the fast-track legislative procedure, there are also those that represent serious systematic and complex changes that require broad professional discussion of all entities that will be (especially in practice) affected by the changes. This can be demonstrated, for example, by the above-mentioned amendments to the criminals acts (and

46 Documents and the adopted amendment by the interim government available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2023-369>

47 [Brief overview of the legislative activity of the National Council of the Slovak Republic](#), 22 December 2023.

48 To make the statistics complete, in 2021 the National Council adopted 27 bills out of 168 (16 %) in fast track legislative procedure, in 2022 it was 21 out of 175 (12 %) and in 2023 it was 2 out of 107 (1,9 %). See more at [Brief summary of legislative activity of the National Council of the Slovak Republic in VIII. term of office](#).

49 Art. 13 par. 7 of [Government Legislative Rules](#).

related laws), which introduce a completely new concept of penal policy, dramatically reduces the penalties for certain offences, changes the limitation periods, introduces a preference for alternative sentences (which it is clear that the State will not be able to carry out) and, as we have already mentioned, abolishes the Special Prosecution Office. For many of these changes, the State and the authorities affected are neither prepared nor technically equipped.

Independent authorities

On 29 November 2023, the government of the Slovak Republic approved the draft amendment to Act No. 575/2001 Coll. on the organisation of government activities and the organisation of the central state administration (the so-called Competence Act), in which the government proposes the establishment of a new Ministry of Sport, changes the legal status of some state institutions and also includes changes in the process of the selection of the heads of two state institutions - the Statistical Office of the Slovak Republic and the Office for Supervision on Healthcare. The law at the same times guarantees the independence of the chairpersons of these institutions.⁵⁰

The draft law is to change the mechanism of selection of the chairpersons of these

institutions, who, according to the currently valid and effective legislation, are appointed and dismissed by the President of the Slovak Republic on the proposal of the government. The President derives this competence not only from the act itself, but also from the Constitution. The amendment changes this mechanism so that the appointment and dismissal of the chairpersons of these institutions shall be fully in the hands of the government, which brings the amendment into conflict with the constitutional regulation. In addition, the proposal adds a new vaguely worded reason for which the government will be able to dismiss the chairmen of these institutions, yet the amendment at the same time contradictory guarantees the chairmen they shall act independently of instructions from state authorities or other public authorities.⁵¹ This does not provide a sufficient guarantee against arbitrariness of the government in its decision to change the chairmen.

This change interferes with the principle of checks and balances by giving full control of these independent institutions exclusively to the government, that is to say, to one branch of power, by removing the President from the process of creating their chairman positions.

50 The draft amendment of the Act No. 575/2001 Coll. on the organisation of government activities and the organisation of the central state administration, adopted on 29 November 2023 by the government, or see the version adopted by the National Council (which has been vetoed by the president).

51 The amendment introduces a guarantee of independence only in the case of the Statistical office, since the legislation currently in force already provides for this guarantee (in the same wording) in the case of the Office for Supervision on Healthcare.

The amendment bill was passed by the National Council but was vetoed by the President for the reasons stated above.⁵² The National Council overrode the presidential veto on 16 January 2024.

Electoral framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

In 2023, there were two amendments to Act No. 180/2014 Coll. on the exercise of the right to vote (“Electoral Act”):

1. The amendment adopted in November 2022 with effect from 1 March 2023 simplified the possibility of remote voting by post from abroad - the change means that applicants to vote by post no longer have to communicate with the municipality of their permanent residence, but all applications are addressed through the information system for voting by post to one place, which is the Ministry of the Interior. Access to the election is also facilitated, for example, by the fact that the voter can obtain the ballot paper from the website of the Ministry of

the Interior.⁵³ Originally, this amendment proposed the extension of the possibility of voting remotely by post also for presidential elections, but this change was not approved.

2. The amendment adopted in May 2023 strengthened the transparency of elections by introducing the obligation to publish the minutes of both precinct and district electoral commissions on the voting process and results in a specific precinct on the website of the municipality (in the case of a precinct) or on the website of the Statistical Office (in the case of a region).⁵⁴

52 In addition to the aforementioned reasons, the President considered the use of the fast-track legislative procedure, which was used in this case as well, to be problematic. The act vetoed and reviewed by the president available at:

<https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=538041>

53 Act no. 468/2022 Coll. amending Act no. 180/2014 Coll. on the conditions for exercising the right to vote available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/468/20230301.html>

54 Act no. 170/2023 Coll. amending Act no. 180/2014 Coll. on the conditions for exercising the right to vote available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2023/170/20230604.html>

Civic space

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc.)

In November 2023, the government announced a change to the 2% personal income tax assignment.

The assignment of 2% of taxes is a financial instrument that provides part of the funding for public non-profit organisations registered in the list of beneficiaries. Any working individual who has paid a personal income tax can assign 2% of the sum to the organisation of his or her choice. In this context, the government has decided to use the 2% to fund the so-called “parental pension”. This kind of social allowance is a de facto contribution to the pension and its financing consists in giving part of the tax paid to the person who raised the taxpayer and who is a pension receiver. Under the government’s announced plans, the change would be that the working person or taxpayer would

have to choose whether to give 2% of their tax to a chosen organisation or to their parents in retirement.

The change would therefore present working citizens with a ‘moral’ dilemma - to support an organisation (which, for example, helps sick children) or their parents?

This was the way the government wanted to pursue its intention to restrict funding for NGOs, which the government has long labelled as “enemies” and “foreign agents”. The proposal to change the funding of NGOs was one of the most imminent attacks on the civil society sector yet, taking the form of concrete ‘action’, albeit only in the form of announced plans.⁵⁵ The government’s intention though has not been presented in the concrete form of a legislative proposal. Finally, in December 2023, the government announced that the tax assignment system for now remains unchanged.

Another, this time concrete, intervention into the funding of NGOs was the decision of the current Minister of Culture in November 2023 that the Ministry of Culture would not continue the disinformation subsidy programme provided to projects aimed to develop and support media education and the fight against disinformation.⁵⁶ Within the ongoing programme, it was

55 Note that for some NGOs this financial source constitutes the vast majority of their funding and thus any change can affect their operation to a significant extent.

56 For more information on the projekt [Programme 5 – Promotion and development of media education and the fight against disinformation for 2023](#).

necessary to spend the funds earmarked for this purpose by the end of 2023, which, however, in the opinion of the Minister of Culture, could not be achieved and therefore she decided to change the purpose of these funds to co-finance the reconstruction of the roof of the building of the Slovak Philharmonic. The Minister justified her decision, among other things, by the composition of the evaluation commission that evaluated the projects, pointing out that some of its members are associated with some liberal political parties or are part of NGOs and therefore the money from the projects should have ended up in “progressive NGOs”.⁵⁷ In the context of the current government of which the minister is part of, this decision can be seen as yet another manifestation of the current government’s cultivation of a hostile environment towards the civil sector or its specific parts.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

NGOs and the civil sector are a continuous target and object of smear campaigns and negative narratives by (not only) the current ruling parties, which have been trying for a long time to discredit NGOs and influence public opinion to regard some organisations as ‘foreign agents’, who act against the interests of the Slovak Republic and through which the events in Slovakia are influenced by ‘enemy foreign countries’ (especially the Western countries, and the

USA). These narratives create an image and a feeling of an ‘enemy’ in the discourse, against which society and the state need to be fought and protected. The civil sector and NGOs are repeatedly associated with the person of the American businessman G. Soros, which also feeds conspiracies about the harmful and subversive activities of NGOs in Slovakia. The same terms ‘foreign agents’, ‘enemy NGOs’, ‘Soros’ NGOs’ and very often ‘political NGOs’ or even ‘government of NGOs’ are repeatedly used in the discourse on NGOs.

At the time and in the context of the announced change of the 2% tax assignment mechanism (see described in the previous section), NGOs began to be divided by government officials’ rhetoric into NGOs that are ‘valuable’ and those which are not, the latter which comprises mainly of NGOs that the government also refer to as ‘political’, i.e. those about which it has created narratives depicting how they influence events in Slovakia and have an impact on Slovak politics through their connections to foreign countries. Such NGOs should have been weaned off the 2% funding option in the first place because they are allegedly sufficiently funded from abroad. On the contrary, ‘noble’ organisations, which are mainly devoted to health and social services, were to be financially assisted by the state even after the eventual abolition of the 2% funding mechanism. The above narratives aim to divide and destabilise the civil sector and create chaos and hostility

57 The word “progressive” is considered a pejorative in this context. [Press release of the Minister of Culture M. Šimkovičová, 21 December 2023.](#)

in the public towards the unwanted parts of the NGO sector.⁵⁸

Verbal attacks

Repeated verbal attacks on specific NGOs are also part of smear campaigns in the context of the narratives described above. In 2023 (in the run-up to the snap elections, when the current prime minister was a candidate), the current Prime Minister made several direct comments about organisation Via Iuris, which he links to G. Soros and claims that the organisation is financed by him. He made the above claims publicly at his press conferences in May 2023⁵⁹ and also made the same statement in a political discussion programme on the public broadcaster RTVS.⁶⁰

A manifestation of the escalating rhetoric in the public space in relation to the NGO sector was the recent anonymous verbal attack on an

activist from the Aevis Foundation (an environmental NGO) in October 2023, in the form of direct intimidating threats.⁶¹

Public participation

Rules on access to and participation in consultations and decision-making processes

It is also the case for dialogue with civil society as well as its access to and participation in consultations and decision-making processes that the above-mentioned use (even abuse) of the fast-track legislative procedure prevents the public and civil society from having the opportunity to be involved in legislative and decision-making processes. The fast-track legislative procedure does not include an inter-ministerial comment procedure, which de facto excludes civil society from the debate on draft laws.

58 Programme Statement of the Government of the Slovak Republic on page 5 says: *“The Government is particularly concerned about the standardisation of the democratic political system and healthy competition between political parties. The Government also recognises the role of non-governmental organisations. However, it cannot accept that politically oriented entities, often financed from abroad, influence democratic political competition in a non-transparent manner. The Government is ready to financially support NGOs carrying out public benefit activities, for example in the social, humanitarian, environmental, educational, educational, sporting, etc. fields.”*

59 At the press conference in question R. Fico declared that “Via Iuris is totally financed from Soros’ resources.” (the press conference streamed on Facebook available at: <https://fb.watch/pB2iolIzmm/>, approx. 1:15). This claim is not based on truth.

60 In the discussion, Róbert Fico again named the Via Iuris organisation and the Stop Corruption Foundation, and claimed that they were demonstrably financed by G. Soros. See more at: <https://www.rtvsk.sk/televizia/archiv/12354/404126#879>, approx. 15:35.

61 The activist was threatened and told to be careful where she walks and what she does, and to make sure her car doesn’t burn down. See more at RTVS, [An activist from the eastern Slovakia has been the target of direct threats. Attacks on NGOs has been escalating](#), 29 October 2023.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment



Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Inadequate protection for the LGBTI+ community remains

Following the murder of two members of the LGBTI+ community on Zámocká Street in Bratislava on 12 October 2022, efforts to increase protection for the LGBTI+ community and to raise the standard of their human rights and freedoms have remained at a minimal level. In January 2022, the then Minister of Justice V. Karas introduced a legislative proposal to regulate the mutual rights of unmarried couples, which was intended to cover LGBTI+ couples as well. The proposal was a sort of weaker alternative to the requirement for the enactment of registered partnerships, which would allow unmarried persons to designate each other as their ‘confidant’ by declaration before a Notary. Under such an arrangement, these persons could e.g. keep each other informed of their health status, receive certain social allowances

or become guardians for their children. The proposal made no provision for inheritance rights or joint ownership. The LGBTI+ community considered the proposal insufficient and degrading. The draft bill was introduced in the National Council in April 2023, but withdrawn by the government in May 2023.⁶²

On 3 September 2023, in a political discussion show ‘Na telo’ broadcast live on TV Markíza, the chairman of the Christian Democratic Movement Party responded to the moderator’s question comparing the seriousness of the problem of corruption and the alleged problem of the existence of LGBTI+ “ideology” by saying that both of these phenomena are “the misfortune of the country” and “are plagues that are destroying the country.”⁶³ This statement of the leader of a political party that is now part of the National Council is emblematic of how insensitive public discourse is in relation to the LGBTI+ community. Instead of providing the necessary systematic support and appealing for increased protection for LGBTI+ people, high-ranking politicians often speak in the public space in exactly the opposite manner, promoting the harmful stigma that is associated with people from the LGBTI+ community.

62 The text of the draft amendment, other documents and an overview of the legislative process available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9386>

63 The chairman of KDH M. Majerský labelled LGBTI+ people as “plague”. Opposition parties demand an apology, 3 September 23.

The reduction in protection for LGBTI+ persons occurred on 21 November 2023, when the new Minister of Health announced that it would abolish the professional directive that regulated the unified procedures for the provision of health care in the case of gender reassignment and the procedures for administrative gender reassignment.⁶⁴ The directive was abolished on 22 December 2023.⁶⁵ The change has thus had a direct negative impact on transgender people in Slovakia.

The deteriorated attitude of Slovak society towards LGBTI+ people is also reflected in the 2023 GLOBSEC Trends report, which states that in 2023, up to 55% of people agreed with the statement that “LGBTI+ is an immoral and decadent ideology”, while in 2020, 49% of people agreed with this statement.⁶⁶

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

At its meeting on 17 October 2023, the Judicial Council of the Slovak Republic discussed the Rule of Law Report of the European Commission, with one of the points of discussion being the status of implementation of European Court of Human Rights (ECtHR) judgments.⁶⁷ The Judicial Council discussed

with the representative of the Slovak Republic before the ECtHR the data, the current status and the reasons for the non-implementation of the ECtHR judgments. The following conclusions emerged from the discussion.

The Slovak Republic ranks among the average of all member states in the Council of Europe in the number of unimplemented judgments of the ECtHR.⁶⁸ According to the representative of the Slovak Republic before the ECtHR, the lack of implementation of these judgments is not due to structural or systemic problems, but rather to various circumstances in specific cases (often such circumstances are, for example, a change in national judicial practice, complicated legal and factual situation of the case, or more complicated communication between the authorities). However, according to the representative of the Slovak Republic before the ECHR, the implementation of ECHR judgments is based primarily on the legal awareness and respect for (judgments of) the ECHR by the state and all its authorities. According to the representative, the Ministry of Justice of the Slovak Republic has neither the competence nor the means to accelerate the implementation of the judgments, and the principle of the separation of powers must always be taken into account when potentially considering such instruments.

64 [Press release of the Ministry of Health of Slovak Republic regarding the abolition of the directive.](#)

65 [Bulletin of the Ministry of Health, Vol. 57-59, No. 71, point 47, 22 December 2023.](#)

66 [GLOBSEC Trends 2023 Report, page 75.](#)

67 [10th meeting of the Judicial Council of Slovak Republic, No. 2, Rule of Law Report 2023, 17 October 2023.](#)

68 [As of October 2023, the backlog of ECHR judgments stood at 12%.](#)

Fostering a rule of law culture

Efforts by state authorities

VIA IURIS is not aware of any activities or initiatives of this kind.

LIBERTIES

RULE OF LAW REPORT

2024

SLOVENIA

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About the authors

Peace Institute – Institute for Contemporary Social and Political Studies



The Peace Institute – Institute for Contemporary Social and Political Studies is an independent, non-profit research institution founded in 1991 in Ljubljana, Slovenia, by individuals who believed in peaceful conflict resolution, equality and respect for human rights standards.

The Peace Institute (PI) uses scientific research and activism aimed at creating and preserving a society capable of critical thought and based on the principles of equality, responsibility, solidarity, human rights and the rule of law.

The Institute develops interdisciplinary research, educational, advocacy and awareness-raising activities in four thematic fields: human rights and minorities, politics, media, and gender. Acting as a research and civil society organisation, it focuses mainly on Slovenia, but it is also participating in numerous cross-border collaborative actions and comparative research on EU level and in the region of South East Europe. The PI acts against discrimination, as an ally of vulnerable groups and in partnership with them. It has carried out projects in support and advancement of the rights of children, women, victims of crimes, defendants in criminal proceedings, Roma communities, “erased people”, refugees and migrants, stateless people, LGBT communities, journalists and others.

Key concerns

Media Environment and Media Freedom

Regarding the media environment and media freedom, in 2023, the government adopted no measures against media concentration nor any measures for the protection of professional journalism, autonomy and the safety of journalists. The ‘depoliticised’ model of governing at RTV Slovenia was implemented, but no decision on the ‘depoliticisation’ of the financing model was taken, causing a sustainability crisis at the public broadcaster. In December 2023, the proposal of the new media law was submitted for public consultation, introducing the mechanisms of state aid to the media, but no clear specification and commitment regarding the source and size of the state aid was provided.

Comparing developments concerning the media environment and media freedom with the EU Commission’s recommendations, the government has not adopted non-legislative safeguards to protect the journalists. The small steps concerning exchange of knowledge and information between the Slovenian Association of Journalists and the Police continue to be made upon the initiative of the journalists’ association. The association is developing various mechanisms and actions to increase the safety of journalists, but the financial support is only provided by foreign donors. The proposal of the new media regulation contains no specific measures for the protection of journalists’ safety, apart from the prohibition of installing intrusive surveillance software on any device used by journalists.

Checks and Balances

Related to checks and balances, as in the past, the government often failed to respect the relevant national provisions concerning the duration of public consultations in the process of adopting laws and regulations.

Civic Space

As it concerns civic space, in October 2023 the National Assembly passed the law aimed at revoking fines targeting alleged organisers of public gatherings protesting democratic backsliding that were imposed on the basis of unlawful regulations during the COVID-19 pandemic, amongst others. Regarding negative developments, the year saw both Pride Parades organised in Slovenia marred by violence. A major public call for funding the NGO sector was also marred by controversy and subsequently annulled.

Disregard of human rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Regarding the disregard of human rights obligations and other systemic issues affecting the rule of law environment, the discrepancy in the number of irregular crossings and the number of people that apply for international protection and the number of people receiving international protection (7,261 asylum applications were lodged, and only 130 people were granted international protection) indicate the need for thorough research and monitoring of the situation. The year 2023 was also marked by significant difficulties in accommodating people

on the move due to insufficient facilities. State migration policies are also reflected in a large percentage of foreigners in Slovenian prisons, which are consequently overcrowded.




It is still the case that more than half of the erased persons from the register of permanent residents did not receive any form of redress (there are still some erased persons who live in Slovenia without regulated status since the erasure in 1992). Remedies available to them are inadequate, as the path to obtain a permanent residence permit takes at least seven years and is, in parts, subject to the discretion of the competent authority.

Slovenia still did not ratify the 1961 Convention on the Reduction of Statelessness.

State of play (versus 2022)

- N/A Justice system
- N/A Anti-corruption framework
- Media environment and freedom of expression and of information
- Checks and balances
- Enabling framework for civil society
- Systemic human rights issues

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

Media environment and media freedom —

Key recommendations

- *Further strengthen RTV Slovenia’s institutional autonomy, particularly through depoliticisation of the financing model (where the amount of the licence fee is not dependent on the decision of the government or the parliament, but automatically follows the inflation or other economic indicators).*
- *Comprehensively reform media legislation to protect public interest in the media, particularly focusing on safety of journalists, financial support to quality journalism, protection of media pluralism, transparency of media ownership and finances, strengthening independence and capacities of media regulatory authorities etc.*
- *Substantially reform the regulatory framework for media and digital services to establish a separate national regulatory authority for media and digital services that is independent and has sufficient resources to play a more active role, and is distinct from the converged regulator of telecommunications, postal services and railway traffic and AKOS.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The Agency for Communication Networks and Services (AKOS) serves as an independent regulatory authority for several sectors, including telecommunications, postal services, railway traffic as well as radio and television. It is a body functionally separate from the government.

The main concerns related to the independence and resources of the regulatory authority to actively and efficiently enforce media regulation remain.

The appointment of the agency's director as the highest (single-member) decision-making body remains under direct control of the government. Such powers given to the government remain one of the main threats to the independence of the media and telecommunication authority. The agency's council is also appointed by the government as a body supervising the work of the agency. It considers the agency's annual plans and reports and can propose dismissal of the director.

In 2023, the new director of the agency was appointed by the government for a 5-year term after a controversial procedure, with the notice of vacancy initially annulled and then repeated twice without any specific explanation from the Ministry for Digital Transformation.¹

The AKOS's human resources (11 employees) in the department overseeing electronic media and devoted to the enforcement of media regulation remains insufficient. The resources are highly disproportionate compared to the resources of similar media authorities in the EU.

As highlighted in the previous reports, such limited resources, and the prevailing passive and invisible role of AKOS in enforcement of media regulation, mostly reflects the internal policy of its leadership (appointed by the government) to keep a low profile in the politically sensitive field of media regulation. Limited resources and lack of ambition to strengthen the capacities and profile of the authority tend to be a problem in the context of growing expectations placed on national regulatory authorities required by new media regulation on the EU level.

According to the January 2024 government's proposal of the Act on the Implementation of the Digital Services Act, AKOS will also serve as a digital services regulator (Digital Services Coordinator). The law² anticipates an allocation

1 <https://n1info.si/novice/slovenija/akos-znova-isce-direktorja/>; <https://siol.net/novice/slovenija/vlada-za-v-d-direktorja-akosa-imenovala-poharja-605720>; <https://www.sta.si/3180029/na-celo-akosa-marko-mismas>.

2 Text of the proposed act is available at: [https://gradiva.vlada.si/mandat22/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc12570e50034eb54/e5128acc69d515bfc1258a8d003e969e/\\$FILE/VG_22_12.pdf](https://gradiva.vlada.si/mandat22/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc12570e50034eb54/e5128acc69d515bfc1258a8d003e969e/$FILE/VG_22_12.pdf).

of funds for 5 new job positions in the agency to perform the newly assigned tasks.³

The new Mass Media Act, drafted by the Ministry of Culture and open for public consultations between 12 December 2023 and 31 January 2024, also assigns new tasks to AKOS. In the assessment procedures related to the implementation of the anti-concentration measures, the agency is required to provide a “preliminary opinion”,⁴ but the proposed act does not specify allocation of new resources to the agency to perform the newly assigned tasks.

In addition, there is a functional self-regulatory framework for journalists in Slovenia, with Journalists’ Court of Honour⁵ playing a major role. It is a self-regulatory body on a national level operating within the Slovenian Association of Journalists and includes representatives of journalists and the public. Enjoying a positive reputation, it continues a long tradition of setting ethical standards and handling complaints. The self-regulatory body is co-founded by the association and the Union of Journalists, and its members are appointed by the founding organisations’ representative bodies. It handles complaints based on the Code of Ethics and publicly announces decisions on a regular basis. In 2023, it published decisions in response to

24 complaints (an increase in comparison to 16 complaints in 2022). It is entirely financed by the journalists’ association.

The Ombudsman of public media RTV Slovenia handles complaints on the basis of Professional Standards and other self-regulatory documents of RTV Slovenia.⁶ The Ombudsman is appointed by the governing body of RTV Slovenia for a mandate of five years, and its independence is guaranteed by internal acts.

Pluralism and concentration

Levels of market concentration

The Media Pluralism Monitor 2023 findings point to a high risk for media pluralism in Slovenia. The highest risk was found in the area of ‘market plurality’ (76%), where the indicator “editorial independence from commercial and proprietary influences” scored the highest at 90%. According to the research, “‘market plurality’ involves the economic dimension of media pluralism, assessing the risks deriving from insufficient transparency in media ownership, the concentration of the market in terms of both production and distribution, the sustainability of media content production, and the influence of commercial interests and

3 In order to enable the implementation of the Digital Services Act across the EU, it is expected that Digital Services Coordinators in the Member States will start operations on 17 February 2024, but in Slovenia there is expected to be a delay.

4 Text of the bill is available at <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>.

5 <https://razsodisce.org>

6 <https://www.rtv slo.si/varuh>.

ownership on editorial content”. The next area most at risk includes ‘political independence’ (65%), where the highest risk to media pluralism was exhibited in the indicator ‘independence of public media’ (96%).⁷

The level of media concentration in Slovenia is therefore high. The media group Pro Plus dominates the television, video-on-demand, and online media market.⁸ There are also dominant media groups in print and radio, in particular media group Media24,⁹ owned by the Odlazek family,¹⁰ which owns more than 60 media outlets in print, radio and television sector, on both national and local level. Even though the Mass Media Act (Article 56) stipulates that the publisher of news printed daily may not be the publisher or co-founder of a radio or television programme,¹¹ these practices are still present, as it is easy to circumvent media law due to inadequate legislation, regulation and oversight. Another problematic practice is visible in the context of media owned by or close to the SDS (Slovenian Democratic Party). Such media outlets operate both on national and local level and serve as a propaganda tool rather than authentic media outlets. For example, they include a seemingly unconnected network

of regional online media.¹² Both practices have a negative impact on media pluralism, as they generate the so-called ‘echo chamber’ effect, in which the exact same content is reproduced across various media outlets.

Direct and indirect state ownership in commercial media remains at risk of government interference – for example, in Tsmmedia through the state-owned Telekom Slovenije. A change occurred in this respect in December 2023, when Slovenian Sovereign Holding sold its 30.6% ownership share in the media firm Salomon to a private enterprise.¹³

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

The existing regulation providing safeguards for media pluralism remains outdated and inefficient. The implementation of the provisions on the restriction of media concentration and ownership has been deficient for many years. However, in December 2023, the Ministry of Culture submitted for public consultation a proposal of the new Mass Media Act. Public

7 <https://cmpf.eui.eu/media-pluralism-monitor-2023/>.

8 <https://pro-plus.si/eng.html>.

9 <https://media24.si/>.

10 For more information on ownership structures of Media24 and connected firms see: <https://podcrto.si/mediji-martina-odlazka-1-del-nepregledna-mreza-radiev-tiskovin-televizije/>; <https://podcrto.si/mediji-martina-odlazka-2-del-ni-varovalk-pred-zlorabo-kopicenja-medijev/>.

11 Text is available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608>.

12 <https://podcrto.si/infografika-internetni-mediji-sds/>.

13 For more information see <https://www.sdh.si/sl-si/novice/4825/sdh-izstopil-iz-lastnistva-druzbe-salomon>.

consultation ended at the end of January 2024. The current media law, adopted in 2001, does not prevent media concentration effectively and does not provide for adequate disclosure of media ownership. The proposed regulation, which claims to follow the principles of the European Media Freedom Act (EMFA), foresees a specific media concentration assessment procedure, in which the competition regulator will also assess the impact of the concentration on media pluralism.¹⁴ The provisions specifying the restrictions for cross-ownership are no longer part of the proposed Mass Media Act.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

The current Mass Media Act specifies that the publisher of news printed daily may not also be the publisher or co-founder of a radio or television programme. Still, there are cases that circumvent the regulation by establishing new media companies that are linked to each other through ownership structures or have the same beneficial owner. Many media outlets may have the same owner, but this is not readily apparent due to intertwined ownership links. Research on media pluralism has shown that concentrated ownership reduces diversity and creates uniform content - same or very similar policies, interests and ideologies are represented in different media outlets owned by the same

beneficial owner(s). Additionally, it is crucial that these media outlets do not criticise their owners or their business partners, as shown by the research carried out as part of the 'Populist Backlash, Democratic Backsliding, and the Crisis of the Rule of Law in the European Union' project.¹⁵ This tends to be particularly problematic in cases where the media outlets are part of large business conglomerates with interests in several different industries.

Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)

In 2023, the Ministry of Culture launched the regular annual public call for project proposals for the co-financing of media content production in 2024, with an indicative value of €2.9 million. The purpose of the call is to support the media in the creation and dissemination of programme content which, in accordance with the Mass Media Act (Article 4), is important for the pursuit of public interest in the field of media.¹⁶ In 2023, following the results of the 2022 annual call, notable recipients of the funds, amongst others, included *Pod črto*, an independent online media outlet focusing on investigative reporting, data journalism and in-depth stories, and quality daily *Večer* (each received €40,000). Quality newspapers *Delo*, *Dnevnik*, *Gorenjski glas* and *Mladina* also received between €36,000 - €38,000. It is important to note that none of

14 Text of the bill is available at <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>.

15 For more information see <https://www.popback.org/>.

16 <https://www.gov.si/zbirke/javne-objave/redni-letni-javni-projektne-razpis-za-sofinanciranje-programskih-vsebin-medijev-v-letu-2024-jpr-mv-2024/>.

them managed to receive a single euro in 2022, which was carried out by the ministry under the previous government led by SDS. The most funds (€98,789) were awarded to *Radio Študent*, a non-profit student radio.¹⁷

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

Currently, there is no specific regulation of state advertising that requires transparency and safeguards against political misuse.

However, the new Mass Media Act proposal follows the principles of EMFA, which calls for greater transparency of state advertising. According to the proposal, state institutions will now have to report regularly on all media expenditure, including advertising, campaigns and other media leases.¹⁸

In 2022, a parliamentary inquiry was initiated to look into alleged illegal financing of “party political propaganda in the media with funds of state-owned companies, state institutions or foreign institutions or entities”, with the inquiry

targeting the media owned by or linked with the former ruling party, SDS.¹⁹ In 2023, MPs were briefed on the public part of the interim report of the inquiry, which concluded that the vast majority of SDS financing activities are conducted through a network of bypass accounts set up at different levels around the political party’s central bank account. Party officials at local and national level, individuals with a financial interest, as well as Hungarian capital, are involved in this financing model. Moreover, the report states that the dispersed network of SDS bypass accounts includes a large number of private business entities which, during the last government (3rd government of SDS President Janez Janša), were awarded deals with the state or were financed from public funds (including state advertising in SDS-affiliated media outlets).²⁰

In December 2023, the Government Communication Office adopted ‘Recommendations for the implementation of advertising campaigns by ministries, bodies within ministries and government departments’. The main purpose of the recommendations is to enforce transparent advertising practices from public funds, as well as the requirement for transparent and non-discriminatory allocation of advertising funds that will be introduced by the EMFA.

17 <https://www.dnevnik.si/1043023838>.

18 <https://n1info.si/novice/slovenija/v-javni-razpravi-tezko-pricakovani-zakon-o-medijih-kaj-predvideva/>.

19 The act on establishing the parliamentary inquiry: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-2175/akt-o-odreditvi-parlamentarne-preiskave-za-oceno-dejanskega-stanja-in-za-ugotovitev-politice-odgovornosti-nosilcev-javnih-funkcij-zaradi-suma-nezakonitega-financiranja-politicianih-str>.

20 <https://www.rtvsllo.si/slovenija/porocilo-komisije-o-financiranju-politicianih-strank-se-bere-kot-politiciani-triler/689451>.

The recommendations provide for transparent reporting by the authorities through the publications of annual reports on the advertising campaigns carried out on authorities' websites. In addition, it is proposed that the authorities should obtain the government's approval to carry out advertising campaigns whose value exceeds €50,000 (including VAT).²¹ Importantly, these provisions are also included in the proposal of the new Mass Media Act.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

There are provisions in the current Mass Media Act obliging media outlets to report media ownership above 5% in the Media Register, which is administered by the Ministry of Culture. Media companies must also annually publish data and updates on ownership changes in the Official Gazette. However, the register is not accurate, and it does not provide updated data. The newly proposed regulation therefore foresees a new Media register, which will provide up-to-date information on the formal and actual owners of media outlets, information on state advertising and state aids allocated to concrete media, and other information needed for media market transparency.²²

There is no obligation imposed on AKOS to provide accessible information concerning the ownership structure of audiovisual media

service providers, including the beneficial owners.

Public service media

Independence of public service media from governmental interference

In 2023, the independence of the RTV Slovenia's governing and management has improved, while the financing model continues to threaten the public service broadcaster's independence and capacities to fulfil its role.

A new governing body and management of RTV Slovenia have been appointed according to a 'depoliticised' model, introduced in 2022 by the amendments to the Act on RTV Slovenia, and implemented after, in May 2023, the Constitutional Court lifted the temporary suspension of the amendments. The amendments to the Act on RTV Slovenija were adopted by the new government coalition in 2022, and endorsed during the referendum by majority of voters. Aiming at depoliticizing the public service broadcaster's governing and management, the amendments put various independent institutions and organisations in charge of appointments to the governing body of RTV Slovenia. A single 17-member governing council has been introduced by the amendments to include representatives of civil society and RTV Slovenia employees. It is in charge of appointing the top management and overseeing

21 E-mail communication with Government Communication Office, 8 December 2023: <https://www.gov.si/novice/2023-12-08-vlada-sprejela-priporocila-za-transparentno-financiranje-oglasovanja-z-javnimi-sredstvi/>.

22 <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>.

the public broadcaster's programming and finances. The new governing body has replaced two previous governing councils, which totalled altogether 40 members, the majority of whom had been appointed by the parliament and the government. Under the reformed system, the management structure includes a four-member management board, headed by a president.

The appointment procedures of the new governing body - the Council of RTV Slovenia - led to the composition and operations of the current council, which makes decisions independently and with regard to public interest. However, there have been complications and challenges in the operation of the Council and the newly appointed management, arising from some inconsistencies between the substantive articles of the amended law and its transitional provisions, non-cooperation of the previous management of RTV Slovenia in the transition to a new governing model, and the lack of sufficient and systemic funds for adoption of the sustainable 2024 RTV Slovenia production plan. The inquiry of the council asking the RTV Slovenia management to elaborate on possible cuts of certain programs and units of RTV Slovenia caused a sharp opposition internally and among the associations of writers, musicians and producers.²³ In November and December 2023, the RTV Slovenia Ombudsman received

219 reactions from viewers and listeners to the information on eventual cuts of certain programs and units.²⁴

Editorial standards (including diversity and non-discrimination)

Fifteen journalists and editors who worked for a TV Slovenia 2 daily news programme 'Panorama' introduced during the previous management (in the term of the previous government) and cancelled from the 2024 production plan by the new management with claims of low quality and viewership, were informed that their services were not required any more, and that they should stay at home, on reduced pay, until needed. Later they were offered new employment contracts.²⁵ The situation raised the concerns on the ability of the new management to consolidate the organisation and restore professional standards without major conflicts.

Financing (including transparency of financing)

At the end of 2023, the government provided extraordinary funds for the financing of RTV Slovenia's programs intended for minorities, which only slightly reduced the disparity between the necessary and available financial

23 <https://www.delo.si/novice/slovenija/enkratna-financna-injekcija-rtv-slovenija/>; <https://www.rtvlo.si/kultura/drugo/slovenski-center-pen-poziva-k-ohranitvi-kulturnih-vsebin-na-rtv-slovenija/692292>; <http://www.revijaglasna.si/novice/odzivi-ob-predlogu-ukinitve-glasbene-produkcije-rtv-slovenija/>.

24 https://img.rtvlo.si/_files/2023/12/29/46_493828743429619723_porocilo-o-odzivih-na-namige-o-morebitni-ukinitvi-nekaterih-enot-rtv-slovenija.pdf.

25 <https://www.rtvlo.si/slovenija/novinarji-ukinjene-oddaje-panorama-ostali-pred-vrati-rtv-slovenija/693634>; <https://www.rtvlo.si/slovenija/rtv-slo-vecina-novinarjev-panorame-sprejela-pogodbe/696677>.

resources for the implementation of the 2024 RTV Slovenia production plan.²⁶

On the other hand, the government did not approve an increase in the RTV licence fee, which is the largest and most important systemic source of RTV Slovenia's funding, accounting for more than two-thirds of the total revenue. The licence fee, paid by more than 600,000 households in the amount of €12.75 per month, has remained unchanged for more than a decade even as labour and production costs have increased along with inflation, leading to a financial crisis for RTV Slovenia.

While the 'depoliticised' model of the governance and management has been implemented, the government remained reluctant to introduce the 'depoliticised' model of RTV Slovenia financing and eliminate the role of the government in deciding the amount of the RTV licence fee. This could be done by adopting the amendments to the Act on RTV Slovenia, allowing for the licence fee to be automatically adjusted to inflation or other economic indicators.

Another public service media, the Slovenian Press Agency (STA), has been provided by the government with stable financing, and all unpaid obligations from the period of the previous government were paid off.²⁷ However, the current regulation of financing and management of STA still does not provide systemic solutions that would protect the agency from risks to the independence and financial sustainability of the public service in the long term. The Ministry of Culture is expected to draft the new act on STA aiming to provide such systemic solutions.

Other

In December 2023, the police filed a criminal complaint with the prosecutor's office against the former director of the Government Office for Communications, Uroš Urbanija, on suspicion of abuse of official position or official rights in case of non-payment of the STA public service in 2021.²⁸

The Court of Audit has continued an investigation into the STA public service funding during the period between 2019 and 2022, expecting to produce findings about whether

26 <https://siol.net/novice/slovenija/vlada-bo-dodatno-financirala-rtv-dobili-naj-bi-toliko-kolikor-znasa-letosnja-izguba-621023>.

27 <https://www.sta.si/3250355/direktorica-ukoma-in-direktor-sta-podpisala-pogodbo-o-opravljanju-javne-sluzbe-agencije-v-letu-2024>. See also the transcript of the discussion of Petra Bezjak Cirman, director of the Government Communication Office, at the parliament Committee for Culture's session held on 19 January 2024: <https://parlamer.si/seja/5889/transkript?page=5>. Additional information was provided by Alenka Potočnik, president of the Slovenian Union of Journalists, a journalist of STA, 15 January 2024.

28 <https://www.rtv slo.si/slovenija/policija-zaradi-neplacevanja-sta-ja-podala-kazensko-ovadbo-zoper-urosa-urbanijo/691262>.

the management and financing arrangements of the STA provided the conditions for the efficient performance of the public service.²⁹

Online media

There are challenges and delays with adopting the law implementing the DSA and appointing the Digital Services Coordinator. In January 2024, the government submitted the law to the parliament, but the deadline of 17 February 2024 for DSA implementation will not be met. The DSA sets out the rules for intermediary service providers, such as internet access service providers, online platforms (Facebook, X, Instagram) and online marketplaces. By contrast, the provisions of the Act do not apply to online media that will still be governed by the Mass Media Act.³⁰

The Prime Minister established the Strategic Council for the Prevention of Hate Speech in March 2023.³¹ The council consists of representatives of relevant government departments, independent state bodies, and civil society organisations aiming to coordinate and evaluate

the measures against hate speech. Its key tasks are the following: to monitor hate speech in Slovenia and on EU level and to propose actions to prevent it; to advise on the development of policies, changes to regulations and other measures that will contribute to more effective prevention of hate speech; to participate in the development of proposals for systemic changes and a model for a network of campaigns and training at both regional and national level.³² In July 2023, the council issued 57 recommendations to the government, which cover areas of education, prevention, online environment, media and criminal justice response. The media policy recommendations cover public funding and co-financing of the media, media regulation and the protection of journalists. The council recommends that the government should demonetise hate content in the media and develop criteria through appropriate measures to prevent public funding of hate speech. This particularly applies to the funding of advertisements and advertising campaigns by ministries and government departments. Moreover, the council recommends the introduction of appropriate sanctions in media legislation for the

29 <https://www.rs-rs.si/revizije-in-revidiranje/arhiv-revizij/revizija/zagotavljanje-pogojev-za-ucinkovito-opravljanje-javne-sluzbe-sta/>.

30 <https://www.gov.si/novice/2024-01-11-vlada-potrdila-predlog-zakona-o-izvajanju-uredbe-eu-o-enotnem-trgu-digitalnih-storitev/>; https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHg-pHEaPfaAdwNCBOPx4FUfiNL8gNDQ11VFQEAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=0F04DF348EFD85EFC1258AA700467165&db=pre_zak&mandat=IX.

31 The act establishing the council is available at: <https://www.gov.si/assets/vladne-sluzbe/KPV/Dokumenti/Delovna-telesa/2023-Strateski-svet-za-preprecevanje-sovraznega-govora/Akt-o-ustanovitvi-in-imenovanju-clanov-Strateskega-sveta-za-preprecevanje-sovraznega-govora-z-dne-17.3.2023.pdf>.

32 <https://www.gov.si/zbirke/delovna-telesa/strateski-svet-za-preprecevanje-sovraznega-govora/>.

dissemination of hate speech, as well as extending the scope of the media regulation so that the legislation adequately covers the prevention of hate speech on websites and social network pages of media outlets. The recommendations also specify that the government should ensure that journalists and other media professionals are swiftly protected. Obstructions to their work should be prevented, including by developing effective legal arrangements to protect journalists and media workers against SLAPPs (strategic lawsuits against public participation) attacks.³³

Competence and powers of bodies or authorities supervising the online ecosystem

The law implementing the DSA, submitted in January 2024 to the parliament for adoption, provides that AKOS is the competent authority for its implementation (the so-called Digital Services Coordinator). The agency will, among other things, monitor compliance with the implementation of the Act by the above-mentioned providers, and will also grant the status of ‘trusted notifier’ to those who raise concerns about illegal practices online. The adoption of the act will make it possible to remove illegal online content. The law provides for jurisdiction to remove illegal content from the web, but as

mentioned before, this does not apply to online media, which is subject to media regulation.³⁴

Public trust in media

The regular public opinion research on trust in institutions and professions, conducted in October 2023 by Valicon,³⁵ revealed positive trends of trust in the public service broadcaster RTV Slovenija. Trust measures show that the public service broadcaster had the highest increase in trust (by 14 points), compared to the opinion poll from October 2022.³⁶ The trust in media in general has not changed (compared to 2022 research). Media remains at the bottom of the list, among the least trusted institutions. On the other hand, trust in media professionals such as journalists and TV presenters has increased (by 7 points for journalists and by 15 points for TV presenters) compared to October 2022.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

In 2023, 15 attacks on journalists were reported to the online platform ‘Report Attack’, which

33 <https://www.rtvsllo.si/slovenija/strateski-svet-za-preprecevanje-sovraznega-govora-izdal-57-priporocil-vladi/675581>.

34 <https://www.gov.si/novice/2024-01-11-vlada-potrdila-predlog-zakona-o-izvajanju-uredbe-eu-o-enotnem-trgu-digitalnih-storitev/>.

35 <https://www.valicon.net/sl/2023/11/valicon-ogledalo-slovenije-jesen-2023/>.

36 <https://www.valicon.net/sl/2022/11/valicon-ogledalo-slovenije-oktober-2022/>.

is coordinated by the Slovenian Association of Journalists. The number is declining in comparison with the previous years: in 2022, there were 20 attacks reported, while 33 attacks were reported in 2021.³⁷

In 2023, verbal attacks and online harassment were most common. As in the past, journalists and editors at public broadcaster RTV Slovenija were most often targeted, but newspaper and local journalists were also among targets. The editor of the investigative portal Necenzurirano was repeatedly attacked. Nine out of fifteen attacks targeted female journalists and editors. The police intimidated journalists and photo-journalists who were reporting on an environmental protest (when the protesters had entered the closed area of the abandoned Bežigrad Stadium) were also among the alleged perpetrators.³⁸

Rules and practices guaranteeing journalist's independence and safety

The new Mass Media Act drafted by the Ministry of Culture and submitted for public consultations in December 2023, apart from prohibiting the installation of intrusive surveillance software on any device used by journalists, introduces no specific measures supporting or promoting safety of journalists.³⁹

The police and the Slovenian Association of Journalists have continued cooperation in terms of mutual learning and understanding about duties and safety procedures. In 2023, the police invited the Slovenian Association of Journalists to present the role and perspective of journalists and photojournalists at the training programme for the police inspectors specialised for public gatherings. Previously, in 2022, the association invited the police to the training programme for journalists.

There are numerous other initiatives of the journalists' association to increase safety of journalists. The mentioned online platform 'Report Attack' has been further developed and maintained. In cooperation with a law firm, the journalists are provided with free first legal advice, and in some cases (e.g. SLAPPs) with financial support for legal defence. The association has also organised workshops, translated and disseminated guidelines of international organisations on safety of journalists and created a newsroom protocol in cases of online attacks. Visible signs for journalists were also produced by the association to make their identification during field work easier.⁴⁰

Apart from the mentioned cooperation between the journalists' association and the police, none of these or similar measures aimed at increasing

37 <https://novinar.com/prijavi-napad/>.

38 <https://novinar.com/prijavi-napad/>.

39 The proposed law is available at: <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>.

40 The information on activities of the Slovenian Association of Journalists on safety of journalists were provided by Špela Stare, Secretary General of the Association, 26 January 2024.

the safety of journalists have been introduced or supported by government bodies. The donor program Civitates of the Network of European Foundations has provided financial sources for safety activities of the journalists' association.⁴¹

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

The legal procedures involving SLAPPs, initiated by Rok Snežič and amounting to over 50 lawsuits, have continued in 2023. The latter, a tax expert close to the former Prime Minister, targeted journalists of investigative portal *Necenzurirano*. The lawsuits have been severely affecting human and financial resources of the investigative media outlet. They report tens of thousands of euro spent for legal costs. As the *Necenzurirano* editor explained in the commentary published after the court session in October 2023, the lawsuits are “all almost exactly the same, practically typical”, adding: “Snežič’s goal is not to seek justice in court, but to financially exhaust our media, which will spend years and tens of thousands of euro defending against groundless lawsuits. [...] After three years, when we have already spent thousands of euro just for answers to lawsuits and other procedural steps, we have only now reached the courtroom”.⁴² However, the plaintiff did not appear in the courtroom.

The Slovenian Association of Journalists and the Legal Network for the Protection of Democracy sent a public letter to the Ministry of Justice in July 2023, requesting a more active approach on a national level against SLAPPs, but also calling on the Slovenian government support to be more ambitious than the solutions in the Anti-SLAPP Directive on the EU level.⁴³

41 The information is provided by Špela Stare, 26 January 2024.

42 <https://necenzurirano.si/clanek/mnenja/snezic-na-darsu-novinar-na-sodiscu-kolumna-1090434>.

43 <https://www.rtvsllo.si/slovenija/ministrstvo-za-pravosodje-naj-koncno-uredi-podrocje-t-i-slapp-tozb/674400>.

Checks and balances

Key recommendations

- *The authorities should respect national provisions related to public consultations in the process of adopting laws and regulations.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

In 2009 the National Assembly of the Republic of Slovenia adopted a Resolution on Legislative Regulation.⁴⁴ The resolution was aimed at improving standards for drafting laws and regulations. Among other things, the resolution in question provides for minimum standards as regards public consultations, with a minimum period of 30 to 60 days budgeted for consultation with the public. The Rules of Procedure of the Government of the Republic of Slovenia were later also amended to include the provision related to the minimum period for public consultations.⁴⁵

The Centre for Information Service, Co-operation and Development of NGOs established a violation meter, a mechanism to

monitor the frequency of violations of provisions related to public consultations. This mechanism captures regulations for which the resolution stipulates a minimum time for public consultations. It also captures other acts for which such consultations are provided for in the government rules of procedure. After taking office on 1 June 2022 until 8 January 2024, data gathered through this monitoring mechanism reveal that the current government did not respect provisions concerning public consultations in 64% of the cases. The former government, in office from 13 March 2020 until 1 June 2022, did not respect the relevant provisions in 70% of the cases.⁴⁶

44 <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5516>.

45 <http://www.pisrs.si/Pis.web/pregledPredpisa?id=POSL32>.

46 <https://www.cnvos.si/stevec-krsitev/>.

Civic space

Key recommendations

- *The authorities should provide for transparent procedures for awarding funds to the NGO sector.*
- *The authorities should provide for the unhindered right to public gatherings (right to assembly) and for safety at public gatherings. Attention should be given to public gatherings involving historically vulnerable groups of the population. Violent acts against such gatherings should be resolutely prosecuted.*

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

In early spring 2023, the Ministry of Public Administration issued a major public call for funding for the NGO sector, which was subsequently marred by controversy. The public call was aimed at co-financing projects and programmes of non-governmental organisations that would encourage public participation in consultation and co-decision processes,

strengthen the competences of employees and volunteers in non-governmental organisations in the field of advocacy, and would strengthen the social contribution of non-governmental organisations in the areas of democratic functioning, good governance, transparency and oversight over authorities, and active citizenship.⁴⁷ Under public pressure, the minister eventually resigned in autumn.⁴⁸ A group of NGOs, including the national umbrella NGO, also called the minister to resign. In their call for resignation, they highlighted the existence of numerous reports on the suspicious adjustment of the tender conditions after the end of the evaluation procedure, the minister's family and friendship ties with the recipients of the funds and unusual replacement of the head of the tender commission in the middle of the procedure. As a result, according to the NGOs, confidence in public calls have been

47 <https://www.gov.si/zbirke/javne-objave/javni-razpis-za-sofinanciranje-projektov-za-krepitev-aktivnih-drzavl-janskih-pravic-in-opolnomocenje-nvo-na-tem-podrocju/>.

48 <https://www.gov.si/novice/2023-10-06-ministrice-ajanovic-hovnik-se-je-v-odstopni-izjavi-zahvalila-tudi-zaposlenim-za-korektno-sodelovanje/>.

undermined. Furthermore, public trust in the NGO sector has been undermined, and numerous NGOs which worked selflessly now face consequences that are difficult to repair. They became scapegoats, despite the fact that they did not issue the public call, make the decision or distribute funds, among other things. For many years to come, the NGO sector will have to repair the damage caused.⁴⁹ Finally, under the guise of the ongoing internal and external oversight procedures, which are not expected to be completed in the immediate future, the new minister decided to fully annul the public call in January 2024.⁵⁰ As a result, successful applicants have been left without awarded funds. In an open letter, a number of NGOs expressed disappointment over the minister's decision. According to the NGOs, it is extremely harmful to the sector and means that the functioning of organisations in the field of democracy and civil rights is hampered. Such an action sets an extremely dangerous precedent, as it opens the way for the authorities to simply cancel tenders whose results are not to their liking. Successful applicants are currently considering legal means to challenge the minister's decision.⁵¹

Freedom of peaceful assembly

Imposition of fines and other administrative sanctions

In October 2023, the National Assembly passed the Act on the regulation of certain issues related to certain minor offences committed during the period of validity of the measures to prevent the spread of the infectious disease COVID-19. The adoption of the law was preceded by an analysis of the legal bases that were applied in misdemeanour proceedings against individuals for violations of measures against the spread of COVID-19 virus.

The analysis was initiated by the new government in 2022 and covered proceedings initiated in the period between 12 March 2020 and 30 May 2022. The aim of the analysis was the revocation of fines imposed on the basis of unconstitutional, unlawful or disproportional measures. The analysis was limited to misdemeanour proceedings under the Communicable Disease Act and misdemeanours proceedings relating to alleged organisers of public gatherings under the Public Assembly Act, respectively. The findings of the analysis presented in September show that 533 decrees were issued to prevent the spread of the coronavirus and that slightly more than 62,000 misdemeanour proceedings were initiated on the basis of inadequate legal grounds. In 93% of the cases, the proceedings

49 <https://www.cnvos.si/novice/3416/poziv-k-odstopu-ministrice-za-javno-upravo-sanje-ajanovic-hovnik/>.

50 <https://www.gov.si/novice/2024-01-16-obvestilo-v-zvezi-z-javnim-razpisom-za-krepitev-aktivnih-drzavl-janskih-pravic-in-opolnomocenje-nvo/>.

51 <https://pravna-mreza.si/novice/izjava-za-javnost-v-zvezi-z-razveljavitvijo-razpisa-za-krepitev-aktivnih-drzavl-janskih-pravic-in-opolnomocenje-nevladnih-organizacij-na-tem-podrocju/>.

targeted natural persons, while 7% of the cases involved legal persons. In total, fines totalling the amount of €5,754,540.63 have been imposed, of which approximately 30% have been paid voluntarily, while the rest of the fines imposed have been subject to enforcement proceedings.

According to the draft law submitted to the parliament, amongst others, the period under review, namely the period between March 2020 and May 2022, was characterised by numerous public gatherings and protests. The then government (almost exclusively via the police) restricted them and tried to stop them by punishing protest organisers in misdemeanour proceedings. The expert analysis of the legal bases was limited to the offences committed by the organisers of public gatherings relating to the failure to register public gatherings or obtain a permit from the administrative unit. These minor offences were included in the analysis for the sake of protection of the constitutional right to assembly and association, which, identical to the right to health and life, enjoys high constitutional protection.

In 2022, the Constitutional Court of the Republic of Slovenia ruled that the restriction of the right to assembly in the period from 27 February to 17 March, from 1 to 18 April 2021 (when public gatherings were fully prohibited), from 18 to 31 March and from 23 April to 14 May 2021 (when gatherings were limited to

including ten participants) was not necessary. In the relevant decision, the Constitutional Court established that the ban on the gathering of people to prevent SARS-CoV-2 infections was not based on an assessment of whether there existed alternative measures that could facilitate the exercise of the constitutional right to peaceful assembly at least to a certain extent even during the COVID-19 epidemic. This means that the positive duties of the state to reasonably ensure the exercise of the right to peaceful assembly, including the duty to cooperate with the organisers, were not observed.

One of the main objectives of the bill was to restore and strengthen the trust in the principle of the rule of law.⁵² Amongst others, the adopted law thus provides the legal basis to allow for the reimbursement of fines paid, costs of misdemeanour proceedings and the related enforcement proceedings initiated on the basis of unlawful or unconstitutional legal provisions, as well as halting ongoing misdemeanour proceedings, proceedings related to community service, imprisonment for a failure to pay a fine or to fine enforcement proceedings. The reimbursement of fines paid and the costs relating to the relevant procedures shall be automatic, that is – it shall be carried out *ex officio*. The funds for this undertaking shall be available in the state budget.⁵³

52 <https://imss.dz-rs.si/IMiS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/c3ab3a7ab00fef-1518964512f6883420abebfaf738452722d26ee488e9ef3a45>.

53 <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8756>.

Other

In 2023, two Pride Parades were held in Ljubljana and Maribor, respectively. Both were marred by violence. The day before the June Pride in Ljubljana, unknown perpetrators smashed the window of an LGBTIQ-friendly bar displaying a rainbow flag. Both during and after the parade, participants were subject to threats, insults (e.g. youth on motorcycles shouting “fuck you, faggots”), violence (e.g. a youth wrapped in rainbow flag was physically attacked). Certain teenagers also pelted the participants with eggs and cans. Flag burnings were also common, were recorded and posted on the internet. So-called Yellow Vests, a far-right group, boasted on the internet that they had organised and were patrolling the city capturing rainbow flags. The youth branch of the Slovenian Democratic Party, the largest opposition party and the second-largest party in the current parliament, were also present at the Pride location, attempting to provoke participants by stressing the existence of two genders only, both as God-given and scientific fact, and by denouncing other gender identities as propaganda.⁵⁴

Several representatives of LGBTIQ+ organisations and activists reported that such levels of violence have not been seen in decades, if ever since the inception of Pride in 2001.⁵⁵ Representatives of the organiser stated that LGBTIQ+ and supporting organisations received numerous testimonies of violence before, during and after the Pride parade. They reported that the police failed to do anything to protect participants at risk and to prosecute the perpetrators.⁵⁶

In September, before the commencement of the Maribor Pride Parade, a few dozen opponents of the parade came to the scene and unfurled the Slovenian flag as a sign of protest. A banner was also placed on a city overpass stating that Maribor was home of violet and yellow colours (i.e. colours of local football club) and is not rainbow-coloured or green (i.e. colour of the major rival football club from Ljubljana). Instances of violence were also reported, the most prominent being the physical attack of a prominent LGBTIQ+ activists by a group of teenagers.⁵⁷ Incidents of hate speech were also recorded.

54 <https://www.mladina.si/225499/samo-dva-spola-nasilje-in-nestrpnost-na-paradi-ponosa/>; <https://www.mladina.si/225531/izjava-za-javnost-nasilje-na-letosnji-paradi-ponosa/>; <https://radiostudent.si/kultura/dlako-z-jezika/nasilje-na-paradi>.

55 <https://www.rtvsllo.si/crna-kronika/na-sobotni-paradi-ponosa-zalitve-napadi-in-zazigi-mavricnih-zastav/672310>; <https://vezjak.com/2023/06/19/samo-dva-spola-nasilje-in-nestrpnost-na-paradi-ponosa/>.

56 <https://www.mladina.si/225531/izjava-za-javnost-nasilje-na-letosnji-paradi-ponosa/>.

57 <https://www.mladina.si/227475/nasilje-na-mariborski-paradi-ponosa-neprimerne-so-tudi-reakcije-nasprotnikov/>; <https://mkc.si/aktualno/2023/9/17/obsojamo-nasilje-na-3-paradi-ponosa-maribor>.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

For years, the Slovenian Democratic Party and its leader have been involved in spreading negative stereotypes and in smearing civil society organisations. This pattern continued in 2023. For example, civil society organisations were portrayed as being without value for society or were blamed for societal problems. Via X (formerly Twitter), a platform which frequently serves such purposes, the party leader often led by example. In a statement, subsequently debunked,⁵⁸ he claimed, for instance, that alleged channelling of funding to non-governmental organisation at Metelkova instead of being used for infrastructure purposes were to be blamed for traffic jams in late spring and summer.⁵⁹ The party and its leader have a considerable history of targeting organisations at Metelkova Street in Ljubljana. In yet another post, the party leader paraphrased a banner from an environmental protest stating that those (with top hats) should be burnt, and not the Earth. In their version, those to be burnt were cycling NGO activists from the parasitic Ljubljana nest at Metelkova, who take money

from the pockets of workers and pensioners so that they can fool around.⁶⁰

His party colleague and an MEP proposed that a big EU problem was illegal migration, which included NGOs that assist in people smuggling. According to him, some NGOs are even funded by certain member states and European institutions, so he proposed that those non-governmental organisations that help with people smuggling were not entitled to European funds. Such crimes could not be supported from public funds, claimed the MEP.⁶¹

Media outlets close to the party, of which many operate online, are yet another channel portraying civil society organisations in a negative light. For instance, the most important online outlet in the party's orbit published an article about alleged criminal complaints lodged with OLAF against four Slovenian NGOs for the misuse of EU funds and referred to an anonymous Twitter account as the source of information.⁶²

When considerable parts of Slovenia had been hit by major floods, the same outlet implied that individuals who, in the 2020-2022 period protested against democratic backsliding in Slovenia under the then government led by

58 <https://www.ostro.si/si/razkrinkavanje/objave/za-zastoje-na-cestah-ni-krivo-sofinanciranje-nevladnih-organizacij>.

59 <https://twitter.com/JJansaSDS/status/1667580277286109186>; <https://twitter.com/JJansaSDS/status/1676175752075661312>.

60 <https://twitter.com/JJansaSDS/status/1632452111492325377>.

61 <https://twitter.com/MilanZver/status/1738139918679892180>.

62 <https://nova24tv.si/slovenija/proti-stirim-nevladnim-organizacijam-spisana-kazenska-ovadba-zaradi-domnevne-zlorabe-eu-sredstev/>.

SDS, as well as civil society organisations, failed to show solidarity with and help people affected by floods. The article also proposed that funds obtained by these organisations should be channelled to worthy humanitarian organisations.⁶³ This outlet also targets NGOs supporting LGBTIQ+ persons on a regular basis. It depicts their work in a manipulative manner, using highly charged language. An example includes educational activities provided by these organisations, which are referred to as LGBT propaganda, unconstitutional activities, and activities aimed at brainwashing youth or destroying the child's given biological identity.⁶⁴

Apart from smear and disinformation campaigns, the Slovenian Democratic Party submitted in December 2023 a bill to the parliament that would effectively abolish the fund for the development of non-governmental organisations. From 2007 until late 2020,

personal income taxpayers could give 0.5 % of their personal income tax for publicly beneficial purposes, including to non-governmental organisations recognised as being in the public interest in a specific field of life. From 31 December 2020, they could give 1% of their income tax for these purposes. By 2018, however, if taxpayers failed to make donations, the relevant percentage of their taxes was not allocated for publicly beneficial purposes⁶⁵ and remained in the state budget. To counter this, the Act on Non-governmental Organisations was passed in 2018.⁶⁶ The law provides a legal basis for setting up the fund for the development of non-governmental organisations.⁶⁷

Since its establishment, a variety of initiatives and projects by NGOs have been financed through this fund. In its submission to the parliament, the party, amongst others, referred to the above-mentioned controversial 2023 major public call for funding of NGOs, and further

63 <https://nova24tv.si/slovenija/toliko-rok-a-njih-nikjer-pozivi-tudi-k-preusmeritvi-njihovih-sredstev-pomoci-potrebnim/>

64 <https://nova24tv.si/slovenija/lgbt/l-lgbt-propaganda-zazrta-v-izobrazevalni-sistem-med-placniki-legebitre-tudi-vertci-in-sole/>; <https://nova24tv.si/slovenija/lgbt/to-kar-zelijo-storiti-otrokom-v-slovenskih-solah-je-nedopustno-in-v-nasprotju-z-ustavo-rs/>.

65 Text of the Personal Income Tax Act available at <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697>.

66 ext available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7129>.

67 According to the law, the fund shall provide resources for projects and programmes of horizontal networks and regional hubs providing the support environment and promoting the development of non-governmental organisations, as well as projects and programmes of non-governmental organisations and other persons implementing measures aimed at the development of individual fields and promoting the development of non-governmental organisations and the development of the support environment for non-governmental organisations. The sources of financing for the fund shall include personal income tax assets not earmarked for publicly beneficial purposes by individual personal income taxpayers, that is - if taxpayers failed to make donations, the relevant percentage of their taxes shall now go to the fund.

cited its concern for the rational use of financial resources for non-governmental organisations that receive significant funds for projects that have no added value. According to the party, the current government coalition deliberately considers as part of the NGO sector both organisations that have added value for people (e.g. Red Cross, Caritas, Scouts and Slovenian Association of Friends of Youth) as well as those with no such value and which represent pro-government leftist civil society. An example of the latter is People's Voice, a coalition of more than one hundred NGOs.⁶⁸

In its proposal, the Slovenian Democratic Party also stated its concern for the reconstruction of the country after it was hit by devastating floods

and landslides and the substantial financial resources needed for such an effort. Under this pretence, the main aim of the proposed amendments was to shift financial resources from the fund for the development of non-governmental organisations to the recently established fund for the reconstruction of Slovenia in the period until 2028, and to the state budget after the period in question. The parliament considered the proposed amendments and rejected them.⁶⁹ This was a repetition of a similar December 2020 attempt by the Slovenian Democratic Party to abolish the fund for the development of non-governmental organisations. Back then the party was in power but also failed to secure a parliamentary majority following significant mobilisation efforts by civil society.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment

Key recommendations

- *The state should consider re-opening and reviewing special legislation on access to permanent residence so that all those who were erased can regularise their status, regardless of where they currently reside. Such a law should not impose any restrictive conditions and must have an open deadline for applications. The country should also adopt*

68 The coalition came into existence in the context of the 2022 super election year, with parliamentary, presidential and local elections all taking place in Slovenia. Its aim was to put a substantive discussion on a democratic, green and fair society at the centre of the pre-election period and to achieve a record voter turnout.

69 https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran/!ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPfAAdwNCBOPx4FUfiNL8gNDQ11VFQEAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=C1257A70003EE6A1C1258A7D0051C392&db=kon_zak&mandat=IX.

additional measures of fair redress for all erased people that include compensations and appropriate healthcare, social welfare and pension measures.

- *The state should establish by law a dedicated statelessness determination procedure (SDP) and protection status in line with norms and good practice, to give full effect to the rights under the 1954 Convention for stateless persons in Slovenia. There should be equal access to SDPs regardless of residence or documentation status, language, gender, ability, age, or any other aspect of identity or circumstances. Also, Slovenia should assume its responsibility and immediately ratify the 1961 Convention on the Reduction of Statelessness.*
- *The state should establish a special legal pathway for regularising the status of long-term irregularly staying migrants, respecting the right to private and family life enshrined in Article 8 of the Convention for the Protection of Human Rights. Such a remedy should provide for an effective pathway to a permanent regularisation of their status, allowing free access to the labour market, health and social care, etc. Connected to that, it should consider changing the responsible ministry for migration, as the Ministry of the Interior, which is currently responsible for the area, treats migration primarily as a security issue, rather than from the perspective of human rights, solidarity and inclusion.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Access to the asylum procedure and reception conditions

In 2023, the police processed 60,587 irregular border crossings. The number is 89% higher

compared to 2022, when 32,042 unauthorised crossings were dealt with. Most often, citizens of Afghanistan, Morocco and Pakistan were processed. In 2023, 58,757 intentions to apply for international protection were recorded, 86.8% more compared to 2022 when 31,447 intentions to apply for international protection were expressed.⁷⁰ Eventually, 7,261 asylum applications were lodged,⁷¹ and only 130 people were granted international protection in 2023.⁷²

70 <https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2023/December2023.pdf>.

71 <https://www.gov.si/assets/vladne-sluzbe/UOIM/STATISTIKA/Mesecne-letne-statistike/2024/Novo-nastanjeni-prosilci-po-mesecih-2023-12.pdf-correctedByPAVE.pdf>.

72 https://www.gov.si/assets/vladne-sluzbe/UOIM/STATISTIKA/Mesecne-letne-statistike/2024/Osebe-s-priznано-mednarodno-za_ito-po-mesecih-12-2023.pdf-correctedByPAVE.pdf.

In 2023, 257 foreigners were handed over to foreign security authorities on the basis of international agreements. The number is much lower compared to 2022, when 2,361 non-nationals were handed over to overseas police. Most foreigners were handed over to the Croatian security authorities.⁷³ In 2023, 377 persons were accepted from foreign security authorities to Slovenia on the basis of international readmission agreements. The number is lower compared to 2022, when 427 foreigners were accepted by Slovenia.⁷⁴

The discrepancy in the number of irregular border crossings and the number of people that apply for international protection and the number of people receiving international protection indicate the need for a thorough investigation into the situation. This particularly applies to persons returned to Croatia, where they are at risk of violence and inhumane treatment,

and a further chain of return to Bosnia and Herzegovina or Serbia.

The year 2023 was marked not only by a significant increase in the number of irregular border crossings compared to previous years, as well as an increase in the number of migrants who expressed their intention to apply for international protection, but also with significant difficulties in accommodating people on the move, as the existing accommodation facilities are ill-suited to accommodate larger groups of people. Situations seriously undermining respect for the human rights of migrants have already been detected in the police proceedings at borders.⁷⁵

Once the asylum seekers were transferred to the Asylum Home the issues only multiplied, as the Asylum Home in Ljubljana, with an additional branch in Logatec, is the only facility for the accommodation of applicants for international

73 <https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2023/December2023.pdf>.

74 <https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2023/December2023.pdf>.

75 For example, the National Prevention Mechanism (NPM) at the Human Rights Ombudsman visited one of the police facilities at the national border and found that the facility/hall for processing and accommodating migrants, before their transfer to the Asylum Home in Ljubljana, is non-functional and completely inadequate. This is particularly problematic since, given the high number of migrants treated on a daily basis, they remain in the facility/hall for extended periods of time (5 to 6 hours). Namely, the police for this purpose used a facility that was previously used for customs procedures that was subsequently equipped with several metal enclosures to accommodate groups of migrants. The NPM noted that the current accommodation arrangements do not guarantee respect for personal security and human dignity of the migrants, in particular of vulnerable persons such as families with young children and unaccompanied minors. The facilities are also not adapted to the needs of persons with disabilities. For more information see https://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/2023_-_TABELE_priporocila/DPM_PP_-_Preglednica_priporocil_2023_-_osvezeno_12._1._2024.xlsx.

protection in the country. During a visit in the spring of 2023, the Human Rights Ombudsman found that the Asylum Home's maximum spatial capacity, estimated at 350 places, had been far exceeded.⁷⁶

In the Ombudsman's assessment, the conditions in the Asylum Home did not meet the minimum standards as defined, for example, in the European Asylum Support Office Guidelines on reception conditions. They also represented a violation of the right of the detained persons to personal dignity under Article 34 and the right to privacy under Article 35 of the Constitution of the Republic of Slovenia. In specific cases, they may also lead to a threat to their right to security (Article 34 of the Constitution). The Human Rights Ombudsman also noted that the conditions which do not meet the minimum standards of accommodation may discourage individuals from waiting for a decision on international protection, which, in the opinion of the Ombudsman, also constitutes an interference with the right to asylum under Article 18 of the Charter of Fundamental Rights of the European Union.

The situation at the borders additionally underlines the need for additional complementary legal pathways that will provide for a safe arrival and access to the international protection procedure. This would save people in need of protection from irregular dangerous routes, often on foot, exploitation and risks of trafficking in human beings.

The length of the procedures is another issue of concern. According to Article 47 of the International Protection Act, the decision should be made at the latest within six months from the lodging of the application or in two months in accelerated procedures. However, in practice, these deadlines are mostly not respected, and duration of the procedure is seen as one of the biggest shortcomings of the Slovenian asylum system.⁷⁷

Additionally, in 2023 there was a worrying trend of numerous unaccompanied minors wrongly claiming to be adults in the frames of the procedures for international protection. Currently, the legislation allows official persons to order an age assessment only in cases where there is a doubt that a person obviously of adult age is falsely claiming to be a minor.⁷⁸

76 Overcrowding of the asylum home meant that the facility is filled with beds (bunk beds), leaving applicants without personal space and places to socialise and spend leisure time. At the time of the visit, there were containers the size of 14m² in the yard of the Asylum Home and in each up to six persons were accommodated. During periods of peak overcrowding, people were also reportedly accommodated on folding beds in the corridors of the asylum home. The Human Rights Ombudsman reported that this situation has a negative impact on the safety of the residents and staff, not to mention on their dignity. For more information see: <https://www.amnesty.si/nevzdrzne-razmere-v-azilnem-domu-vic>.

77 https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-SI_2022-Update.pdf.

78 <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103#17>.

Unfortunately, the legal system does not allow officials to request an age assessment in cases where there is doubt regarding an asylum seekers' claimed age of majority. This tends to be problematic from the perspective of the protection of children's rights and principle of the best interests of the child, because it opens the door for abuse of this vulnerable group, failure to recognise their needs and inappropriate treatment in the asylum procedure. The adulthood of the applicant is recognised only on the basis of a statement of the person applying for asylum and there is no legal mechanism that allows the officials to check if this is true in case of doubt. Consequently, the child is being deprived of the special safeguards intended for children and vulnerable persons in the course of the procedure. There are various reasons why unaccompanied minors declare themselves as adults: due to the fear of being separated from their relatives and friends with whom they are travelling; the unaccompanied minors in Slovenia are placed in a separate town quite distant from the asylum homes; sometimes they only follow instructions received by smugglers to pretend to be adults in order to easily continue their route etc.

Related to the state asylum and migration policies is the increasingly higher percentage of

foreign nationals in Slovenian prisons, resulting in their considerable overcrowding.⁷⁹ Both are the consequence of the 2020 amendment to the Criminal Code, which significantly increased the penalty for the criminal offence of illegally crossing the state border or territory - the smuggling of undocumented migrants (Article 308 of the Criminal Code).⁸⁰ According to the Prison Administration of the Republic of Slovenia, smugglers already account for more than 50% of detainees and around 30% of convicts in Slovenian prisons.⁸¹

In June 2020, an amendment to the Criminal Code was adopted, which increased the penalties for the smuggling of undocumented migrants across the state border from a maximum sentence of five years' imprisonment to a sentence between three and ten years' imprisonment. Those who have obtained a disproportionate financial gain or participated in a criminal association face up to 15 years in prison, which is comparable to the penalties for the most serious crimes such as murder or gang rape.⁸² Among experts and human rights activists there is a concern that the stricter penalties for smugglers (who are dominantly foreigners) imposed by Criminal Code amendments are too high or even draconian, and in combination with the prison overcrowding, lack of prison

79 <https://www.gov.si/assets/organi-v-sestavi/URSIKS/Dokumenti/Zaporska-statistika/2024/Stevelo-zaprtih-oseb-in-zasedenost-zavodov-dne-15.-1.-2024.pdf>.

80 <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050#308>.

81 <https://www.rtvsllo.si/slovenija/slovenski-zapori-so-iz-dneva-v-dan-bolj-prezasedeni-najbolj-jih-polnijo-tihotapci-ljudi/696267>.

82 <https://www.rtvsllo.si/slovenija/slovenski-zapori-so-iz-dneva-v-dan-bolj-prezasedeni-najbolj-jih-polnijo-tihotapci-ljudi/696267>.

staff and language barriers could lead to a situation when the rehabilitative component of imprisonment is not accomplished.

Impunity and/or lack of accountability for human rights violations

The Erased

In February 2023, 31 years passed since the authorities illegally erased 25,671 individuals from the register of permanent residents of the Republic of Slovenia.

The erasure was a systematic, arbitrary and illegal deprivation of permanent residence affecting people seen as an ‘undesirable’ part of the population. The consequences for the victims of the erasure have not disappeared over the years, especially since the national authorities decided to implement only the minimum measures required by the European Court of Human Rights (*Kurić and Others v. Slovenia*). More than half of the erased did not receive any form of redress, neither the restitution of the illegally taken away status nor the financial compensation for the damage suffered. There are still some erased persons who live in Slovenia without regulated status since the erasure. The remedies available to them are ineffective. The special law intended for the regularisation of the permanent residence of the erased people

expired in 2013 and ever since, there has been no remedy that would provide for a permanent residence status. For some time, they were able to use legal remedies that are available for undocumented migrants that cannot be removed from the country, but this pathway was extremely uncertain and lengthy. At best, it would take seven years for one to acquire a permanent residence permit, which is unacceptable for people who once had permanent residency and were deprived of the status via a mass violation of human rights. Currently, due to the 2023 shift in the practice of the responsible administrative and police authorities, even this pathway is ineffective. The distress of the erased people without a status in the country is severe, many of them are elderly and sick people, who, without permanent residence, are ineligible for any form of social protection or benefits.

On the 30th anniversary of the erasure in 2022, then-President of the Republic of Slovenia, Borut Pahor officially apologised for the erasure.⁸³ His office has since offered to help those erased people who are living in the country without status to arrange a permanent residence permit, by issuing an official opinion to some of them that it is in the interest of the Republic of Slovenia to regularise their status,⁸⁴ which should speed up their path to status regularisation. However, a number of administrative hurdles prolonged this process, and some of

83 <https://www.rtvsllo.si/slovenija/pahor-izbrisanim-opravcilo-je-potrebno-za-nazaj-in-kot-zaveza-za-na-prej/613688>.

84 <https://www.mirovni-institut.si/porocilo-kampanje-za-ureditev-statusa-izbrisanih-oseb-zastatus/>; <https://www.amnesty.si/zoran-tesanovic>; <https://www.dnevnik.si/1043024178/slovenija/ganljiv-pogreb-izbrisanega-brezdomca>.

them, elderly and sick, did not live long enough to receive the status. This demonstrates that the state needs to urgently adopt a systemic, legislative solution that will provide for a fast and efficient route to permanent residence for the erased. The current President of the Republic of Slovenia, Nataša Pirc Musar, also committed herself to solving the problem of erasure when she took office.⁸⁵ In cooperation with her office, NGOs Peace Institute, Civil initiative of Erased Activists and Amnesty International Slovenia have drafted a legal proposal for status regularisation that is based on the premise that a permanent residence permit should be available to all those who have been erased from the permanent population register, removing the obstacles that have prevented many erased persons from regularising their status in the past.⁸⁶ In October 2023, the President of the State sent the proposal to the Prime Minister, Robert Golob, who has not yet responded to it.

Given that more than half of those who have been erased have not received adequate access to restitution of their permanent resident status and/or compensation, the State should revise past legislation by removing the obstacles that prevented many of the erased to regularise their status in the past and open up the application period so that all those who have been erased have fair access to redress.

Long-term irregularly staying migrants

Another group without an effective pathway to status regularisation are the long-term irregularly staying migrants, who have, due to various circumstances, resided in the country without status for longer periods of time.

Currently, permission to stay under Article 73 of the Foreigners Act is the only legal solution to status regularisation of persons who have resided in the country for years, sometimes decades, and thus created in Slovenia their centre of life interests, social and cultural ties, and possibly (but not necessarily) family ties. Under the cited provision, the police may issue a permission to stay to foreigners, whose removal from the country is currently not possible for limited statutory reasons. Protection of private and family life is not reflected in these statutory grounds. For the majority of long-term irregularly staying migrants, this solution was ineffective in practice. For a while, the erased were effectively the only group that could receive this status. In 2023, this too changed with the shift in the practice of the responsible administrative and police authorities, and currently none of the long-term irregularly staying migrants can receive permission to stay.

The Human Rights Ombudsman has repeatedly addressed the issue of long-term irregularly staying migrants “whose long-term stay is

85 <https://www.24ur.com/novice/slovenija/bobnarjeva-v-pisarno-predsednice-drzave-urejala-bo-vprasanje-izbrisan-ih.html>.

86 <https://www.rtvsllo.si/slovenija/natasa-pirc-musar-dovoljenje-za-prebivanje-vsakemu-izbrisanemu-ki-za-to-za-prosi/686014>.

tolerated by the state”: “The current regime is not sufficient in terms of the possibility for a person who has resided in the Republic of Slovenia for several years and has thus established a circle of life interests, social and cultural ties, and possibly also a family environment (but not necessarily!) to obtain a residence permit in Slovenia - and thus violates Article 8 of the ECHR.”⁸⁷

The state should therefore establish a special legal pathway for regularising the status of long-term irregularly staying migrants, respecting the right to private and family life enshrined in Article 8 of the Convention for the Protection of Human Rights. Such remedy should provide for an effective pathway to a permanent regularisation of their status, allowing free access to the labour market, health and social care etc.

Statelessness

Some of the erased people have also been affected by statelessness: however, it is important to note that the erasure itself did not cause statelessness. But the issue of statelessness has generally been ignored by Slovenian authorities and there is no reliable data about the number of stateless persons residing in the country.

While Slovenia is a party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), Slovenia did not accede

to the 1961 Convention on the Reduction of Statelessness.

Slovenia does not have a dedicated statelessness determination procedure (SDP). There are other administrative procedures through which statelessness can be identified (for example an application for residence, international protection or naturalisation). However, there is no dedicated stateless protection status and no obligation in law to consider a claim of statelessness, nor clear instructions, guidance or training for officials conducting the assessment. Furthermore, in these other procedures, the burden of proof is on the applicant, the standard of proof is very high and legal aid is only available for judicial review. Existing research also shows that people claiming to be stateless will face the presumption of having another citizenship or being able to apply for one in another country and the public official will refer them to embassies of other countries rather than consider their statelessness as a relevant circumstance. Stateless persons face a heightened risk of arbitrary detention, particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁸⁸

There are also significant gaps in existing safeguards that should protect children from statelessness. The safeguard in nationality law to prevent statelessness among children born

87 For more information see https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/VARUH_LP2018.pdf.

88 ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf.

in Slovenia relies on the status of the parents rather than the child.⁸⁹ The parents of a stateless child born on the territory must also be stateless (or unknown) for the child to acquire Slovenian nationality.

The shortcomings in Slovenia's protection against statelessness and the lack of will to properly identify stateless persons also affect other vulnerable groups. In practice, individuals in the asylum procedure are rarely registered as stateless. Often statelessness is not recognised and people are attributed a citizenship based on personal circumstances (place of birth, nationality). Therefore, accurate statistical data regarding stateless persons in Slovenia is not gathered. The described circumstances prevent stateless persons from being recognised as such in Slovenia, and from the protection and rights this entails, such as the right to a travel document and legal residence.⁹⁰

In 2023, during the periodic reporting process under the Convention against Torture, Slovenia has committed to the ratification of the 1961 Convention on the Reduction of Statelessness.

Slovenia should assume its responsibility and immediately ratify the 1961 Convention on the Reduction of Statelessness. The state should establish by law a dedicated SDP and protection status in line with norms and good practice, to give full effect to the rights under the 1954 Convention for stateless persons in

Slovenia. There should be equal access to SDPs regardless of residence or documentation status, language, gender, ability, age, or any other aspect of identity or circumstances.

Follow-up to recommendations of international and regional human rights monitoring bodies

In 2023, the UN Committee against Torture considered Slovenia's fourth periodic report and then, on 22 November, made concluding recommendations to Slovenia, including as follows:

ERASED: Recalling its previous concluding observations, the Committee recommends that the State party adopt additional measures to ensure that 'erased' persons have the right to restore their permanent resident status, ensure that all individuals who were victims of erasure receive full and effective reparation, including restitution, compensation and satisfaction, and take all steps necessary to identify and protect stateless persons who were subjected to erasure.

STATELESSNESS: Slovenia should establish statelessness determination procedures to prevent and reduce statelessness and follow up on the commitment expressed during the dialogue to ratify the 1961 Convention on the Reduction of Statelessness.

89 Text is available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

90 <https://pic.si/wp-content/uploads/2023/10/PIC-%E2%80%93-Legal-Center-for-the-Protection-of-Human-Rights-the-Peace-Institute.pdf>.

ASYLUM AND NON-REFOULEMENT: Slovenia should refrain from engaging in pushbacks and refoulements that do not comply fully with its obligations under Article 3 of the Convention, and should ensure that all persons seeking protection in the State Party have access to a fair and impartial review by an independent decision-making mechanism on expulsion, return or extradition, including in times of emergency and in exceptional situations. Related to pushbacks, Slovenia should ensure that persons are not refouled in violation of the principle of non-refoulement and should guarantee procedural rights to persons in the process of refoulement.

MIGRANT CHILDREN: Slovenia should review its national legislation to ensure that children and families with children are not deprived of their liberty solely on the basis of their migratory status, and to ensure that unaccompanied children are adequately accommodated and treated.

ASYLUM CENTRES: Slovenia should step up its efforts to reduce overcrowding and improve conditions in asylum centres.

ROMA PEOPLE: Slovenia should continue its efforts to promote access for Roma people to education, employment, health care and adequate living conditions. The State Party should strictly enforce the legislation concerning the prohibition of child and forced marriage and address the harmful consequences of such

practices, investigate cases of child and forced marriage, and prosecute the perpetrators.⁹¹

Fostering a rule of law culture

Efforts by state authorities

In March 2023, as a response to an increase in hate speech and intolerance, the Slovenian Prime Minister set up the Strategic Council for the Prevention of Hate Speech as their consultative body. Amongst others, composed of government officials, representatives of civil society, police and national equality body, the council was tasked with monitoring hate speech at national and EU level, and asked to propose activities and guidelines regarding the prevention of hate speech. The council also evaluates the activities of ministries in the field of hate speech prevention and proposes improvements, as well as provides advice on policies, changes to regulations and other measures contributing to more effective prevention of hate speech. The Strategic Council produced recommendations to the government, including general recommendations, as well as specific recommendations covering e.g. the field of education, media, internet and penal law responses to hate speech.⁹²

91 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FSVN%2FCO%2F4&Lang=en.

92 <https://www.gov.si/zbirke/delovna-telesa/strateski-svet-za-preprevanje-sovraznega-govora/#content>.

Contribution of civil society and other non-governmental actors

In autumn 2021, Slovenian civil organisations and initiatives joined forces and set up an informal coalition called The People's Voice. The coalition, which currently involves 113 civil society organisations and initiatives, materialised in the context of the 2022 super election year, with parliamentary, presidential and local elections all taking place in Slovenia. Its aim was to put a substantive discussion on a democratic, green and fair society at the centre of the pre-election period and to achieve a record voter turnout. In this respect, the coalition, amongst others, drafted 138 demands divided into 11 different sections (e.g. decent work and social rights for all; global justice; just climate transition and nature protection; freedom of media and culture; rule of law and human rights), and submitted them to political parties participating in the parliamentary election.

In 2023, the coalition monitored the implementation of 112 demands the three parties that formed the government after the elections jointly committed to implement. According to the available monitoring data, the government has so far fulfilled 9 demands, while 11 demands have been partially fulfilled and 55 demands are being currently implemented. In addition, the implementation of 7 demands has been stalled, 33 demands have not been tackled at all, and in 7 cases the government parties have

broken promises given before the last parliamentary elections.⁹³ In particular during 2023, the coalition was campaigning for better access to healthcare services and the strengthening of the national public healthcare system which has increasingly become hard-to-access, with long waiting periods and around 150,000 persons without designated personal doctors, the latter serving as entry points to the system. To this end, the coalition organised a variety of public events and recently collected more than 5,000 signatures of voters, allowing it to submit a bill listing urgent measures to ensure the stability of the healthcare system. The bill is currently in the parliamentary procedure.⁹⁴

The Legal Network for the Protection of Democracy, a structure set up by four NGOs (Amnesty International Slovenia, the Legal Centre for the Protection of Human Rights and Environment, Today is a new day and the Institute for Culture of Diversity Open) to provide legal assistance to individuals and organisations involved in legal proceedings due to non-violent public action, continued its activities in 2023. Apart from various public interventions and opinions issued regarding e.g. different draft laws and actions by public authorities, the network set up, amongst others, a project focused on strategic litigation against hate speech targeting erased residents of Slovenia, a group of 25,671 persons who were arbitrarily and unlawfully removed from the register of permanent residents in 1992, losing

93 <https://glas-ljudstva.si/monitoring/>.

94 <https://glas-ljudstva.si/>. The bill is available at <https://imss.dz-rs.si/IMiS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/95d5c2b8c7782fd457a7d4693d55d0d266f0432ba0d5a2298626c4e781e5d9f8>.

many, if not all, economic and social rights, as well as artists and activists who designed a monument dedicated to the memory of the erasure. During the project, the network filed a criminal complaint against an online media outlet, its editor and unknown perpetrators who posted hateful comments under an article critical of the monument.⁹⁵ After their project had been selected, authors of the monument also faced threats, media discreditation and were subject to false and offensive claims, which have serious consequences for them, their families and society as a whole. A particularly harmful article aimed at discrediting an author of the monument was published on another online media outlet. It depicted the artist as a sexual predator involved in a high-profile case. According to the legal network, the method of discreditation was even more worrying because the author of the article referred to ‘intelligence tips’ from abroad as a source of information. If the court does not establish restrictive case law in this area, this can become a method for the media to destroy political and opinion opponents by publishing information that cannot be checked for accuracy. As such practices are dangerous for the society, they should be challenged by legal means, claimed the network. To this end, the network, on behalf of the artist and activist, filed a private criminal suit for defamation proposing that the journalist in question be found guilty, be penalised and ordered to cover the costs of the criminal proceedings, and that the judgement be published in the media outlet in the same way as the controversial article was

published. In addition, withdrawal of the article was requested in a civil suit, as well as prohibition of further violations, the publication of an apology and the payment of compensation, as the article contained untrue and offensive statements that interfere with the honour and good name of the artist.⁹⁶

Parlometer is an online tool developed to provide for transparency of the work of the Parliament. It collects and analyses voting data, transcripts of sessions, as well as other information regarding activities of MPs and parliamentary groups, such as parliamentary initiatives and questions in the Parliament. The tool is a source of organised data open to the public as well as specific audiences, such as journalists, allowing them to follow activities of MPs and the Parliament in an easy-to-follow manner. Available features include e.g. sharing any content anywhere on the internet, interactive results of voting events, voting comparator, email alerts, as well as AI detection of unexpected voting behaviour. In addition to the national parliament, the tool is also available for monitoring work of some local authorities in Slovenia and foreign parliaments. Today is a New Day, Institute for Other Studies, the NGO which developed the tool, is focused on providing digital support regarding political participation, transparency and public oversight.⁹⁷

95 <https://pravna-mreza.si/novice/s-pravnimi-sredstvi-proti-sovraznemu-govoru/>.

96 <https://pravna-mreza.si/c-s-stratesko-litigacija-proti-govoru-iz-sovrastva/>.

97 <https://parlometer.si/>; <https://danesjenovdan.si/en/about>.

LIBERTIES

RULE OF LAW REPORT

2024

SWEDEN

#ROLREPORT2024



SWEDEN

About the authors

Civil Rights Defenders



Civil Rights Defenders is a politically and religiously independent international human rights organisation. Its mission is to defend civil and political rights, as well as local human rights defenders by increasing their security, capacity, and access to justice. We work as part of a global movement of human rights defenders and partner with those at risk. Through legal means and public advocacy, we hold states, individuals, and non-state actors accountable for human rights violations. We advocate for the norms and values of the International Covenant on Civil and Political Rights and other relevant human rights standards, by encouraging people to use these rights to promote democratic societies.

International Commission of Jurists – Sweden



The Swedish section of the International Commission of Jurists (ICJ-Sweden) - whose members are lawyers - works to promote human rights and the rule of law in Sweden and internationally. At the national level, ICJ-Sweden monitors Sweden's international, regional, and constitutional obligations in the field of human rights, ensuring that the rights of individuals are observed, that the judiciary is independent and accountable, and works to strengthen its compliance with fundamental rights. ICJ-Sweden works for equality before the law and non-discrimination, claims the right to a fair trial is a right in itself, and promotes active resistance when violations of rights occur. ICJ Sweden designs a Program for Justice in Sweden, organises debates and seminars on current issues, and collaborates with other rights organisations when individual and structural violations in society have been identified. At the international level, ICJ-Sweden monitors trials in order to promote human rights and the rule of law.

Key concerns

In the area of justice, the government has changed the legal system through new laws and legislative proposals that could put Sweden at risk of breaching its international obligations. The proposal that anonymous witnesses be permitted to testify in trials has been widely criticised as being contrary to fair trial rights and likely to weaken the justice system. It is proposed that police can apply stop-and-search zones at their own discretion, resulting in an obvious lack of oversight. The government proposes to unilaterally decide upon a state of emergency with oversight only available after it has gone into effect. The justice system still features direct government involvement in appointing judges, and the decisions are vulnerable to systemic political interference. There is now a proposal from the committee of inquiry to strengthen the protection of democracy and the independence of the judiciary. There have not been any proposals made to the Parliament yet and a change can only take effect after two decisions in the Parliament, one before and one after the 2026 election – if the Parliament accepts the proposal. The change could have already been implemented in 2024 had it been prioritised.

As regards the anti-corruption framework, no progress has been made in strengthening the fight against foreign bribery. Existing legal definitions have not been amended, and there has been no change related to improving the prosecution and final judgments of cases. Moreover, the rules on ‘revolving doors’ for

executive positions in the government have not been further developed.

Public Service, which includes radio and television services, is not protected in the Constitution. The government appoints the members of the board of Public Service and there is no regulated protection against direct political involvement. A parliamentary committee of inquiry has now been appointed to propose changes to Public Service, creating an obvious concern that political demands to curtail public service media will be met. Despite this, there have not been any proposals to include protective measures in the constitutions.

Regarding checks and balances, 2023 saw a sharp increase in the pace of legislation being proposed by Sweden’s parliament, especially in relation to proposed new criminal policies and policies including complex and controversial legislation that could put Sweden at risk of being in breach of its international obligations. Although such legislative proposals require careful analysis and consideration, the government has instead been imposing short deadlines on relevant stakeholders to submit consultation responses. For civil society organisations in particular, many of whom have limited resources, this is a serious impediment to their participation in the legislative process. Moreover, because the foundations for the current government’s migration and criminal policies were laid out by the previous government, there is a concerning lack of clear counter-narrative amongst the present opposition parties. As a result, few alternative measures are proposed,

and the worrying direction these policies are headed remains unchallenged.

In the past year, civil society actors have been increasingly called into question, presumably in an effort to divert focus away from actual substantive arguments. Civil society organisations (CSOs) have been criticised and accused of being politically partisan for speaking out against proposed legislation. Discriminatory treatment of ethnic and religious CSOs, and Muslim civil society actors in particular, worsened during 2023. Ethnic and religious organisations in particular are at serious risk of dissolution as the government has adopted a bill blocking them from applying for and receiving public funding. The increasingly fast legislative pace, including the imposition of very short deadlines during the stakeholder consultation process, impedes effective engagement by civil society organisations who often lack the resources to meet these heightened demands. As a result, civil society is increasingly prevented from providing critical input to often complex and controversial legislation. Additionally, the government's proposed budget for 2024 will cut funding to ethnic and religious organisations, putting them at real risk of being forced to cease operations and/or face dissolution, as this is for many their sole source of income. This is directly contrary to the Commission's recommendation that Sweden ensure that reforms to the legal framework for the funding and operation of CSOs do not unduly affect civil society engagement.







The government has continued to propose legislation that effectively undermines human

rights and the rule of law and leads to violations of the rights of migrants and beneficiaries of international protection in particular, as well as ethnic and racial minorities. National security and the threat of terrorism and organised crime are routinely invoked to justify increasingly repressive criminal policies and the expansion of powers granted to law enforcement. Many of the proposed legislative measures, in particular those targeting gang and youth criminality, are loosely formulated and vaguely defined. This paves the way for the use of broad law enforcement measures, such as wiretapping and stop-and-search methods, against individuals who may not even be suspected of criminal activity. Civil Rights Defenders is concerned that the government's proposals are short-term solutions not based on empirical research or careful analysis, and that repressive policies that restrict individual rights will in the long term undermine public confidence in the authorities and the justice system and weaken the rule of law.

Moreover, the government's migration policies take a similar divisive 'us vs. them' approach, which threatens to increase rather than reduce existing social inequalities and exclude certain groups from becoming part of society. Among other concerns, the proposals include more stringent requirements for obtaining a residence permit, requiring asylum seekers to pay for their own reception, and the reduction of social benefits to migrants. A proposal has also been made to implement mandatory reporting of paperless individuals. Civil Rights Defenders is concerned that this will increase mistrust in society and create

division, ultimately weakening the rule of law. Additionally, the Swedish government cancelled funding for ‘ethnic organisations’ in 2023. For many of those organisations, this government funding is their sole source of income. As such, Sweden has been acting in direct contradiction to the Commission’s recommendation.

State of play (versus 2022)

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend

Regression

No progress

Progress



Justice system

Key recommendations

- *The proposal from the Committee of Inquiry on strengthening the protection of democracy and the independence of the judiciary should be sent to Parliament as soon as possible.*
- *The law regulating who nominates the members of the Board of Justice (Domarnämnden) should be changed in order to exclude government involvement in the appointment process. This is necessary during 2024, 2025 and 2026, until the proposal from the committee of inquiry on strengthening the protection of democracy and the independence of the judiciary to change the constitution has entered into force.*
- *Access to justice for individuals whose human rights have been violated should be improved substantially. Human rights protections are currently ineffective due to high litigation costs that most individuals are unable to cover. The ‘loser pays’ rule is still in effect. This creates unequal access to justice. The requirements for being able to obtain legal aid, which have not changed in the last 20 years, should be improved to make legal aid more accessible for a wider group of people, or the relevant authorities should propose a rule that each party must bear its own cost in discrimination cases. This would improve access to justice for these groups and reduce the financial barriers to litigation, thereby giving rise to further opportunities to have discrimination issues tried in court.*

- *Court proceedings should be adapted to address the individual needs of persons with disabilities so they can enjoy the same conditions as others during the legal process. The limited legal aid specifically creates a negative effect in order for them to receive the support they need to be able to assert their rights.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The justice system continues to see direct involvement by the government in appointing judges, and the system is not protected from political influence during the decision-making process.

A proposal arising from a parliamentary investigation has been made that would protect the appointments of judges, but that proposal would only go into effect after the 2026 election if the Parliament accepts it. The law regulating who nominates the members of the Board of Justice (Domarnämnden), which independently should nominate judges to be appointed, should be changed. The Board of Justice cannot be seen as independent due to the fact that the government appoint its members. This will be changed when government involvement in the appointment of the members of the Board of Justice will cease. This will occur when a proposal from the committee of inquiry on strengthening the protection of democracy and the independence of the judiciary enters into force. According to the proposal, the board of justice will be regulated by the constitution. So far the justice system still features direct government involvement in appointing members

of the Board of Justice, and the decisions are vulnerable to systemic political interference.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

There are no guarantees that the mandatory retirement age for judges will not be used to strategically get rid of judges, as there is a lack of regulations in that regard. The committee of inquiry's proposal on strengthening the protection of democracy and the independence of the judiciary will improve this by regulating the retirement date in the Constitution, but changes will only enter into force in 2027 at the earliest.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Sweden does not have any Council for the Judiciary, but regulations are introduced to the constitution by the aforementioned committee of inquiry proposal. Once again, its effect hinges on parliamentary approval and is delayed until 2027.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Access to justice in all civil cases for individuals whose human rights have been violated should be improved substantially. Human rights protections are currently ineffective due to high litigation costs that most individuals are unable to cover. This creates unequal access to justice. The legal aid system, which has not been changed in the last 20 years, should be reformed and expanded to enable more people to obtain legal aid. The ‘loser pays’ rule is still in effect, meaning that in addition to their own litigation costs, those seeking to bring a case risk being ordered to pay the costs of the opposing party as well, which is a significant deterrent to seeking justice. In basic human rights cases, a rule that each party must bear its own cost in discrimination cases should be introduced. If human rights cases brought against the state were free from costs, this would create more effective protection. Those who tend to be the targets of discrimination also tend to have limited resources, so the costs of bringing a case to court often create an insurmountable obstacle to accessing justice. People with disabilities should be able to have the proceedings in court customized to their individual disability to enable their equal participation, and in all senses be given the same conditions as others during the legal process.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

All education curricula should include teaching of the protections afforded by the Swedish constitution, the European Convention on Human Rights, the EU Charter of Fundamental Rights, and the UN’s core conventions and how they can be invoked. This includes curricula for primary and secondary schools as well as education at the university level. The knowledge of judges, especially administrative court judges, as well as jurors, prosecutors, and trial attorneys, must be improved through recurring training on democracy and human rights.

Fairness and efficiency of the justice system

The government has changed the legal system through the passage of many new laws and proposals for new laws. Examples include:

- A proposal that anonymous witnesses be permitted to testify in trials,¹ which has been widely criticised as being contrary to fair trial rights and likely to weaken the justice system. The proposal to introduce a law on anonymous witnesses is unlikely to lead to the intended results, namely to reverse the trend of increasing gang violence, break the culture of silence, and strengthen and make the legal process more efficient. On the contrary, there

1 Inquiry proposes new act on anonymous witness testimony: <https://www.government.se/press-releases/2023/11/inquiry-proposes-new-act-on-anonymous-witness-testimony/>

may even be a risk that the proposed legislation will make it more difficult to get individuals to testify if they are not allowed to remain anonymous, as well as making the legal process less efficient and increasing the administrative burden on prosecutors and courts.

- A proposal that the government itself should be able to invoke a state of emergency with checks being carried out only after it has taken effect. The committee itself stated in the report “that the form of government’s provisions on the rule-making power are of fundamental importance and that changes to these can be associated with risks. It cannot be ruled out that special solutions for crises, which give the government greater power, may be used in cases for which they are not intended.” It is important that Parliament retain its power to decide if and when the legislative process should be delegated. This means that the Constitution should not include a standing rule stating that the government automatically has the right to introduce a state of emergency in the event of a crisis during peacetime. The proposed criteria for when the government itself should be allowed to invoke a state of emergency and take over the legislative process during a crisis are unacceptably vague and leave a

lot of room for interpretation by the government itself. For example, the proposed situations in which the government would be allowed to invoke a state of emergency include “serious peacetime crises / only when it is really necessary / exceptional situations / a serious peacetime crisis situation must prevail / the conditions must require the government to be given special rule-making powers / be a question of an acute stage of the crisis / when the need for new regulations is so urgent / it would take too long to legislate / act in urgent situations / there is a threat to or danger to public interests that are important to protect / a severe nuclear accident / during a pandemic with rapid spread and high mortality.”²

- A proposal that police should be able to create stop-and-search zones³ with obvious lack of oversight. The proposal involves a restriction on the right to private and family life that cannot be considered proportionate to the purpose of the law. For a law that infringes in such an extensive way on individual integrity to be considered proportionate, very clear support is required to show that it is an effective measure to achieve the purpose of the law. The Swedish Institute for Human Rights does not believe that this

2 Stärkt konstitutionell beredskap: Betänkande av Kommiteen om beredskap enligt regeringsformen: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2023/11/sou-202375/>

3 Säkerhetszoner – ökade möjligheter för polisen att visitera för att förebygga brott: <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2023/12/sakerhetszoner--okade-mojligheter-for-polisen-att-visitera-for-att-forebygga-brott/>

has been shown.⁴ The proposed rules in selected areas will grant authorities overly extensive powers to impose restrictions on personal integrity on arbitrary grounds, for example by permitting body searches of individuals because they are dressed in a certain way or exhibit deviant behaviour.⁵

The government is still directly involved in the process of appointing judges and the judicial system is not protected from political influence in the decision-making process.

The possibilities for access to justice for individuals whose human rights have been violated ought to be improved substantially. Currently, there are no effective human rights protections due to the burden of high costs. Access to justice is unequal. There are few opportunities to have discrimination issues tried in court, and, in cases where the issues are raised, the relevant assessments are often out of date. People with disabilities are also not given the same conditions as others during the legal process, and they do not receive the support necessary to be able to assert their rights.

Anti-corruption framework

Key recommendations

- *The government should prioritize the development of rules relating to revolving doors that cover top executive functions in the government.*

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

The regulations addressing the issue of revolving doors for top executive roles in the government have not been sufficiently developed.

4 <https://mrinstitutet.se/om-institutet/remisser/sakerhetszoner-okade-mojligheter-for-polisen-att-visitera-for-att-forebygga-brott/>

5 <https://www.do.se/om-do/pressrum/aktuellt/2024/2024-01-18-sakerhetszoner-innebar-oacceptabla-risker-for-diskriminering>

Media environment and media freedom

Key recommendations

- *The government must ensure that the Swedish Public Service retains its political and financial independence.*

Public service media

Independence of public service media from governmental interference

The Swedish Constitution does not include protections guaranteeing the survival or independence of the Public Service. The government appoints members of the board of the Public Service. No inquiry is working towards improvement in this regard.

Safety and protection of journalists and other media actors

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

Journalists and their families are constantly endangered on social media and threatened with violence.

There are ordinary criminal statutes related to the endangerment of journalists on social media and threats of violence, but the police

lack sufficient resources to effectively fight this activity.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In March 2023, a new organisation called 'Förtalsombudsmannen' (The Defamation Ombudsman) was founded in Sweden. Behind this organisation is 21-year-old Christian Peterson, who serves as the self-proclaimed defamation ombudsman. Peterson has a history within the violent Swedish Nazi movement known as the 'Nordic Resistance Movement'.

Supported by private anonymous contributors and legal professionals, The Defamation Ombudsman offers guidance, research, and financial support to those who wish to participate in what Peterson has referred to as "mass voting against left-wing individuals".⁶ The project aims to discredit, silence, and disrupt political opponents, making it difficult or impossible to publicly label someone as a Nazi by filing defamation lawsuits and pursuing compensation claims ranging between €1,000 and €2000. The organisation has not shown any interest in genuine defamation cases but

⁶ [Domstolar blir redskap när nationalister vill "masstämma vänsterfolk" - DN.se](https://www.dn.se/nyheter/2023/03/23/omstolar-blir-redskap-nar-nationalister-vill-masstamma-vansterfolk/)

rather has expressed a desire to leverage the legal system for political purposes. Based on the information disclosed thus far, it seems that journalists and various opinion leaders, some with a left-leaning orientation, have been the primary targets of the initiative.

Among the individuals aided by The Defamation Ombudsman, notable figures include the Quran burner Rasmus Paludan and the journalist Ingrid Carlqvist, known for questioning facts related to the Holocaust.⁷

Although no one has yet been convicted of defamation through any of the legal actions

initiated by The Defamation Ombudsman, there is concern among journalists and anti-racist forces that these measures could have a chilling effect on the coverage of the extreme right in the country. This concern extends not only to the potential costs and time involved for the accused but also to the fact that individuals in any such legal process may be publicly identified in right-wing media. They thereby risk being the target of hate and harassment from extreme right-wing movements.

Checks and balances

Key recommendations

- *The government must safeguard the integrity of the legislative process and ensure that stakeholders, including civil society actors, are given sufficient time to respond to legislative proposals during the consultation process.*
- *The government must ensure that all aspects of the asylum and migration process, including the process for appealing negative decisions by the Migration Agency, are in line with the rule of law and due process principles.*
- *The government must continue to strive towards establishing robust and independent institutions dedicated to promoting human rights and ensuring their autonomy with independent officials.*

⁷ For more information about The Defamation Ombudsman, please see the following articles: [Vill stämma politiska motståndare till tystnad | Expo.se](#); [Domstolar blir redskap när nationalister vill ”masstämma vänsterfolk” - DN.s](#)

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of the judiciary on judicial reforms), and transparency and quality of the legislative process

Over the past year, legislative activity in Sweden has been notably high and fast-paced, particularly within the area of criminal law. Lawmakers often seek to justify this accelerated pace by claiming they must address urgent societal issues such as crime prevention. In many instances, this has resulted in legislative proposals that are complex, and controversial in that they confer additional authority upon governmental entities, while simultaneously gravely limiting individuals' freedoms and rights. Some of these proposals, were they to be enacted, could put Sweden in violation of its international obligations. Legislation proposing such extensive infringements on personal integrity should be carefully considered and evidence-based, and must be proportionate to their aim. However, despite the controversial nature of these proposals, relevant stakeholders are given very short deadlines to respond. The primary purpose of sending legislative proposals to stakeholders for consultation is to explore the potential consequences of enacting the proposed bills.⁸

The combination of a fast pace and short response timeframes has frequently resulted

in significant stakeholders in the legislative process, such as civil society organisations with already limited resources, being unable to provide critical input into proposed legislation. In effect, civil society and other relevant stakeholders are being impeded from participating in the legislative process. This includes situations where the perspectives of individuals or communities directly affected by certain legislative proposals should be included, or where a human rights perspective could be applied. Civil society organisations as well as government authorities, including supervisory bodies, expressed concern over the situation. Also, concerns expressed by the Council of Legislation about the compatibility of draft bills with the Constitution and general legal principles are regularly disregarded by the government.

Independent authorities

Threats to dismantle the Swedish Human Rights Institute

On 1 January 2022, a national human rights institute was established in Sweden. The Swedish Institute for Human Rights aims to promote and safeguard human rights within the country. In April 2023, the Sweden Democrats, a constituent part of the current government coalition and currently the country's second-largest party, expressed their intent to dismantle the institute. This proposal was accompanied by a suggestion to discontinue funding dedicated to combating racism and discrimination. The rationale behind the proposal was the assertion

⁸ Svvara på remiss - hur och varför, PM 2003:02 ([regeringen.se](https://www.regeringen.se))

that Sweden does not face significant issues of discrimination and racism⁹ — an assertion contested by several civil society organisations.

In an open letter addressed to Prime Minister Ulf Kristersson, 49 organisations in Sweden emphasised the need for a clear statement of assurance from the Prime Minister that the Institute for Human Rights, in its current form and with undiminished resources, will be able to continue its crucial work.¹⁰ This collective appeal prevented the implementation of the proposed changes.

However, concerns arise from the fact that the proposal originates from the second-largest party in the Parliament and the largest party in the current government coalition. There is apprehension about whether this move may impede the institute from critically engaging with the current government to avoid the risk of being defunded or dismantled.

Salary increases for non-political officials implementing the government's policies

During the 2023 salary revision for the Government Offices, the head of the government's administrative office issued a directive that non-political government employees implementing the policies of certain political parties were to be prioritised for salary increases.¹¹

The majority of employees at the Government Offices are non-political civil servants whose employment is not linked to the sitting government, and many have reacted strongly to this directive as it implies a politicisation of their work. It has also sparked concern that staff will not be eligible for salary increases if their work does not align with the current government's political priorities. The relevant trade unions have also been surprised by the directive and emphasise that the salary process should be completely free of political interference.

Accessibility and judicial review of administrative decisions

Civil Rights Defenders has become aware of a concerning trend in which an increasing number of individuals applying for Swedish residence permits and citizenship are being rejected based on undisclosed security concerns.

As part of the application process for residence permits and citizenship, the Swedish Migration Agency forwards cases to the Security Police for evaluation. As outlined on their public website, if the Security Police have reason to suspect that the applicant may constitute a security threat they conduct an investigation to assess the applicant's engagement in activities deemed to be of concern. Following the completion of this investigation, the Security Police provide an

9 To read more about the proposal, please see the following articles: [Sverigedemokraterna: Lägg ned Institutet för mänskliga rättigheter - DN.se](#); [SD vill lägga ner MR-institut – men röstade ”ja” till det i riksdagen - Altinget - Allt om politik: altinget.se.](#)

10 [Öppet brev till statsminister Ulf Kristersson om MR-institutet från 45 organisationer - Civil Rights Defenders \(crd.org\)](#)

11 [Regeringskansliets nya direktiv: Den som arbetar för Tidöavtalet kan få högre lön - DN.se](#)

opinion to the Migration Agency, which then determines the application's final decision.¹²

Applicants have the right to appeal a negative decision by the Migration Agency. However, they do not have access to the information upon which the Migration Agency based its decision. This poses a significant obstacle during the appeals process as the applicants do not know

the specific information and reasoning that they need to contest.

This arrangement raises fundamental concerns about transparency and due process, as individuals find themselves at a serious disadvantage when seeking to challenge decisions that affect their residency status and citizenship.

Civic space

Key recommendations

- *The government must ensure that proposed legislation is in line with Sweden's international obligations and protects rights enshrined in the European Convention on Human Rights and other international agreements to which Sweden is party.*
- *The government must demonstrate its commitment, through its actions and rhetoric, to ensuring a robust civil society by, among other things, safeguarding access to stable public funding and upholding the rights to freedom of association and assembly.*
- *The government must ensure equal treatment of civil society organisations regardless of their focus or type of activities and adhere to national anti-discrimination laws in this respect, especially with regard to Muslim civil society organisations.*

Freedom of association

Involuntary dissolution

As of 2023, there are no specific or direct mechanisms in place in Swedish law to involuntarily

dissolve NGOs. In practice, though, Swedish NGOs are constrained by general principles of Swedish association law, which allows for more or less involuntary dissolution in cases of bankruptcy or liquidation.¹³ There exists, however, a discernible and frequently alluded to political

12 [Utlänningsärenden - Säkerhetspolisen \(sakerhetspolisen.se\)](https://sakerhetspolisen.se)

13 Unlike its neighbouring countries, NGOs in Sweden are not explicitly referenced in any Swedish legal text, though it is generally held that they are subject to general principles of 'association law', see Stattin, D., Ideell förenings rätthandlingskompetens, *Svensk juristtidning*, 2004 s. 935, pp. 935—948. <https://svjt.se/svjt/2004/947>

will to institute such mechanisms, made evident by several statements or programs adopted by governing parties to that effect. The targets of such proposals or statements are exclusively Muslim civil society organisations and Muslim faith-based communities. For example, in a highly publicised event, par for the course within the trend of Islamophobic political discourse and the highlighting of Islamophobic antagonisms being legitimate tools of political activity in Sweden, party leader of the Sweden Democrats and Member of Parliament,¹⁴ Jimmie Åkesson, delivered a speech at the Sweden Democrats' annual convention in which he asserted that the Sweden Democrats, as part of their formal policy, are calling for an immediate halt to the ongoing construction of mosques in Sweden, as well as the demolition of all currently existing mosques which "contribute to Islamism."¹⁵ Åkesson (who launched his political career by penning an op-ed in the magazine *Aftonbladet* with the title and thesis 'Muslims are Europe's biggest threat')¹⁶ defined Islamism as the ideology of anyone who puts Islam in front of democratic values and individual freedom,¹⁷

manifestations of which include the public appearance of such Islamic symbols as minarets, domes, and crescent moons – all of which Åkesson identifies as "Islamist monuments".¹⁸ Responding to the backlash, Åkesson further rationalised the Sweden Democrats' proposals with references to similar laws in Germany and France, such as the French *Loi confortant le respect des principes de la République*.¹⁹ That law has been harshly criticised and condemned by international human rights and civil society organisations for amounting to little more than a poorly disguised attack against Muslims and Muslim organisations in both purpose and effect.²⁰ It is in violation of the rights to freedom of association, freedom of religion and general principles of the rule of law. Yet it has previously been referenced by Sweden's governing parties as an exemplary standard of how to deal with issues such as 'Islamism' and 'separatism' (or 'social exclusion'). Already in 2022, ahead of the Swedish parliamentary election, the then newly elected party leader for the Liberals and current Minister for Employment and Integration Johan Pehrson dedicated his

14 Rosén, H, DN/Ipsos, *Han styr Sverige*, *Dagens Nyheter*, 13 October 2023.

15 Sverigedemokraterna, *Jimmie Åkessons tal på Landsdagarna 2023*, 25 November 2023.

16 Åkesson, J., *Åkesson: Muslimerna är vårt största utländska hot*, *Aftonbladet*, 19 October 2009.

17 Åkesson, J., *"Kartlägg de islamistiska strömningarna i Sverige"*, *Dagens Nyheter*, 1 December 2023.

18 Sverigedemokraterna, *supra* n. 7, 2003.

19 SVT Nyheter, *Åkesson om kritiken: "Får inte vara naiva inför islamismen"*, 27 November 2023.

20 Among others, see Amnesty International, *Amnesty International's Concerns Regarding the Bill "to Strengthen Respect for the Principles of the Republic"*, 2021; Human Rights Watch, *Restrictions of Civil Society Space in France*, 4 May 2023; European Network against Racism, *Joint Statement: France's Shrinking Civic Space Must Be Protected*, 2021; The Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, *The Expert Council on NGO Law is concerned about the restrictions by the Bill to strengthen respect for the principles of the Republic by all*, 31 March 2021; Commission Nationale Consultative des Droits de L'homme, *Conforter le respect des principes de la République: un PJJ dangereux pour la cohésion nationale*, 8 April 2021; Défenseur des droits, *Avis du Défenseur des droits*, n. 21-01, 2021.

first speech as a party leader to situating the so-called fight against ‘separatism’ at the core of the party’s platform:²¹

*“The security in Sweden is now being challenged by criminal gangs, clan rule and religious fundamentalists. And by men who hate women. We shall call these forces by their proper name: Separatists! Individuals who aim to tear apart our democratic society. **We should act as in France** [emphasis added]. Take on the fight against the forces that are tearing us apart. Unite against what the separatists seek to separate.*

[...] We are the liberal party for those who want to change the government and introduce new ideas in the efforts for the school, for combating separatism and segregation.”

In an op-ed published in Sweden’s second-largest daily newspaper, Svenska Dagbladet, titled ‘The separatists in Sweden must be crushed’, Pehrson further detailed the transnational nature of the party’s approach to “separatism,” itself a term borrowed from French political discourse:

“Sweden finds itself today where France was a number of years ago. President Emmanuel Macron’s liberal government has openly challenged Islamist separatism in France and

shown a clear path forward towards a united France that addressed integration issues and keeps the country together. What Macron has done in France, through honest and open debate and concrete proposals to combat separatism, is absolutely right and should have been done in Sweden many years ago.”²²

Pehrson continued the “separatism” framing in 2023. In an op-ed in Sweden’s biggest daily newspaper, *Dagens Nyheter*, published in conjunction with the presentation of the 2024 Budget Bill, Pehrson described the Liberal party’s efforts to fight “separatism,” including concrete proposals to cut all and any funding to ethnic organisations. This evidently was (also) inspired by a study visit the party leader made to the Belgian city of Mechelen to visit mayor-turned-Vice-President and Minister for Domestic Affairs, Integration and Gender Equality to the Flemish government, Bart Somers.²³ Somers has been praised for his repressive measures to combat radicalisation, Islamism and “political Islam” in Mechelen, for which he won the ‘World Mayor Prize’ in 2016,²⁴ and his report *Combating Radicalisation and Violent Extremism: Preventive Mechanisms at the Local and Regional Level* was adopted the same year by the European Union’s Committee of the Regions as its official opinion.²⁵ He is a regular participant at the Vienna Forum on

21 Liberalerna, Johan Pehrsons tal i Almedalen, 5 July 2022.

22 Pehrson, J, L: *Separatisterna i Sverige måste knäckas*, 31 May 2022.

23 Pehrson, J, “Nu slopar vi statsbidraget till etniska organisationer”, 11 September 2023.

24 Renew Europe, *Bart Somers awarded 2016 World Mayor Prize*, 2016.

25 European Committee of the Regions, *Combating Radicalisation and Violent Extremism: Prevention mechanisms at local and regional level*, CDR 6329/2015, CIVEX, 16 June 2016.

Countering Segregation and Extremism in the Context of Integration.²⁶

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

Discriminatory treatment of ethnic and religious organisations

Racism, and Islamophobia in particular, maintained its strong grip throughout 2023 as the dominant force according to which Swedish governance and social coordination is organised. The government put into practice the provisions enshrined in the Tidö Agreement, several of which make explicit references to restricting the freedom of association of religious and ethnic organisations.²⁷ Examples of provisions with such an aim include the proposal to appoint a government inquiry to explore the possibility of

a legal prohibition against foreign funding of religious communities and civil society organisations “with links to Islamism and extremism” and to “propose stricter regulations and supervision” of such organisations, taking into particular account “the interest of counter-acting Islamism and radicalisation and chart[ing] out how foreign funding of congregations and other cultural, ethnic and religious organisations are used for Islamist and separatist interests”.²⁸

The Tidö Agreement also promises to review what measures can be taken to prevent any public funding (including national public funding) from being allocated to “ethnically defined associations or other organisations that are associated with Islamist or separatist interests.”²⁹ The agreement also specifically describes “schools with a Muslim profile” as breeding grounds for extremism and Islamism.³⁰ Between 2017 and 2023, 10 Muslim schools were shut down and dissolved, with only one remaining in

26 See, for general information on the so-called Vienna Forum, Bridge Initiative, [Factsheet: Vienna Forum on Countering Segregation and Extremism in the Context of Integration](#), 22 February 2023. Held for the first time on 28 October 2021, on the initiative of Austrian Minister for Women, Integration and Equality, Susanne Raab of the Austrian People's Party (Österreich Volkspartei), with the aim of being a centre in the fight against “political Islam” since “representatives of ‘political Islam’ are infiltrating society and trying to undermine European values,” the conference has been described by the European Network against Racism as being based on the essentialisation of Muslims with the goal of increasing surveillance and repression of the group, and has hosted a magnitude of political leaders, scholars and activists criticised for their frequent engagement with Islamophobic stereotypes and divisive, antagonistic rhetoric.

27 Sverigedemokraterna, Moderata samlingspartiet, Kristdemokraterna, Liberalerna, [Tidöavtalet: Överenskommelse för Sverige](#), 14 October 2022

28 Sverigedemokraterna et al., *supra* n. 8, 2022.

29 Ibid.

30 Ibid.

2023.³¹ Eight of the 10 schools have been closed by the Swedish Schools Inspectorate (Skolinspektionen) after receiving restricted intelligence based on classified evidence by the Swedish Security Service that “there are risks that the students might be subjected to radicalisation”. Since the evidence is classified, it is not available for consideration by either the Inspectorate nor the affected schools, the latter of which are struggling to defend themselves against accusations whose content or nature they are not privy to, or recognise themselves³². No case of actual radicalisation has ever been presented, nor have the schools previously received other criticism by the Inspectorate, regarding, for example, the quality of education or satisfaction of its staff and pupils.³³

The Liberals have also promised to create a permanent ‘anti-separatism’ organ in the Swedish Parliament.³⁴ In March 2023, the Liberals invited the Swedish academic and public commentator Sameh Egyptson to hold a seminar in Parliament, which was attended by Members of Parliament from the Liberals, the Christian Democrats,³⁵ the Moderate Party and the Sweden Democrats. According to the Bridge Initiative at Georgetown University, Egyptson is engaged in spreading conspiracy theories about an alleged Islamization of Sweden by

the Muslim Brotherhood, and has repeatedly called for Swedish Muslim organisations to be dissolved or shut down.³⁶

Meanwhile, the term Islamophobia is itself becoming more contested, even at the executive level. In connection with a highly publicised Qur’an burning outside of a mosque in Stockholm on 30 June 2023, for example, the newly instituted Psychological Defence Agency claimed in a segment on *SVT Nyheter* that there is an ongoing disinformation campaign against Sweden internationally. They claimed it is constituted around the ‘myth’ that there exists widespread Islamophobia in Sweden.³⁷ This development actively and explicitly harms or seeks to harm the standards of rule of law, democracy and human rights in Sweden. The political organisation of minority groups and dissenting voices is increasingly curtailed, with what can only be described as an intent to fully eliminate them from public opinion. Muslim and ethnic organisations are particularly targeted and have in the last couple of years almost completely vanished in the face of overwhelming institutional opposition.

The greatest threat to ethnic organisations specifically came on 20 September 2023, when the Swedish government presented the Budget Bill

31 Asker, A., Bara en skola med muslimsk profil kvar, *Svenska dagbladet*, 25 December 2023.

32 Ibid.

33 Ibid.

34 Pehrson, J, *supra* n. X, 31 May 2022.

35 Aftonbladet, ”Politikerna har gjort muslimerna en björntjänst”, 23 February 2023.

36 Bridge Initiative, Factsheet: Sameh Egyptson, 4 May 2023.

37 SVT Nyheter, Ny desinformationskampanj mot Sverige: ”Mycket aktivitet”, 30 June 2023.

for the financial period of 2024 to the Swedish Parliament.³⁸ In contrast to previous budgets, the bill included a complete redistribution of any funds previously allocated to organisations formed on an ethnic basis, so-called ‘ethnic organisations’. Such organisations have been eligible for targeted state funding since the 1990s and have received a total of SEK 18,9 million (€1.67 million) since 2008. According to the government, which described it as a “phase-out of state subsidies”, the motivation behind the change was that “public funds set aside for integration measures must be used more efficiently and have clearer integration objectives” and that “[b]esides the special conditions that apply to the five national minorities,³⁹ the government sees no reason why funds should be allocated to organisations based on their members’ ethnicity”.⁴⁰ In a press release published in connection with the presentation of the Budget Bill, the Swedish Minister for Employment and Integration, Johan Pehrson, further explained the proposal by saying that “[though] Sweden is a country built on popular movements (*folkrörelser*) ... integration efforts should focus on activities, not ethnicity” and that “[it] is about money that can be used in a

better way to end social exclusion (*utanförskap*) and promote integration.”⁴¹ In an op-ed published on 7 September 2023, Pehrson further described the state of play as such that “[s]ociety should not encourage ethnic segregation, but rather integration”, implying that ethnic organisations are a tool for social exclusion.⁴² The proposal was widely criticised by several Swedish civil society and human rights organisations,⁴³ but was voted through on 7 December 2023.⁴⁴ In practice, the result of the new budget is that all 41 currently existing ethnic organisations in Sweden will have no available sources of public funding and, by extension, be unable to operate and imminently dissolve.

The targeted, discriminatory treatment of religious and ethnic organisations and the shrinking of such organisations’ access to public spaces is also evident from the way they are routinely demonised, securitised and stigmatised within the media and political discourse in Sweden – a development fully endorsed and acted upon by high-ranking government officials. The most apparent example of the reciprocal relationship between undue media scrutiny and summary political decision-making that infringes on the

38 Ministry of Finance, [Government presents Budget Bill for 2024](#), 20 September 2023.

39 Jews, Roma, Swedish Finns and Tornedalers. See the [National Minorities and Minority Languages Act](#).

40 Ministry of Employment, [Labour market and integration reforms – Budget Bill for 2024](#), 3 October 2023. <https://www.government.se/articles/2023/10/labour-market-and-integration-reforms--budget-bill-for-2024/>

41 Arbetsmarknadsdepartementet, [Statsbidraget till organisationer bildade på etnisk grund avskaffas](#), 7 September 2023.

42 Pehrson, J., “Nu slopar vi statsbidraget till etniska organisationer”, *Dagens Nyheter*, 6 September 2023.

43 Gelin, G., “Luktat rasism”: Kritik efter slopat stöd till etniska föreningar, *Dagens ETC*, 25 September 2023; Kroksson, H., “Liberalerna har inte förstått etniska organisationer”, *Dagens Nyheter*, 11 September 2023.

44 Sveriges riksdag, [Beslut: Utgiftsområde 17 Kultur, medier, trossamfund och fritid](#), 7 December 2023.

freedom of association of ethnic and religious organisations is the treatment of the Swedish adult education association (*studieförbund*) Ibn Rushd. Ostensibly, it is Sweden's biggest and oldest Muslim association. Since 2017, the association has been the subject of four public investigations: two by the Swedish Civil Contingencies Authority (*Myndigheten för samhällsskydd och beredskap*) under the Ministry of Justice, and two by the Swedish Council for Popular Education (*Folkbildningsrådet*).⁴⁵ Ibn Rushd is the only association or organisation to date to be scrutinised by public authorities in such a way.

The first report from the Swedish Civil Contingencies Authority, titled 'The Muslim Brotherhood in Sweden' stated erroneously that the management of Ibn Rushd is "completely controlled by the Muslim Brotherhood".⁴⁶ The report received intense criticism, including from 20-something religious scholars, who, in an open letter to the authority, lambasted the report for failing to meet evidentiary thresholds and argued that several key claims lacked empirical

support and were of a conspiratorial nature.⁴⁷ The authority subsequently published a statement on the social media platform Twitter⁴⁸ explaining that the report only reflected the opinions of its authors, not the operations of the authority nor any evidence-based investigations.⁴⁹ In the following report, the authority completely backed away from their previous claim that the management was controlled by the Muslim Brotherhood. However, it still criticised Ibn Rushd for hindering integration and promoting "separatism" and social exclusion by organising against Islamophobia.⁵⁰ The report claimed that "a problem with organisations associated with the Muslim Brotherhood is that they contribute to political and social polarisation by pitting an imagined 'us' (Muslims) against an imagined 'them' (non-Muslims)" and that "[i]t is a strategy of identity politics that pits groups against each other and thereby has a negative impact on the democratic rules of the game (sic) for public debate."⁵¹ Meanwhile, positive aspects of the association's organisation, such as the even gender distribution of its board members, were described as forms of "tokenism", that is, tactics

45 Norell, M., Carlbom, A., Durrani, P., *Muslimska brödrskapet i Sverige. Myndigheten för samhällsskydd och beredskap*, 2017. <https://rib.msb.se/filer/pdf/28248.pdf>; Carlbom, A... *Islamisk aktivism i en mångkulturell kontext – ideologisk kontinuitet eller förändring?*, *Myndigheten för samhällsskydd och beredskap*, 2018. <https://www.slideshare.net/Johanwesterholm/aje-carlbom-msb-om-mb>; Amnå, E., *När tilliten prövas: En studie av studieförbundet Ibn Rushds samhällsbidrag*, *Folkbildningsrådet*, 2019; Folkbildningsrådet, *Beslut i granskningsärende*, Dnr. 22/00331, 2023.

46 Norell et al., *supra* n. 13, 2017.

47 Religionsvetenskapliga kommentarer, *Undermålig forskning i svensk myndighetsrapport*, 2 March 2017.

48 Now X.

49 Amnå, E. 2019.

50 Carlbom, A. 2018. *supra* n. 13.

51 Carlbom, A. 2018. *supra* n. 13.

used to pretend to be democratic to gain legitimacy while simultaneously working in secret to demolish democratic values.⁵² Finally, prior to 2023, the Council for Popular Education, which distributes funds to adult education associations, initiated an investigation against Ibn Rushd as a result of the criticism that had been levied against the organisation in mostly conservative publications and from profiles within the larger anti-Islamic or anti-Islamist movement.⁵³ The report concluded that there was no evidence to support the claim that Ibn Rushd had any links to the Muslim Brotherhood or otherwise failed to fulfil the requirements necessary to be eligible for public funding, including respect for democratic values.⁵⁴ Despite this fact, the Social Welfare Board of Gothenburg withheld the funds distributed to Ibn Rushd by the Council for Popular Education in 2022, a decision criticised by the Swedish section of Amnesty International as an attack on the freedom of religion and freedom of association and the principle of non-discrimination.⁵⁵

Ibn Rushd rose to media prominence once again in late 2023. After conducting a routine review of the study material used by its member association's study circles, the association alerted the Council of Popular Education that two identified books, which had been listed in the syllabi of five study circles, included chapters that the association considered as conflicting with the so-called prerequisite 'democracy requirements' necessary for eligibility to receive state funding, as well as the by-law values of the association itself.⁵⁶ The identified books included chapters which made references to anti-Semitic theories and writings endorsing corporal punishment of children. Though there was no indication that the books nor the specific chapters had been used at all, even less so in which specific context they were to have been used, Ibn Rushd recognised that their lack of documentation, itself a requirement for state funding, was substandard. They thus initiated formal proceedings with the Council with the purpose of paying back funds received corresponding to the

52 Carlbom, A. 2018. *supra* n. 13.

53 These include Aje Carlbom, who had written the previous two reports; Magnus Ranstorp, which the research project The Bridge Initiative at Georgetown University in a fact-sheet published in 2023 described as a leading voice against Muslim civil society in Sweden and a frequent disseminator of conspiracy theories regarding a supposed Islamist infiltration of leftist and green parties; Amineh Kakabaveh, who was ousted from the Swedish Left Party in 2019 after several Islamophobic and racist remarks; and Hanif Bali, a far-right media figure and former Member of Parliament for the Moderate Party who frequently posts on social media about an ongoing replacement of white Swedes in favour of migrants from the Middle East and Africa, Muslims and other predominantly non-white groups. See Tobias Hübinette, Om Hanif Balis resa från färgblind antirasism till högerradikalism, 13 December 2022.

54 Amnå, E. 2019, *supra* n. 13.

55 Amnesty International, Beslutet att neka Ibn Rushd bidrag riskerar att hota religions- och föreningsfriheten, 23 February 2023.

56 TT Nyhetsbyrån, Flera nobbar Ibn Rushd – kallas till minister, 12 December 2023.

operations of the specific study circles, which the association estimated amounted to 0.04% of its total operations. On 8 December 2023, *TV4 Nyheterna*, one of Sweden’s largest news channels, published a news report concerning the events, disingenuously titling it ‘Taught seven-year-olds about Sharia and corporal punishment – funded by taxpayers’.⁵⁷ In the introduction to the news segment, the channel further described the facts of the case as Ibn Rushd having, according to an investigation by the Council of Popular Education, “taught children at the age of seven that corporal punishment is acceptable, that homosexuality is a sin, and about anti-Semitic conspiracy theories” and that “Ibn Rushd is now forced to repay SEK 149,600 (€13,200) of the tax bill the association has received”.⁵⁸ The news clipping was picked up by the biggest Swedish news agency, TT, and circulated in a number of publications, which similarly claimed that “Ibn Rushd has come under scrutiny since an investigation

report from the Council of Popular Education exposed that the adult education association taught children that corporal punishment is acceptable, that homosexuality is a sin, and about anti-Semitic conspiracy theories.”⁵⁹

Even though both Ibn Rushd and the Council of Popular Education denied these claims, following the publications several Swedish municipalities and regions immediately withheld future funding to any of Ibn Rushd’s member associations operating in their administrative district.⁶⁰ Immediately following *TV4 Nyheterna’s* news report, Minister for Education Mats Persson summoned Ibn Rushd to answer for the allegations in front of the Ministry of Education and Research, remarking that the reports were “repugnant” and expressed approval for the municipalities and regions cutting funding without any investigation.⁶¹ As a direct result of the news publications, the Swedish government further reduced the allocated funding for adult

57 *TV4 Nyheterna*, Undervisade sjuåringar om sharia och barnaga – för skattpengar, 8 December 2023. c

58 Ibid.

59 TT, Flera nobbar Ibn Rushd – kallas till minister, 12 December 2023.

60 E Including the regions of Kalmar, see Sveriges Radio P4 Kalmar, Regionen ser över stödet till Ibn Rushd, 14 December 2023; Gävleborg, see Region Gävleborg, Region Gävleborg pausar anslaget till Ibn Rushd, 15 December 2023; Kronoberg, see Sveriges Radio P4 Kronoberg, Region Kronoberg stoppar bidrag till muslimskt studieförbund, 11 December 2023; and Skåne, see Borgerliga Treklövern i Region Skåne, Region Skåne pausar stöd till Ibn Rushd efter att granskningsrapport konstaterat allvarliga brister, 11 December 2023; and the municipalities of Malmö, see Malmö stad, Kulturnämnden pausar stöd till studieförbundet Ibn Rushd och inleder utredning, 20 December 2023; Växjö, see Växjö kommun, Växjö kommun inväntar Folkbildningsrådets granskning av studieförbundet Ibn Rushd, 19 December 2023; Oskarshamn, see Sveriges Radio P4 Kalmar, Oskarshamn pausar utbetalning till Ibn Rushd, 18 December 2023; and Helsingborg, see SVT Nyheter Helsingborg, Helsingborg och Region Skåne stoppar bidrag till Ibn Rushd, 12 December 2023.

61 Persson, M. [@matsperspektiv], “Avskyvärt! Ibn Rushds har mycket att förklar. Jag kommer kräva fler och tydligare svar än de givit hittills.”, 8 December 2023 Persson, M. [@matsperspektiv], ”Bra att Liberalerna i Region Skåne agerar efter de avskyvärda uppgifterna angående Ibn Rushds verksamhet.”, 11 December 2023.

education associations, which had already been seriously cut, by yet another SEK 350 million (€31 million), which Persson explained by saying that “[i]t is clear that the prioritisation we made in [the 2024 Budget Bill], where we shifted money from adult education associations to real education, feels easier to justify in light of these terrible revelations”, adding that “it is not a right to receive state funding”.⁶²

The course of events testifies to the low evidentiary standards applied to conduct by Muslim civil society organisations and how media discourse interacts with the decision-making of public bodies in ways that perpetuate discriminatory conspiracy theories, as well as how attempts to refute such accusations are ignored by both local and national authorities. Ibn Rushd was not contacted by any of the municipalities or regions before their finances were frozen, nor do they have any meaningful means of redress against such summary institutional measures.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens’ allocation of income tax

to charitable causes, eligibility to use public amenities at low or no cost etc.)

Apart from summary political rulings, Muslim civil society organisations’ access to public and foreign funding is being increasingly challenged by the adoption of legal frameworks. The European Union Fundamental Rights Agency’s indicators on the shrinking civic space for organisations working with religious minorities explicitly referenced the situation in Sweden. The most egregious example is the adoption of a bill to implement so-called ‘democracy requirements’ on the national level for organisations to be eligible for state funding, as proposed by the previous government in 2022. The bill proposed the adoption of a ‘democracy requirement’ law which would prohibit the distribution of public funding to organisations if the organisation or any of its representatives or affiliated members committed acts of violence, coercion, or threats against a person or “in other ways” violated the fundamental rights and freedoms of persons; discriminated against individuals or groups of individuals, or “otherwise violated the principles of all persons equal value”; defended, promoted or incited any of the aforementioned conducts or “otherwise opposed democratic governance”.⁶³ According to the bill, conduct that “opposed democratic governance” included, for instance,

62 Björkman, F., *Efter skandalen kring Ibn Rushd – regeringen skärper granskningen av studieförbund*, *Aftonbladet*, 14 December 2023

63 Demokrativillkorsutredningen, *Demokrativillkor för bidrag till civilsamhället*, Betänkande av Demokrativillkorsutredningen, 2019. (SOU 2019:35).

expressing support towards “undemocratic or violent regimes”.⁶⁴

A majority of civil society organisations consulted during the preparation of the bill expressed concern that the proposed legislation would in practice solely, or at least disproportionately, target ethnic and religious organisations, especially Muslim civil society organisations and faith-based communities. They also criticised the political and social background against which the government inquiry was initiated, which was as a direct response to media scrutiny of the organisation *Sveriges Unga Muslimer* (Sweden’s Young Muslims), this being the actual goal of the legislation.⁶⁵ During the inquiry procedure preceding the bill’s presentation, several ethnic and religious organisations were interviewed. Nearly all expressed concern that they were being singularly targeted by the proposals and subjected to disproportionate and erroneous media coverage, which had led to closer scrutiny of their organisations by the authorities, especially when compared to the more lax approach taken toward other types of organisations. This included placing higher demands on them to meet various requirements. Some expressed criticism over the ways in which the Swedish Agency for Youth and Civil Society (Myndigheten för ungdoms- och civilsamhällesfrågor) had treated Muslim civil society organisations and felt that authorities,

especially municipal parliamentary bodies, had become more restrictive in their distribution of grants to religious organisations, and held prejudices and suspicions toward religious activities in general.⁶⁶

In November 2022, shortly after the election of the new right-wing conservative government, the Swedish government withdrew the bill from consideration. According to representatives of the government, this action, merely two months before the proposed legislation was set to enter into force, was motivated by criticism from Christian organisations and faith-based communities which felt they would be unduly targeted by the requirements laid out. Representatives from the government parties, however, claimed that although the bill was withdrawn, they were working on a new bill which would introduce an adjusted democracy requirement whose scope would not include Christian organisations and faith-based communities. Internal division between the governing parties, however, has delayed the bill, which was set to be presented to Parliament in the autumn of 2023, until 2024.⁶⁷

Impact on Swedish Civil Society: Challenges Posed by Proposed Funding Adjustments

At the end of 2023, the government introduced a reform agenda outlining its intention to

64 Demokrativillkorsutredningen, *Demokrativillkor för bidrag till civilsamhället*, Betänkande av Demokrativillkorsutredningen, 2019. (SOU 2019:35).

65 Demokrativillkorsutredningen, 2019.

66 Demokrativillkorsutredningen, 2019.

67 Demokrativillkorsutredningen, 2019.

strengthen support for civil society and human rights and democracy defenders through development aid.⁶⁸ However, civil society actors in Sweden have become aware of certain aspects of the government's proposed policy that raise concerns that it will actually cause the opposite effect. This concern was expressed in an open letter authored by 40 Swedish civil society organisations and sent to the Minister for International Development Cooperation, Johan Forsell.⁶⁹

The concern stems from the government's plan to increase the self-financing contribution of 5% or 10% to 20%. This would have severe repercussions for Swedish civil society organisations involved in development work. However, civil society actors have not been directly consulted about such a major change and have not had access to the government's reasoning or a comprehensive analysis of the consequences of such a proposal.

Good administration and redress mechanisms in relation to decisions by public authorities affecting CSOs

As described above, ethnic and religious organisations do not have any recourse to seek redress or appeal funding decisions made by public authorities. Ibn Rushd was not contacted by any of the municipalities or regions before their finances were frozen, nor do they have any

meaningful way of redress against such summary institutional measures.

Freedom of peaceful assembly

Bans on protests

In the wake of heightened tensions between Israel and Palestine, several European nations have leveraged current global events to enact stringent measures which, in practical terms, encroach significantly upon a number of fundamental rights and freedoms. These measures include broad prohibitions on public demonstrations, restrictions on specific symbols, national flags, attire or slogans, unjustified law enforcement interventions, and the misuse of immigration laws to deport non-citizen protesters on arbitrary grounds.

A parallel trend is discernible in Sweden, both in terms of discourse and policy. An early sign of this trend was Chalmers University of Technology's prohibition of political demonstrations on its campus. This ban extended to individuals gathering in groups and expressing political opinions in ways visible to passers-by, as well as displaying political views on posters. The Swedish Minister for Education, Mats Persson, endorsed this decision. Subsequently, in response to public outcry, the university opted to rescind the ban.

68 The government's new reform agenda for a revamped aid framework: [Bistånd för en ny era – Frihet, egenmakt och hållbar tillväxt - Regeringen.se](#)

69 Open letter to the Swedish government: [Öppet brev till regeringen: Äventyra inte civilsamhällets möjligheter att verka | ForumCiv](#)

What gives rise to deeper concerns, however, is the exploitation of the escalated situation by various Swedish parliamentarians and ministers to further their individual political motives and foster societal division. Numerous statements display a clear disregard for the principles of free speech and the right to peaceful assembly. The Minister of Civil Defence has persistently intertwined pro-Palestinian solidarity with anti-semitism, support for Hamas, and the dissemination of misinformation, and has discouraged individuals from participating in demonstrations. Furthermore, Prime Minister Ulf Kristersson characterised counterdemonstrators as ‘political saboteurs’ and ‘the street’s parliament’.⁷⁰

Of particular gravity is the government’s collaboration with the Sweden Democrats in proposing the revocation of residence permits on grounds of purported lapses in ‘honourable conduct’. This proposal invokes vague and arbitrary terms such as ‘connections’ and ‘collaboration’ with ‘terrorist activities’ or ‘Islamist organisations’. Such a proposition necessitates careful consideration in light of the rapidly evolving definition of terrorism, especially in the context of the numerous pro-Palestinian demonstrations held across Sweden, and the contentious expansion of anti-terrorism legislation that took effect in May 2023.

Freedom of expression and of information

Criminalisation of speech

In recent years, environmental organisations such as Extinction Rebellion and Återställ våtmarkerna (Restore the Wetlands) have emerged in Sweden, gaining significant attention through their intensified protest actions. These protests are usually conducted through obstruction of road traffic. The protests are peaceful, in the sense that they do not involve elements of violence or vandalism. They have led to some traffic congestion, but measures have been taken to ensure that emergency vehicles or similar are not obstructed in their passage. No protest action has exceeded one hour, and the inconveniences caused by the protest have been limited to the specific location and duration of the protest. When climate activists have increased their level of activity, their scope for action has also become restricted, a trend which has been particularly pronounced this year.

Over 200 climate activists have received criminal convictions for their activism and civil disobedience, with 25 of them being convicted for the crime of sabotage, which carries up to four years in prison. This is despite the United Nations having placed demands on states to exercise caution when imposing restrictions on peaceful protests for climate justice. The conviction of climate activists in Sweden for the crime of sabotage is a recent phenomenon.

70 <https://www.facebook.com/UlfKristerssonM/posts/ikväll-skulle-elisabeth-svantesson-och-jag-hålla-en-öppent-offentlig-frågestund-f/907756507376113/>

As the number of climate actions has increased during 2023, so has the number of trials and convictions. Sabotage is a crime that carries the possibility of a prison sentence, but because most activists have not been previously convicted, they have so far generally received suspended sentences with high fines. However, if these activists continue to carry out actions, there is a strong likelihood that harsher penalties will be imposed. According to Anna-Sara Lind, a professor of public law at Uppsala University, sabotage-related convictions were virtually non-existent in cases involving demonstrations before 2022.⁷¹ The fact that climate activists now risk imprisonment for the very same actions that previously would only have led to far less serious charges and fines at most, has raised criticism. Prominent legal experts argue, especially in cases of road blockades, that the constitutionally protected freedom to demonstrate carries more weight than the disruption of traffic – an aspect that does not seem to be considered in the district courts’ rulings.⁷² Civil Rights Defenders, along with many other civil society organisations, believes that this legal development also violates the freedom of assembly as outlined in Article 11 of the European Convention on Human Rights. Many climate activists are concerned about what might happen if they continue with their actions. The risk of imprisonment and high fines is discouraging. Human rights organisations worry that activists may be effectively prevented from carrying out legitimate actions and that the space for civil society will further shrink.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

As described above, the criticism directed at climate activists has emanated from various political figures and government ministers expressing non-nuanced perspectives on these activists and civil disobedience in general. This ongoing discourse has led to a narrative where climate activists’ protests are portrayed as potentially causing disorder, posing security risks and as being similar to terrorists, thereby diverting attention from the core message of advocating for reformed climate policies. The political debate and the approach by the judiciary is coupled with a situation where climate activists are targeted with hate and threats, even death threats, by private individuals.

The current Minister for International Development Cooperation and Foreign Trade has expressed substantial concerns about climate activists. In connection with these concerns, the government has stated its intent to consider an increase in the penalty for sabotage from 14 days to a minimum of 12 months in prison. This proposed measure is aimed at deterring certain actions, coupled with a suggestion to introduce mandatory detention for activists who systematically block roads.

A recent incident that merits attention occurred when the Swedish Armed Forces, during a

71 DEBATT: “Om fängslande klimatdemonstrationer” - Dagens Juridik

72 Bull, T., Saboterad demonstrationsfrihet? In *Festskrift till Elisabeth Rynning*, Iustus förlag, Uppsala, 2023, p. 57.

defence exercise involving the Navy's mine-sweeping vessel, simulated a scenario in which an environmental rights organization came too close to a wetlands area. An audio recording from the exercise indicates that failure by the activists to adhere to command instructions could result in the armed forces opening fire on them. This incident is concerning for several reasons. In addition to the alarming implication that deadly force could be used against those engaged in peaceful activism, the use of climate activists in a scenario such as this could have a chilling effect on activists, possibly affecting their future plans and discouraging them from further activism.

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

Closer observation reveals a potential correlation between the heightened rhetoric against

climate activists and recent court rulings in which climate rights activists have been convicted of sabotage. This complex interplay underscores the need for a more nuanced understanding of the dynamics surrounding climate activism and its intersection with legal and security considerations.

Public participation

Rules on access to and participation in consultations and decision-making processes

As detailed in the section 'Process for preparing and enacting laws', by imposing short deadlines for stakeholders to submit responses during the consultation process, the government is creating a serious impediment to civil society stakeholders' participation in the legislative process.

Disregard of human rights obligations and other systemic issues affecting the rule of law environment



Key recommendations

- *The government must swiftly present a bill to the Swedish Parliament to strengthen the National Discrimination Act. Any proposed legislation should be based on the legislative proposals in government inquiry SOU 2021:94 and take into account recommendations made during the consultation process on how to shape the proposal to ensure that the police cannot avoid accountability for acts of discrimination by citing national security concerns and to include a prohibition on the use of discriminatory measures.*

- *The government must ensure that proposed legislation is in line with Sweden's international obligations and protect rights enshrined in the European Convention on Human Rights and other international agreements to which Sweden is a party.*
- *The government should task the police authority with developing working methods to prevent ethnic and racial profiling in policing and ensure that the police authority has sufficient resources to do so.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

During 2023, the government and the Sweden Democrats proposed and/or enacted a range of legislative bills which negatively affect human rights and fundamental freedoms, particularly within the areas of migration policy and criminal policy.

On 1 December 2023, a law proposed by the government and the Sweden Democrats limiting the right to family reunification for beneficiaries of subsidiary protection entered into force.⁷³ This legislation is likely in violation of the right to family life, in accordance with Article 8 of the European Convention on Human Rights.

The government has appointed a committee of inquiry, which has been tasked with developing

a mandate for public servants to report undocumented migrants to the police and the Migration Agency. The government inquiry is expected to be presented by 15 January 2025 at the latest. While it remains to be seen which public servants will have this obligation, there is a real risk that healthcare professionals, social workers, and primary school staff will be included. This would in effect impede undocumented migrants from enjoying their rights to education and health care.⁷⁴ The UN Committee for Social, Economic and Cultural Rights has previously called on Germany, which has implemented similar legislation, to revoke that legislation in order to enable undocumented migrants to access their social and economic rights.

Furthermore, the government has appointed a committee of inquiry in November 2023, which is tasked with proposing expanded powers to deny and revoke residence permits for asylum seekers, beneficiaries of protection, and migrants who lead a so-called 'defective lifestyle'. The committee will also develop

73 <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2023/2023-11-10-Skarpta-villkor-for-anhoriginvandring.html>

74 <https://www.regeringen.se/contentassets/6b1c7e2d05a9435d8143a0a1b91f4754/tillaggsdirektiv-till-utredningen-om-starkt-atervandandeverksamhet-ju-2022-12-dir.-2023-126.pdf>

proposals for how certain government agencies can access information about foreigners that enable more decisions to revoke or deny residence permits on the basis of the person having led a ‘defective lifestyle’. The committee of inquiry’s conclusions will be presented by 15 January 2025 at the latest.⁷⁵ The cited examples of a ‘defective lifestyle’ include participation in an extremist organisation or environment that threatens ‘fundamental Swedish values’, engaging in ‘dishonest work’, drug abuse, or being part of a ‘criminal clan.’ Experiences from other recent bills have shown that vague terms such as ‘dishonest work’ and ‘criminal clans’ risk leading to a broad and arbitrary application of the law. In practice, an individual who has family members who engages in criminal activity might then be considered part of a ‘criminal clan’ despite not engaging in criminal activities themselves. Additionally, the committee of inquiry is expected to analyse whether it is possible to also include as a basis for rejecting or denying a residence permit the expression of opinions that are deemed as seriously posing a threat to ‘Swedish democratic values’ or that are ‘system threatening’ or that may threaten the legitimacy of the public administration. If the committee proposes such language in the legal provisions, there is a real risk that the legislation will seriously threaten the freedom of expression of asylum seekers, beneficiaries of protection, and migrants.

Within the area of criminal policy, a new law is entering into force on 1 February 2024 that allows for preventive bans for individuals over

the age of 15 from certain public areas, even their own neighbourhoods and residential areas, if the police authority deems there to be a risk of gang activity involving firearms or explosives, or other criminal activity that aims to seriously impede safety in that area, and if the individual belongs to such a group and might promote such criminal activities. The individual does not need to have been suspected or accused of a crime as the prohibition is intended to be preventive in nature. The individual may be banned from accessing the area for six months and could be subject to electronic surveillance. Violations of the ban could lead to prison sentences of up to a year. Those targeted by such stay-away orders may be prevented from accessing their own homes, schools, workplaces, or leisure activities. Civil society organisations and government authorities such as the Equality Ombudsman have raised concern over the law, noting that it infringes upon the freedom of movement and the right to private and family life beyond what is necessary and proportionate.

On 1 October 2023, it became legal for authorities to use secret surveillance (wire-tapping telephones, camera surveillance, secret data interception) as a preventive measure against persons who are not suspected of having committed a crime. As a result, there was a sharp increase in the use of secret surveillance in 2023. Meanwhile, the Swedish Commission on Security and Integrity Protection, a Swedish government agency, has highlighted serious flaws in how secret surveillance is used in Sweden. Despite this, the government and the

75 <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2023/11/dir.-2023158>

Sweden Democrats have appointed a government committee of inquiry to explore legislation that enables the use of preventive wiretapping of private buildings. The inquiry was presented on 12 September 2023 and proposes legislative amendments that enable wiretapping of rooms.⁷⁶ Both the existing and the proposed legislation threaten the right to private life.

As last year's report noted, the government has appointed a committee of inquiry to propose legislation that will enable the establishment of stop-and-search zones. The conclusions were presented in December 2023, and the bill is expected to enter into force in March 2024. As feared, the committee has proposed the adoption of legislation enabling the establishment of stop-and-search zones in which the police can search individuals and vehicles without suspicion of a crime. Children below the age of 15 can also be searched.⁷⁷ The legislation opens the door for arbitrary stops and searches. In combination with the absence of guidance for police officers on how stops and searches should be conducted in a non-discriminatory way, the legislation creates a real risk of an increase in discriminatory profiling.

In 2022, the Swedish Security Service requested that the former government amend the regulation on security protection (*Säkerhetsskyddsförordningen*) in regard to mandatory security assessments of existing employees or applicants for positions that are considered sensitive from a security perspective.⁷⁸ The Security Police wanted the regulation to be amended to explicitly state that the security assessment of an applicant or employee should include information about the applicant or employee's 'connection to another country' and that it is the responsibility of the applicant or employee to provide the authorities with the necessary information. A connection could entail having relatives in a country other than Sweden or having a spouse or a partner who has relatives in countries outside of Sweden. The person does not need to be a citizen of that country, or even to have ever visited the country. The Security Police has also announced their intention to change their own regulation to explicitly state that such a security assessment should include a particular analysis of the type of security threat that country could pose for Sweden.⁷⁹

As a result of the Security Police's request, the current government has appointed a committee

76 <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2023/10/sou-202360/>

77 <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2023/12/sakerhetszoner-okade-mojligheter-for-polisen-att-visitera-for-att-forebygga-brott/>

78 <https://www.regeringen.se/contentassets/f181fd269e5a4ff98b9446171ab23609/hemstallan---skarpta-krav-pa-underlag-vid-sakerhetsprovning.pdf>

79 <https://www.regeringen.se/contentassets/f181fd269e5a4ff98b9446171ab23609/hemstallan---skarpta-krav-pa-underlag-vid-sakerhetsprovning.pdf>

of inquiry to explore whether such amendments should be made. Their conclusions will be presented by 15 August 2024 at the latest.⁸⁰ If the committee of inquiry results in a bill in line with the Security Police's request, thousands of people in Sweden who have a connection to or a spouse/partner with a connection to countries such as Iran, Russia and China (which are countries that engage in espionage in Sweden) would be blocked from employment in a multitude of governmental and municipal agencies, as well as within Swedish Public Television and Swedish Public Radio. Many will also be at risk of losing their jobs, as security assessments are also done on current employees. Even more concerning, the Security Police has already been informing many government and municipal agencies of the importance of taking into account applicants' and employees' connection to certain countries. As a result, many applicants with a connection to countries such as Iran and Russia have already been denied employment in government agencies since they could not pass the security assessment based on their connection to those countries. Civil Rights Defenders is also aware of a recent case in which a public servant was reassigned from his job because he has a partner with a connection to Iran. At this time, applicants and employees who do not pass the security assessment cannot appeal the decision. This treatment is discriminatory, and if individuals with a connection to countries such as Iran, Russia or China continue to be routinely rejected during the security assessment (which generally is conducted after a job offer is made or employment has begun), employers

will likely stop offering positions to these individuals if they are unlikely to pass the security assessment.

Impunity and/or lack of accountability for human rights violations

The conclusions of a government-appointed committee of inquiry presented in December 2021 recommended that the prohibition against discrimination in the National Discrimination Act be expanded to encompass discriminatory measures in addition to discriminatory treatment by public sector employees, including the judiciary, police, and prosecutors. As described in previous reports, the proposal would contribute to closing a massive accountability gap if adopted. Since then, Sweden elected a new government which is supported by the Sweden Democrats. Given the Sweden Democrats' hostile approach to the National Discrimination Act, there are legitimate fears that the government will not adopt the proposal and present it to Parliament. In meetings with government officials, Civil Rights Defenders and several other stakeholders have routinely highlighted the need to move forward with the proposal but have not received any conclusive answers about the future of the proposal. The need to adopt the proposal is bigger than ever given that legislation enabling stop and search zones is envisioned to be in place in March 2024 (see above), to ensure access to justice and redress for individuals that experience discriminatory practices by law enforcement.

80 <https://www.regeringen.se/pressmeddelanden/2023/06/en-forbattrad-process-for-sakerhetsprovningar/>

Fostering a rule of law culture

Contribution of civil society and other non-governmental actors

In September 2023, Civil Rights Defenders convened the third Nordic Rule of Law Forum in Stockholm. The goal of this annual event is to create a platform, for dialogue and learning around important human rights and rule of law issues, that brings together civil society actors, including legal practitioners and non-governmental organisations, as well as representatives of the judiciary and other state authorities. The theme of this year's forum was 'Racism and the Law' and the panel discussions examined the legal system's ability to address racial, ethnic, and religious inequality. A series of panel discussions considered issues such as the rise of radical nationalist parties throughout Europe, the effects of so-called colour-blind laws and workplace neutrality policies, and how the law can be a more effective tool in combating inequality. Speakers included academics, legal practitioners, and representatives from international organisations and civil society. The forum, which drew nearly 100 in-person participants from the Nordic and the Western Balkan countries, received overwhelmingly positive feedback.

Contacts

The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

Ebertstraße 2, 4th floor
10117 Berlin
Germany
info@liberties.eu
www.liberties.eu



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