Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2362 (2021)[1]

Restrictions on NGO activities in Council of Europe member States

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 2226 (2018) and Recommendation 2134 (2018) on new restrictions on NGO activities in Council of Europe member States, Resolution 2096 (2016) and Recommendation 2086 (2016) "How can inappropriate restrictions on NGO activities in Europe be prevented?", its previous Resolutions 2225 (2018), 2095 (2016), 1891 (2012) and 1660 (2009) and Recommendations 2133 (2018) and 2085 (2016) on the situation of human rights defenders in Council of Europe member States, as well as its Resolutions 2300 (2019), 2060 (2015) and 1729 (2010) and Recommendations 2162 (2019), 2073 (2015) and 1916 (2010) on the protection of "whistle-blowers".

2. The Assembly recalls that non-governmental organisations (NGOs) are a key component of an open and democratic civil society and make an essential contribution to the development and realisation of democracy, the rule of law and human rights. To ensure the proper functioning of civil society, the Council of Europe's member States are required in particular to ensure respect for the rights to freedom of expression, assembly and association enshrined in Articles 10 and 11 of the European Convention on Human Rights (ETS No. 5, the Convention); these rights are inextricably linked and may only be limited on grounds specified in the Convention.

3. The Assembly also recalls that the Council of Europe has extensive experience in preparing guidelines on legislation relating to NGOs, notably in Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe, and the "Joint guidelines on freedom of association" of the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) of 17 December 2014. It welcomes the adoption by the Committee of Ministers of Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, and of its declaration related to this subject adopted in Helsinki on 17 May 2019.

4. More than two years after its Resolution 2226 (2018), the Assembly is concerned to note that the civil society space continues to shrink in several Council of Europe member States, particularly in the case of NGOs working in the field of human rights. The restrictive legislation and regulations previously criticised by various Council of Europe bodies, including the Venice Commission, the Expert Council on NGO Law of the Conference of International Non-Governmental Organisations and the Assembly itself, are still being applied, particularly in Azerbaijan, the Russian Federation and Turkey. Moreover, certain NGOs are the subject of smear campaigns and their activists are subject to threats and reprisals.

5. The Assembly is concerned that, in certain member States, legislation imposing excessive reporting and public disclosure obligations on NGOs receiving funding from abroad, aimed at stigmatising these organisations, has not been repealed, despite the criticism expressed by various Council of Europe bodies. It is particularly concerned that some other member States have produced draft laws that appear to be based on the aforementioned legislation. The Assembly reiterates, in this context, that the right to seek, secure and use financial and material resources is essential to the existence and operation of any association and an

1. *Assembly debate* on 27 January 2021 (6th Sitting) (see Doc. 15205, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Alexandra Louis). *Text adopted by the Assembly* on 27 January 2021 (6th Sitting).
See also Recommendation 2194 (2021).

inherent part of the right to freedom of association, as emphasised in the Venice Commission's report (Study No. 895/2017, CDL-AD(2019)002) of March 2019 on the funding of associations. When they impose obligations on NGOs for the purpose of combating terrorism or money laundering or preventing foreign political influence, States must draw a distinction between "reporting obligations" and "public disclosure obligations" and ensure that any requirements regarding information and transparency are proportionate to the size of the association and the scope of its activities.

6. Referring to its Resolution 2356 (2020) on the rights and obligations of NGOs assisting refugees and migrants in Europe, the Assembly condemns the various attacks on NGOs assisting refugees and migrants, and on their donors. It reiterates its concern about new regulations which make it more difficult for these NGOs to operate and which criminalise certain of their members' activities.

7. Referring to its Resolution 2338 (2020) on the impact of the Covid-19 pandemic on human rights and the rule of law, the Assembly is concerned about the impact of restrictive measures adopted by Council of Europe member States during this period and highlights the deleterious effect of these measures on the functioning of civil society. It emphasises that even though, in accordance with the Convention, public health may constitute a legitimate purpose justifying restrictions on the rights to respect for private life (Article 8), freedom of expression (Article 10) and freedom of assembly and association (Article 11), any restrictions on the aforementioned rights must be "prescribed by law", "necessary in a democratic society" and proportionate to the legitimate aim pursued.

8. The Assembly supports the work of the Committee on Equality and Non-Discrimination in preparing the report "Preserving national minorities in Europe" and urges support for NGOs working in the field of national minorities protection.

9. Notwithstanding the above-mentioned negative developments, the Assembly is pleased to note that certain member States have amended their legislation concerning NGOs in line with the recommendations of various Council of Europe bodies. Moreover, the majority of member States have established an environment that is conducive to civil society activities and the authorities have taken steps to ensure that NGOs are financed in an equitable fashion and can participate more fully in the legislative process and public debate.

10. The Assembly therefore urges all the member States to:

10.1. comply with international legal standards with regard to the rights to freedom of assembly, association and expression;

10.2. fully implement Recommendations CM/Rec(2007)14 and CM/Rec(2018)11;

10.3. fully and rapidly implement the judgments of the European Court of Human Rights concerning violations of NGOs' right to freedom of association;

10.4. repeal and/or amend legislation that interferes with NGOs' ability to work freely and independently and ensure that such legislation conforms to international human rights instruments, in particular Articles 8, 10 and 11 of the Convention;

10.5. refrain from enacting new legislation entailing unnecessary and disproportionate restrictions on NGO activities; in this context, the Covid-19 pandemic should not be used to justify the imposing of such restrictions;

10.6. where appropriate, make use of the expertise of the Council of Europe, and in particular of the Venice Commission and of the Conference of International Non-Governmental Organisations and its Expert Council on NGO Law;

10.7. ensure that NGOs can seek, secure and use financial and material resources of both domestic and foreign origin, without suffering discrimination or encountering unjustified obstacles, in line with the recommendations included in the Venice Commission's report on the funding of associations;

10.8. ensure that NGOs enjoy effective legal protection, and in particular, in the event of a dispute with the authorities, that judicial scrutiny conforms to the safeguards inherent in the right to a fair trial (Article 6 of the Convention);

10.9. ensure that NGOs are fully involved in consultations on new legislation concerning them as well as on other important subjects and in relevant public debates;

10.10. ensure that civil society continues to benefit from its own space, particularly by refraining from all forms of harassment, whether judicial, administrative or fiscal, negative public statements, smear campaigns aimed at NGOs and acts of intimidation against civil society activists.