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The impact of the Covid-19 restrictions for civil society space and activities

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights is concerned about the impact of Covid-19 restrictions and their deleterious effect on the functioning of civil society. In some Council of Europe member States, the Covid-19 pandemic worsened problems that already existed. Laws aimed at combating the pandemic might also be used to further restrict the rights and fundamental freedoms of civil society actors.

Some good practices emerged during the pandemic, with many member States providing financial or other support to NGOs, or showing flexibility over institutional and reporting requirements. NGOs themselves proved to be very flexible and adapted to the new challenges.

Member States should avoid imposing unnecessary and disproportionate restrictions on human rights on the basis of existing laws to combat Covid-19, and repeal any legislation that interferes with civil society actors' ability to work freely and is no longer justified. Civil society should also be adequately consulted on laws, policies and practices concerning them, as well as on the handling of the pandemic. The use of online communication tools with and within civil society should be promoted.

1. Reference to committee: Doc. 15273, Reference 4585 of 28 May 2021.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls its Resolution 2362 (2021) and Recommendation 2194 (2021) "Restrictions on NGO activities in Council of Europe member States", Resolution 2226 (2018) and Recommendation 2134 (2018) "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 1660 (2009), 1891 (2012), 2095 (2016) and 2225 (2018) and Recommendations 2085 (2016) and 2133 (2018) on the situation of human rights defenders in Council of Europe member States, and 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. It also recalls the work it carried out in response to the Covid-19 pandemic and the measures taken to counter it, in particular Resolution 2329 (2020) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", Resolution 2337 (2021) and Recommendation 2179 (2020) "Democracies facing the Covid-19 pandemic" and Resolution 2338 (2020) "The impact of the Covid-19 pandemic on human rights and the rule of law".

3. The Assembly stresses that the existence of a vibrant civil society is a key component of an open and democratic society and makes an essential contribution to the development and realisation of democracy, the rule of law and human rights. Civil society actors, including non-governmental organisations (NGOs) and human rights defenders, should be able to continue promoting public awareness, participating in public life and fostering the transparency and accountability of public authorities despite the Covid-19 pandemic.

4. The Assembly notes that the Covid-19 pandemic and the restrictive measures taken to contain it, including those adopted under the state of emergency – such as travel bans and other restrictions on movement, blanket restrictions on assemblies and gatherings, repressive measures against protesters, electronic surveillance or criminal sanctions for expressing critical thoughts on the handling of the pandemic – have significantly affected the situation of civil society in all Council of Europe member States. Other measures – such as denial of or delay in registration of new NGOs, limited access to the beneficiaries of their actions, reduced funding or limitations on governing bodies' meetings – have also had a direct and adverse impact on the functioning of civil society organisations.

5. Thus, the exercise of the right to freedom of assembly has largely been restricted, and the rights to freedom of association, freedom of expression, freedom of movement and the right to respect for private life have also been negatively impacted. Moreover, many individuals and civil society actors were confronted with difficulties in accessing public information and were not consulted about changes to laws, policies and practices made in connection with the Covid-19 pandemic.

6. The Assembly is concerned about the impact of the restrictive measures adopted by Council of Europe member States during the pandemic and highlights their deleterious effect on the functioning of civil society. It emphasises that even though, in accordance with the European Convention on Human Rights (ETS No. 5, "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 of the aforementioned rights must be "prescribed by law", "necessary in a democratic society" and proportionate to the legitimate aim pursued. The same applies to measures restricting freedom of movement (Article 2 of Protocol No. 4 to the Convention, ETS No. 46).

7. The Assembly is also worried about the fact that in some Council of Europe member States the Covid-19 pandemic highlighted or worsened problems that already existed in the environment in which civil society functioned. Moreover, there is a risk that laws aimed at combating the Covid-19 pandemic might be used to further restrict the rights and fundamental freedoms of civil society actors.

8. Notwithstanding these negative developments, the Assembly is pleased to note that various good practices have also emerged in the course of the Covid-19 pandemic. Many Council of Europe member States have taken steps to mitigate the consequences of the pandemic through the provision of financial and/or other support as well as by showing some flexibility as regards institutional and reporting requirements, including through the introduction of digital facilities. Moreover, NGOs themselves proved to be very flexible and adapted their own environment to the Covid-19 challenges, in particular through accelerating the digitalisation process, adjusting and developing their working methods and cooperating with other stakeholders and building coalitions.

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2. Draft resolution unanimously adopted by the committee on 5 September 2022.

9. The Assembly therefore calls on all Council of Europe member States to:

9.1. comply with international legal standards pertinent to the functioning of civil society, and in particular with regard to the rights to freedom of assembly, association and expression;

9.2. fully implement Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe;

9.3. fully and rapidly implement the judgments of the European Court of Human Rights concerning violations of civil society actors' human rights and fundamental freedoms as well as those related to the measures taken to combat the Covid-19 pandemic;

9.4. avoid imposing unnecessary and disproportionate restrictions on human rights and fundamental freedoms of individuals and civil society actors on the basis of existing laws aimed at combating the Covid-19 pandemic;

9.5. repeal any legislation that interferes with civil society actors' ability to work freely and independently and is no longer justified by the Covid-19 pandemic or other public health issue;

9.6. refrain from enacting new legislation entailing unnecessary and disproportionate restrictions on civil society actors' activities; the Covid-19 or any other future pandemic as well as any other public health issue should not be used to justify the imposing of such restrictions;

9.7. provide sufficient financial and other support to NGOs in order to enable them to continue their work, despite the negative impact of the Covid-19 measures, and elaborate long-term strategies for supporting them;

9.8. encourage potential private donors to provide such support;

9.9. ensure that civil society actors are adequately consulted on laws, policies and practices concerning them as well as on other important subjects such as the handling of the Covid-19 pandemic; in particular, European Union member States should ensure that civil society is involved in the adoption, implementation and monitoring of national recovery and resilience plans;

9.10. provide unhindered access to public information and documents;

9.11. promote and support the use of online communication tools with and within civil society; such tools should be available at any time and not only in time of a public health or other crisis;

9.12. ensure a conducive environment for all civil society actors, in particular by refraining from harassment, smear campaigns, and acts of intimidation against them.

B. Draft recommendation[3]

1. Referring to its Resolution … (2022) "The impact of the Covid-19 restrictions for civil society space and activities in Council of Europe member States", the Parliamentary Assembly recommends that the Committee of Ministers shall:

1.1. continue to implement its decision on "the need to strengthen the protection and promotion of civil society space in Europe", adopted at its 129th session, in Helsinki on 17 May 2019;

1.2. call again on the member States of the Council of Europe to implement its recommendations CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe;

1.3. reflect, in co-operation with relevant Council of Europe bodies, on the impact of the Covid-19 pandemic and the measures taken to counter it on civil society, and in particular non-governmental organisations (NGOs) and human rights defenders, as well as on the measures that could be taken in order to improve their situation;

1.4. organise exchanges of views on these issues with civil society actors;

1.5. give priority to judgments arising from systemic problems concerning NGO rights and freedoms embodied in Article 11 of the European Convention on Human Rights (ETS No. 5) as well as those concerning measures taken to counter the Covid-19 pandemic, when supervising the execution of judgments of the European Court of Human Rights;

1.6. establish a mechanism for monitoring and responding to attacks against civil society actors;

1.7. continue to promote European and international standards to protect civil society space and exchange information on good practices developed in this area during the Covid-19 pandemic, particularly in co-operation with other international organisations such as the United Nations, the Organisation for Security and Co-operation in Europe and the European Union.

3. Draft recommendation unanimously adopted on 5 September 2022.

C. Explanatory memorandum by Ms Margreet De Boer, rapporteur

1. Introduction

1.1. Procedure

1. In its Resolution 2362 (2021) "Restrictions on NGO activities in Council of Europe member States", adopted on 27 January 2021, the Parliamentary Assembly expressed concern about "the impact of restrictive measures adopted by Council of Europe member States during this period" and highlight[ed] "the deleterious effect of these measures on the functioning of civil society". Consequently, the Committee on Legal Affairs and Human Rights, at its meeting on 21 April 2021, adopted a motion for a resolution on the question,[4] and was subsequently seized for a report on this issue. At its meeting in Strasbourg on 21 and 22 June 2021, the committee appointed Ms Alexandra Louis (France, ALDE) as rapporteur. At its meeting on 27 January 2022, the committee considered her introductory memorandum. Following the resignation of Ms Louis as rapporteur, the committee appointed me as her successor at its meeting on 23 June 2022. On the same day, it held a hearing with the participation of:

– Mr Filip Pazderski, Head of the Democracy and Civil Society Programme/Analyst Institute of Public Affairs, Warsaw, Poland,

– Mr Jeremy McBride, barrister, President of the Expert Council on NGO Law, Conference of INGOs, Council of Europe.

1.2. Issues at stake

2. The broader issue of restrictions on the activities of NGOs in the Council of Europe's member States was raised in Ms Alexandra Louis's report entitled "Restrictions on NGO activities in Council of Europe member States"[5] of December 2020, which also highlighted the risks faced by NGOs from the restrictions imposed in response to the Covid-19 pandemic. The rapporteur pointed out that the restrictive measures introduced by governments during this period had limited the fundamental rights and freedoms of NGOs and their members in a number of States. Their rights to respect for private life, freedom of expression (especially the freedom to receive and communicate information and ideas), freedom of assembly and association and freedom of movement were most impacted. Whilst the European Convention on Human Rights (ETS No. 5, hereinafter "the Convention") lists public health as a legitimate purpose justifying restrictions on the rights to respect for private life (Article 8), freedom of expression (Article 10), freedom of assembly and association (Article 11) and freedom of movement (Article 2 of Protocol No. 4 to the Convention, ETS No. 46), any restrictions on those rights must be "prescribed by law", "necessary in a democratic society" and proportionate to the legitimate aim pursued.[6]

3. In its Resolution 2362 (2021) based on that report, the Assembly voiced concern about the impact of restrictive measures adopted by Council of Europe member States during the pandemic and stressed that these measures often had a deleterious effect on the functioning of civil society. It also emphasised that certain restrictions could not be justified by the pandemic if they fell outside the framework of the Convention.

4. The motion for a resolution at the origin of my mandate points out that the Covid-19 pandemic has forced many Council of Europe member States to take measures restricting human rights and fundamental freedoms, including restrictions of the freedom of movement, blanket restrictions on assemblies and gatherings, electronic surveillance measures, limited access to information on the government's handling of the pandemic and criminal sanctions for expressing critical thoughts about these. Some of them have had a highly adverse impact on the functioning of civil society, including the denial of or delay in registration of new NGOs, limited access to funding or limitations on governing bodies' meetings. Governments also failed to consult NGOs on these measures or on their strategies for protecting public health.

5. The motion reiterates the requirements arising under the Convention and proposes that the Assembly conduct a study on how civil society freedoms have been impacted by the Covid-19 measures and whether these measures had an appropriate legal basis. It was proposed that the Assembly could also establish a list

4. Doc. 15273 of 21 April 2021.
5. Doc. 15205 of 6 January 2021, paragraphs 35 and 36.
6. Articles 10.2, 11.2 of the Convention and Article 2.2 of Protocol No. 4 to the Convention.

of good and bad practices and draw up a set of recommendations in order to guide States on how best to accommodate the vital need to preserve health and civil society freedoms in the event of a pandemic or other threat to public health.

6. Interestingly, in its 2021 report on the situation of civil society in the European Union member States, the European Union's Fundamental Rights Agency (FRA) looked at the effects of the Covid-19 pandemic on the activities of NGOs, human rights defenders and other civil society players. According to a FRA survey of 177 civil society organisations, in 2020 (since March 2020), 75% of them thought that the pandemic measures had had a negative impact on their activities.[7] However, 75% also considered the measures taken to contain the pandemic justified overall despite the impact on their work, and 56% considered these measures to be proportionate. In its most recent report "Europe's Civil Society: Still Under Pressure. Update 2022", following another research conducted in the EU member States as well as in North Macedonia and Serbia, the FRA concluded that the Covid-19 pandemic and the measures taken in relation to it continued to have a negative impact on civil society and its work, despite some positive developments.[8] Both FRA reports also highlight the negative effects of the pandemic on the rights to freedom of peaceful assembly, association and expression.[9]

7. Another interesting study concerning the impact of the pandemic on civil society in the European Union member States has been conducted for the European Economic and Social Committee (EESC) by a consortium of four partners – European Civic Forum, Civil Society Europe, European Center for Not-for-Profit Law and the Institute of Public Affairs.[10] A part of this study is based on 238 replies received from civil society organisations in response to an online survey conducted from 20 August to 22 September 2021 in 11 languages.[11] It concludes that despite some positive developments, the pandemic had "serious negative consequences" on the functioning of civil society organisations. Almost 80% of surveyed organisations replied that the conditions for their work and action during the pandemic had deteriorated as compared to the pre-pandemic environment. Moreover, 74% of participants negatively evaluated the Covid-19 restrictions impact on their operations, 82% negatively assessed the overall situation in their country and 78% considered that adopting special measures to counter the pandemic also limited fundamental freedoms. The study concluded that smaller entities as well as those operating outside big cities or bringing together a higher proportion of digitally excluded people (like older people or people with disabilities) had to suspend their activities. A large proportion of such organisations have not resumed their activities to date. Moreover, people working for NGOs had faced mental health issues due to the fatigue from working remotely. Governments of several EU member States had reduced the transparency of their operations, introduced measures restricting freedom of assembly and freedom of expression and lowered standards for dialogue with civil society in the legislative process, especially as regards laws aimed at addressing the impact of the pandemic. Many NGOs also complained about the lack of financial support from the State.

8. It is clear, therefore, that the pandemic and the restrictive measures taken to contain it have significantly affected the situation of civil society, even though it is sometimes difficult to assess whether these restrictions were or are still proportionate and therefore satisfy the requirements laid down by the European Convention on Human Rights and other international human rights protection instruments. I will therefore start by considering the relevant work carried out by the Council of Europe (including the Assembly) in this sphere and the state of applications pending before the European Court of Human Rights. I will then look at how the restrictions relating to the pandemic have influenced the situation and activities of civil society in the Council of Europe's member States (and also, to a certain extent, in the Russian Federation, as a former member State). I will focus on restrictions of the right to freedoms of assembly, association and expression as well as some other issues relevant for the daily work of civil society organisations (such as funding, access to information and public consultations). Finally, I will examine how the pandemic led to the development of some good practices. before outlining my conclusions as to the next steps and making relevant recommendations to Council of Europe member States.

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7. FRA, "Protecting civic space in the EU", 2021, p. 17.
8. FRA, "Europe's civil society: still under pressure - 2022 update", p. 21.
9. FRA (2021), op. cit., p. 7, and FRA (2022), ibid., p. 24.
10. European Economic and Social Committee, "The implications of the Covid-19 pandemic on fundamental rights and civil space". Study, 14 February 2022.
11. Ibid., p. 23. It has been pointed out that the size of the sample surveyed and how it was spread do not allow the results obtained to be considered representative of all civil society organisations active in EU member States. The largest groups were organisations from Poland, Bulgaria, Croatia, Hungary, France, Germany and Spain.

2. Work carried out within the Council of Europe

2.1. Work carried out by the Assembly

9. Within the Assembly, a number of reports, resolutions and recommendations on issues arising from the handling of the Covid-19 health crisis have been adopted but they do not focus specifically on the situation of civil society. Already in 2020, the question of necessary and proportionate measures for dealing with the Covid-19 pandemic was examined by the Assembly in Resolution 2329 (2020) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", where it stressed that "public-health control measures for disease mitigation with human rights implications (such as quarantining, physical distancing, contact tracing, border controls and travel restrictions) must be based on relevant standards and on public trust to be effective: they need to be designed and implemented in a transparent, evidence- and rights-based manner; they must be de-politicised, co-ordinated nationally, regionally and internationally, communicated clearly and applied fairly".[12]

10. The question of the impact of the Covid-19 pandemic on human rights and the rule of law was the subject of a report by our colleague, Mr Vladimir Vardanyan (Armenia, EPP/CD),[13] resulting in the adoption by the Assembly of Resolution 2338 (2020) and Recommendation 2180 (2020). In Resolution 2338 (2020), the Assembly stressed that some restrictive measures, especially those relating to freedom of movement and assembly, could be justified in the light of the exemption clauses in the Convention. However, "measures that restrict freedom of expression, access to information and media freedom are not readily justifiable. Information is essential to enable the public to understand the danger and take measures at a personal level to protect themselves." Regarding the role of journalists and human rights defenders in the transmission of information on the pandemic, "only deliberate dissemination of misinformation that may cause significant public harm should be controlled, on the basis of laws that are clearly and narrowly defined and non-discriminatory". Accordingly, the Assembly called on the Council of Europe's member States to protect media freedom and the safety of journalists, "stop the practice of blocking websites and initiating criminal prosecution to intimidate and silence critics, on the pretext of fighting disinformation" and "conduct a prompt, thorough and independent review of the national response to the Covid-19 pandemic, including its effectiveness and respect for human rights and the rule of law, with a view to ensuring that if there is another pandemic, the authorities can respond quickly and effectively, in accordance with Council of Europe standards".

11. In addition, the question of respect for the rules of democracy in a pandemic, including when a state of emergency is declared, was the focus of a report by the Committee on Political Affairs and Democracy entitled "Democracies facing the Covid-19 pandemic",[14] resulting in the adoption by the Assembly of Resolution 2337 (2020) and Recommendation 2179 (2020). In June 2021, the Assembly adopted Resolution 2383 (2021) "Covid passes or certificates: protection of fundamental rights and legal implications", stressing that measures such as the introduction of a Covid pass or certificate must be applied only in a context of fighting the pandemic and in compliance with the positive obligations arising from the Convention.[15]

2.2. Work carried out by other Council of Europe bodies

12. Strengthening civil society's role and participation in the Council of Europe's activities was the subject of a decision entitled "A shared responsibility for democratic security in Europe – The need to strengthen the protection and promotion of civil society space in Europe", adopted by the Committee of Ministers on 17 May 2019 in Helsinki, at its 129th session. At its ministerial session held in Hamburg in May 2021, the Committee of Ministers stressed the importance of the decisions taken in Helsinki and asked for an update for the May 2022 ministerial session. A number of informal meetings were organised with civil society in 2021 based on the Council of Europe Secretary General's proposals to implement the Helsinki decision.[16] As regards more specifically the measures taken during the pandemic, on 8 April 2020, the Secretary General published a "toolkit" for all European governments for the purpose of respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis,[17] reiterating that the rights and freedoms enshrined in Articles

12. Doc. 15115, report of the Committee on Social Affairs, Health and Sustainable Development; rapporteur: Mr Andrej Hunko (Germany, UEL).
13. Doc. 15139.
14. Doc. 15157, rapporteur: Mr Ian Liddell-Grainger (United Kingdom, EC/DA).
15. Doc. 15309, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Damien Cottier (Switzerland, ALDE).
16. SG/Inf(2020)8, "Follow-up to the Helsinki decisions on civil society", 2 June 2020, and SG/Inf(2021)24, "Follow-up to the Helsinki decisions on civil society: implementation of the Secretary General's proposals", 20 August 2021. See also the annual report of the Secretary General of the Council of Europe, "Moving Forward 2022", pp. 57 and 60.

10 and 11 of the Convention (freedom of expression, association and peaceful assembly) may be restricted only if those restrictions are established by law and proportionate to the legitimate aim pursued, including the protection of health. While heightened restrictions of the above-mentioned rights may be justified in time of crisis, harsh criminal sanctions must be subject to strict scrutiny.

13. Furthermore, in December 2020, the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe expressed its concern about the limitation of fundamental rights in time of pandemic and considered that the latter represented "a major danger for the right to freedom of association and assembly, the right to freedom of expression and meaningful civil participation". It also stressed that "the commitment of the civil society sector constitutes a part of the global solution in the fight against the pandemic".[18] Moreover, the Expert Council on NGO Law of the INGO Conference sent a questionnaire to NGOs in all Council of Europe member States (including the Russian Federation, which was a member State at the time), in Belarus as well as in Kosovo*[19], which focused on the implementation of Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe. the questionnaire also provided an opportunity to ask questions about the impact of the Covid-19 pandemic on NGOs, in particular on fulfilling requirements applicable to their operation, the extent of NGOs being kept informed about changes to laws, policies and practices having an impact on their work, whether they were consulted on such changes, the way their action was perceived, the support received from the State and other actors and the impact on funding. The results of the questionnaire have been summarised by Mr Jeremy McBride in a document entitled "The legal space for non-governmental organisations in Europe"[20] and presented by him at the committee hearing on 23 June 2022.

14. The selection of the NGOs invited to respond to the questionnaire was made by reference to the breadth of their expertise and of their familiarity with the general situation in their country. The responses represent the perspective of the NGOs concerned and not a definitive account of the situation for each country. The questions focused on seven issues: 1) the impact of Covid-19 and the responses to it on the operation of NGOs; 2) whether any good practices had emerged; 3) the extent to which NGOs were informed about changes to laws, policies and practices which might have an impact on their work; 4) whether they were consulted on such changes; 5) whether there had been any change in the way that NGOs are perceived and, if so, whether this had a positive or negative effect on their work; 6) whether they received any support from the State, inter-governmental organisations or other bodies; and 7) the impact of the pandemic measures on funding.[21]

2.3. Applications pending before the European Court of Human Rights

15. The question of potential violations of certain human rights and fundamental freedoms during the Covid-19 health crisis has already been raised before the Court. The latter recently delivered a judgment (not final yet) in the case of *Communauté genevoise d'action syndicale v. Switzerland*, which was lodged by an association defending the interests of workers and its member organisations and relates to the general banning of demonstrations between mid-March 2020 and end of May 2020 because of the Covid-19 pandemic.[22] The Court found a violation of Article 11 of the Convention, stressing that the ban was not "necessary in a democratic society". While by no means disregarding the threat posed by the pandemic to society and to public health, it nevertheless considered, in the light of the importance of freedom of peaceful assembly in a democratic society, and in particular of the topics promoted by the application association, the blanket nature of the ban on public events falling within the association's sphere of activities, and the nature and severity of the possible penalties, that the interference had not been proportionate to the aims pursued. It also pointed out that the domestic courts had not conducted an effective review of the measures at issue during the relevant period.[23]

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17. Information document: "Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis", pp. 6-7.
18. Declaration of the Conference of INGOs of the Council of Europe on the place and role of civil society in safeguarding human rights, democracy and the rule of law, adopted on 16 December 2020, CONF/PLE(2020)DEC1.
19. * All reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
20. Council of Europe, "The legal space for non-governmental organisations in Europe. Civil society's perception of the implementation of Council of Europe CM Recommendation (2007)14 to Member States on the Legal Status of Non-Governmental Organisations in Europe", by Jeremy McBride on behalf of the Expert Council on NGO Law, December 2021.
21. Ibid., pp. 33-39.
22. Application no. 21881/20, judgment of 15 March 2022.
23. Ibid., paragraph 91.

16. Moreover, the Court has communicated cases to States on other restrictions related to the Covid-19 pandemic. In the case of *Magdić v. Croatia,* the applicant claims that the measures adopted by the Croatian authorities in the context of preventing the spread of the Covid-19 virus breached his right to freedom of religion, freedom of assembly and freedom of movement.[24] In the case of *Avagyan v. Russia,* the applicant, who was sentenced to a fine for disseminating information on Instagram stating that there had been no genuine cases of Covid-19 in the Krasnodar region, is complaining that her right to freedom of expression (Article 10 of the Convention) and her right to a fair trial (Article 6.1 of the Convention) were violated.[25]*Nemytov v. Russia*[26] and two other similar applications concern the prohibition of public events in Moscow introduced in response to the spread of the Covid-19 virus. The Court is also examining applications relating to restrictions on peaceful demonstrations in Spain[27] and Poland.[28] It will be some time yet before the Court rules on these applications.

3. Restrictions imposed on civil society activities on grounds of the Covid-19 pandemic: some examples

3.1. Restrictions potentially affecting the right of freedom of assembly

17. As indicated above, it would appear that some of the restrictions imposed on grounds of Covid-19 have been used in some Council of Europe member States as a pretext for further restricting the space allocated to civil society, in some cases by limiting their rights to freedom of assembly and, to a lesser extent, their rights to freedom of association.

18. According to the FRA survey of 2021 and the above-mentioned study commissioned by the EESC, freedom of assembly has been affected above all by lockdowns and social distancing measures, which were often disproportionate. One third of the organisations surveyed by the FRA said they had faced difficulties in exercising this freedom in 2020. According to the EESC study, 73% of respondents indicated that the situation concerning the exercise of this right had deteriorated during the pandemic.[29] The specific measures at issue included blanket bans on public gatherings,[30] disproportionate surveillance, sanctions and repressive measures against protesters.[31] In 2021, the percentage of organisations facing difficulties with exercising their right to freedom of assembly went down to 16%.[32] Bans on gatherings and the penalties related thereto were still in force in 2021.[33] The FRA also reported about a tendency to over-police assemblies and, consequently, the disproportionate use of force by law enforcement officers against protesters (in particular in Austria, Cyprus and Slovenia), including those criticising Covid-19 measures.[34]

19. Freedom of assembly thus appears to have been particularly hard-hit by anti-Covid measures. It seemed logical, initially, to restrict mass gatherings in order to slow the spread of a contagious illness. But in many cases such restrictions were blanket, absolute prohibitions with no exceptions allowed, even for socially distanced peaceful demonstrations. A blanket ban on gatherings is especially problematic in this context, as it affects opposition movements in some cases and is very much open to abuse by the authorities. As a result, a blanket ban on demonstrations with no exceptions may undermine, in a disproportionate manner, a key component of civic expression.

20. In some Council of Europe member States restrictions on freedom of peaceful assembly have been disproportionate and were applied in a discriminatory manner in that protests critical of the government that would comply with health and safety measures were repressed while other gatherings were permitted by the

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24. Application no. 17578/20, communicated to the Croatian Government on 31 May 2020.
25. Application no. 36911/20, communicated to the Russian Government on 4 November 2020.
26. Application no. 1257/21, communicated to the Russian Government on 22 September 2021.
27. *Central Unitaria de Traballadores/as v. Spain*, application no. 49363/20, communicated to the Spanish Government on 13 October 2021.
28. *Jarocki v. Poland,* application no. 39750/20, communicated to the Polish Government on 17 November 2021.
29. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 28.
30. During the first phase of the pandemic, such bans were introduced in Germany, France, Italy, Poland, Hungary, Slovenia and Spain. In the Czech Republic, public gatherings were limited to a maximum of two people and, in Greece, to ten; "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., pp. 18-19.
31. "Protecting civic space in the EU", op. cit., pp. 29-20. Such measures were reported in Germany, Belgium, Italy, Poland, Slovenia, France, Romania, Ireland, Cyprus, Greece, Lithuania, Bulgaria, Spain, and Hungary; "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 19.
32. "Europe's civil society: still under pressure - 2022 update", op. cit., p. 24.
33. Ibid., p. 26.
34. Ibid.

authorities. In Russia, for example, in spring 2020, with public gatherings already subject to very strict rules, the authorities imposed blanket bans on all public events on grounds of the Covid-19 pandemic. Whereas those measures were justified by public health concerns, the authorities were reluctant to consider lifting or easing them, while events such as the commemoration of the 75th anniversary of the Soviet victory in the Second World War were allowed to go ahead.[35] However, on 13 March 2021, the police broke up a gathering of 200 regional elected officials from 56 regions on the pretext that it had been organised by an "undesirable organisation" in breach of the Covid-19 restrictions in force.[36] In Hungary, it appears that the general ban on demonstrations imposed during the first wave of the pandemic in 2020, with exceptions permitted for organising authorised peaceful protests, has been applied in a discriminatory manner. Two large-scale events were allowed in May 2020: the first of these was attended by football fans and the second was organised by a far right-wing movement. Those events were not regarded as coming under the rules prohibiting gatherings for the purpose of combating the spread of the pandemic. On the other hand, protests criticising the government's handling of the crisis, organised in the form of processions of vehicles in order to comply with social distancing, were treated differently, with the police deeming that they had to be banned on grounds of the Covid-19 restrictions.[37] In Poland, Marta Lempart, an activist who had co-organised large protests in October and November 2020 against the ruling of the Constitutional Court of 22 October 2020 restricting access to abortion, was charged with organising demonstrations in breach of Covid-related restrictions and faces up to eight years in prison.[38]

21. In Türkiye, a government circular of 16 March 2020 banned all meetings and activities of civil society organisations that might bring people together, including training sessions and general assembly meetings.[39] Because of lockdown measures and the ban on gatherings, many civil society entities had to cancel meetings where people would have been physically present. Some of them transferred their activities to online platforms while others opted to continue exercising their freedom and received multiple fines as a result. Small gatherings in isolated locations were still repressed by the Turkish authorities even after lockdown measures had ended in Türkiye (in the case of some environmental rights defenders for example).[40] Between 1 January 2020 and 1 June 2020 (which includes the period for which anti-covid measures were in place), the police used force to disperse at least 363 peaceful gatherings and events and took 754 people into custody, while 16 people were injured. Among those incidents, nine gatherings and events were forcibly dispersed on grounds of anti-covid measures, and 42 protesters were arrested in the course of these actions.[41] Administrative fines were also often used against human rights defenders for participating in meetings and demonstrations, under both the Law on Misdemeanours and the Law on Public Health; between 1 March and 31 August 2021, 290 human rights defenders were fined a total of 909 598 TRY (approximately 50 800 EUR), and in the first three months of 2022 this amount ranged between 277 and 18 028 TRY (approximately 17 to 1 180 EUR).[42]

22. The proportionality of restrictions to the right to freedom of assembly was examined by several courts throughout Europe, including in European Union member States. For example, the German Constitutional Court held that competent authorities could not rely on blanket restrictions to this right and had to consider each specific case before deciding on the prohibition of an assembly. Similarly, the Slovenian Court ruled that the government had to assess, at least every seven days, if such restrictions were necessary to achieve the objectives pursued to follow the principle of necessity. Therefore, one can observe a trend in national courts repealing or amending the restrictions due to their non-compliance with the principles of proportionality, necessity and time-limitation, and sometimes due to the non-respect of the principle of legality.[43]

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35. FIDH, Russia. "Crimes against history", June 2021, p. 22. At least 194 participants were accused of taking part in the activities of this "undesirable organisation" and yet the authorities have not demonstrated any kind of link between this event and an undesirable organisation.
36. International Partnership for Human Rights, "Russia Silence Factory", August 2021, p. 24.
37. Adam Dargiewicz, "Covid-19 and Civic Space in Poland and Hungary", Utrecht University, p. 16.
38. See my report entitled "Access to abortion in Europe: stopping anti-choice harassment", Committee on Equality and Non-Discrimination, Doc. 15459, 21 February 2022, paragraph 54.
39. International Center for Not-for-Profit Law, COVID-19 Civic Freedom Tracker, "Turkey".
40. FIDH-OBS, "Turkey Part II Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association", May 2021, pp. 6, 20 and 53.
41. FIDH-OBS, "A perpetual emergency: attacks on freedom of assembly in Turkey and repercussions for civil society", July 2020, p. 51.
42. FIDH-OBS, "Turkey Part III. Drowned in Procedure, Sentenced to Fail: Administrative Harassment Against Civil Society in Turkey", June 2022, p. 32.
43. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., pp. 15-16.

3.2. Restrictions potentially affecting the right to freedom of association

23. Where freedom of association is concerned, around 18% of FRA respondents said they had faced major challenges in 2020.[44] While some countries had taken steps to ease administrative formalities, NGOs in other countries had faced difficulties with registration or had been placed under excessive reporting obligations, although these measures had not been directly linked to the Covid-19 pandemic. In 2021, the percentage of NGOs facing difficulties with the exercise of this right amounted only to 8%,[45] but regulatory hurdles continued to hamper the establishment and operations of many NGOs in EU member States, in particular following the adoption of new regulations on associations in 2021.[46] According to the study commissioned by the EESC, while the right to freedom of association was not directly addressed in the Covid-19 restrictions, many EU member States adopted new rules affecting this right and/or hindered the day-to-day operations of "troublesome" organisations in various ways (for example in Greece, Hungary, Poland, Slovenia, Slovak Republic and France).[47]

24. Furthermore, the ability to fulfil reporting requirements was also examined in the above-mentioned INGO Council's study.[48] The following difficulties have been encountered by certain NGOs: the limited digital systems within the administration (in Croatia), the poor broadband service (in Ireland, especially in rural areas), the inability to first approve them at annual meetings as these could not be held (in Cyprus), the lack of possibility of holding annual meetings online (Cyprus and Ukraine) or allowing such meetings only where this was specifically stipulated in an NGO's statute (North Macedonia).

25. However, in 15 countries,[49] no problems of compliance with requirements on the holding of annual meetings or the submission of reports were reported, and in 3 countries, sanctions for non-compliance with some of these requirements were stated not to have been applied (in Lithuania, Malta and Portugal). In addition, in 15 countries,[50] it was reported that annual meetings were allowed to be moved to an online format and in two other countries (Estonia and Hungary), the same approach was taken for all decision-making meetings. Moreover, in some countries the deadlines for holding annual meetings[51] or submitting reports[52] had been postponed. Furthermore, in Estonia, there was at least one instance of the mandates for management bodies having been extended where these were expiring.

3.3. Restrictions potentially affecting the right to freedom of expression

26. During the first months of the pandemic numerous States introduced laws criminalising disinformation and the spreading of fake news about Covid-19. In some cases, these new regulations were misused to roll back criticism of the authorities' handling of the crisis, making some individuals liable to incur long prison sentences and also resulting in the arrest of numerous activists after they had shared information on the pandemic. Within the European Union, 25% of the organisations surveyed by the FRA felt they had experienced difficulties in exercising freedom of expression in 2020, particularly because of the chilling effect of these laws and censorship on the internet.[53] In 2021, this percentage was 17%[54] and little progress had been made as regards laws and practices negatively affecting this freedom, with some countries having adopted laws further restricting it.[55]

27. For example, on 30 March 2020, Hungary adopted the Bill on Protection against the Coronavirus amending the Criminal Code's provisions relating to the offense of 'imparting or conveying false information' and making more severe the penalties related to it.[56]

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44. Ibid. pp. 33-34.
45. "Europe's civil society: still under pressure - 2022 update", op. cit., p. 24.
46. Ibid., p. 25.
47. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 19.
48. "The legal space for non-governmental organisations in Europe", op. cit., pp. 33-34.
49. Andorra, Armenia, Austria, Bosnia and Herzegovina, the Czech Republic, Hungary, Iceland, the Republic of Moldova, Montenegro, the Netherlands, Norway, Romania, Slovenia, Sweden, as well as Kosovo.
50. Azerbaijan, Belarus, Croatia, Denmark, Finland, France, Georgia, Germany, Ireland, Latvia, Liechtenstein, Poland, Serbia, Ukraine and the United Kingdom.
51. In 9 countries: Belgium, Bulgaria, France, Italy, Latvia, Luxembourg, Portugal, San Marino and Türkiye.
52. In 12 countries: Belgium, Estonia, France, Italy, Latvia, Russian Federation, San Marino, the Slovak Republic, Spain, Sweden, Ukraine and the United Kingdom.
53. Ibid., pp. 31-32.
54. "Europe's civil society: still under pressure - 2022 update", op. cit., p. 24.
55. Ibid., p. 26. For example, Greece adopted the law on countering disinformation.
56. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 21.

28. In the Russian Federation, amendments were made to the legislation on “fake news”, impacting freedom of expression. Under the amended legislation, at least 37 people (including civil society activists, journalists, and bloggers critical of government policy) have been prosecuted. At least five media outlets have been prosecuted and, in August and September 2020, the *Novaya Gazeta* newspaper and its editor-in-chief were fined twice for articles on Covid-19 and ordered to delete the online versions.[57]

29. In Türkiye, numerous individuals are presently facing prosecution for having expressed their views on the authorities' handling of the crisis. For instance, the presidents of the Van-Hakkari and Mardin Medical associations were accused of "inciting fear and panic among the public" because of their criticism of how the crisis was being managed in prisons and the failure to prevent contagion among prisoners.[58] On 13 August 2020, administrative fines were imposed on the KRT TV television channel and Harman radio after critical coverage of the authorities' handling of the pandemic.[59]

30. In Azerbaijan, more than a dozen individuals, including journalists and opposition activists, who criticised the authorities’ handling of the pandemic were sentenced to so-called "administrative detention" of between 10 and 30 days.[60]

31. Moreover, some emergency measures taken during the Covid-19 pandemic were used to limit access to public information, in particular to journalists (for example, in Hungary).[61] According to the FRA, this is still an issue, especially in Hungary, Italy, Malta and Poland.[62] The pandemic’s influence on NGOs’ right to receive information about changes to laws, policies and practices which might have an impact on their work was analysed in the above-mentioned study of the INGO Council.[63] For about two-thirds of the surveyed countries,[64] NGOs reported that they had continued to receive such information. However, this was said not always to occur in the case of nine others,[65] while there was reported to be no change in the existing (good) practice in Italy. In Poland, such information was said to have been published on official websites, no information was addressed to NGOs directly. In Ukraine, information was provided to NGOs through a weekly bulletin prepared by one of them. For some 6 countries,[66] it was reported that NGOs had not received information about such changes. No public mechanism for this purpose existed in Portugal.

3.4. Other difficulties encountered by civil society

32. According to the organisations surveyed by the FRA in 2020, three dimensions of their work which had been the hardest hit by the pandemic and the measures taken against it were: their day-to-day work (owing to the limited possibilities for action and limited access to those benefiting from it), their (reduced) funding and their (limited) participation in decision making in the public sphere.[67] These concerns were also raised by the organisations surveyed for the purpose of drafting the EESC[68] and the INGO Conference’s reports.

33. As regards the first area, in 2020, access to beneficiaries was severely affected by social distancing and restrictions on free movement, particularly where beneficiaries were in a vulnerable situation, for example because they lacked access to the internet and digital tools. Travel bans and other restrictions on free movement also hampered a number of NGO projects as well as their ability to hold meetings with people physically present.[69]

34. Funding was affected by a substantial drop in private donations and other sources of funding, such as those linked to tax revenues in some countries. In most member States, civil society organisations did not benefit from the kind of emergency financing schemes open to the private sector.[70] However, some countries

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57. Amnesty International, “Report 2020/2021 The state of the world's human rights”, pp. 400-406.
58. FIDH-OBS, “Turkey Part II Turkey’s Civil Society on the Line: A Shrinking Space for Freedom of Association”, op. cit., p. 19.
59. www.icnl.org/covid19tracker/?location=128&issue=&date=&type=.
60. Amnesty International, op. cit., pp. 103-106.
61. “The implications of the Covid-19 pandemic on fundamental rights and civil space”, op. cit., p. 21.
62. “Europe's civil society: still under pressure - 2022 update”, op. cit., p. 35.
63. “The legal space for non-governmental organisations in Europe”, op. cit., pp. 35-36.
64. 29 countries: Andorra, Austria, Belarus, Belgium, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Romania, the Russian Federation, San Marino, the Slovak Republic, Sweden, Switzerland, Türkiye, Ukraine, the United Kingdom, as well as Kosovo.
65. In Bulgaria, the Czech Republic, Hungary, Ireland, the Republic of Moldova, the Netherlands, North Macedonia, Serbia and Spain.
66. Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus and Slovenia.
67. “Protecting civic space in the EU”, op. cit., pp. 18-20.
68. “The implications of the Covid-19 pandemic on fundamental rights and civil space”, op. cit., pp. 17 and 20.
69. “Protecting civic space in the EU”, op. cit., p. 18.

did adopt dedicated financial measures to support NGOs.[71] In total, 60% of the respondents had difficulties finding adequate funding in 2020 and 42% said that they had faced "financial difficulties" as a "direct result of measures related to the Covid-19 pandemic".[72] Problems with funding seemed to have persisted in 2021, despite a range of positive developments in some EU member States such as support schemes for NGOs due to Covid-19 (in Austria, Belgium, Italy and Lithuania),[73] improvement of general financing framework and a more favourable taxation framework (for example in the Czech Republic, Italy and Lithuania).[74]

35. According to the INGO Council's study, there had been or appeared to have been a decrease in the overall level of funding in the case of 23 countries.[75] In Croatia and the Republic of Moldova, the provision of funding had been formally or effectively suspended. Again in the Republic of Moldova and in Ukraine, there have also been some readjustment of budgets to take account of the costs for preventing Covid-19 transmission. In some countries, it was reported that so far the pandemic had not had any effect on the level of public funding or that the impact had not been significant.[76] The provision of funding had been increased just for some NGOs in Armenia, Iceland and Luxembourg.

36. It was also reported that funding from private and international sources had been impacted as much as that from public ones (in 14 countries)[77]. Even where public funding was not affected, there seemed to be a decrease in funding from the private sector in 9 countries[78] and an increase in one country (Estonia). In respect of Switzerland, it was reported that funding came essentially from members of NGOs. In the UK, there had been an increase in giving by members of the public to a particular form of NGO (charities). In Ireland and Lithuania, some NGOs expressed their fears about the impact that budget cuts would have when the pandemic ended and in the Slovak Republic – about the possible effects on private funding through the tax designation mechanism.

37. In many countries some support was provided to NGOs in order to enable them to continue to carry out their activities, mainly in the form of grants or other financial support for those NGOs – or certain categories of them – that have been affected by the pandemic (in 26 countries).[79] In some countries, NGOs were said to have benefited from: more general measures such as deferred tax payments, subsidies for maintaining jobs or various benefits for staff (in six of them);[80] some funding and support in respect of equipment for online work (in Austria, Italy and the Slovak Republic); and rent not being charged or reduced where they occupied publicly-owned premises (in Croatia, Latvia and the Russian Federation). However, in 12 countries, no support of any kind had been provided.[81]

38. Where civil society's participation in decision making was concerned in 2020, according to the FRA, it was substantially reduced by limited consultations and restrictions on access to information, despite the efforts made by the authorities in some countries to maintain co-operation with civil society.[82] In 2021, the situation did not change much. NGOs were not allowed to take part in discussions concerning Covid-19 National

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70. Ibid., p. 19.
71. Ibid. Notably Austria, Denmark, Germany, Finland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovak Republic and Sweden.
72. Ibid., p. 39.
73. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 32. However, these schemes are already discontinued in some cases or their usefulness is being overshadowed by burdensome bureaucratic requirements.
74. Ibid.
75. "The legal space for non-governmental organisations in Europe", op. cit., p. 38. These are: Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, France, Hungary, Ireland, Latvia, Liechtenstein, Malta, Montenegro, the Republic of Moldova, North Macedonia, Poland, Portugal, Serbia, Slovenia, Spain, Sweden, Türkiye and Ukraine.
76. Respectively in 9 (Azerbaijan, Belarus, Georgia, Lithuania, Monaco, Norway, Romania, Switzerland, as well as in Kosovo) and in 3 countries (Cyprus, Estonia and San Marino).
77. Belarus, Bulgaria, the Czech Republic, France, Italy, Latvia, Liechtenstein, Malta, the Netherlands, North Macedonia, Poland, Portugal, Spain and Sweden.
78. Andorra, Azerbaijan, Belgium, Germany, Iceland, Luxembourg, Norway, the Russian Federation, as well as in Kosovo.
79. "The legal space for non-governmental organisations in Europe", op. cit., pp. 37-38. The countries at issue are: Albania, Austria, Azerbaijan, Belgium, the Czech Republic, Denmark, Estonia, Georgia, Germany, Iceland, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, North Macedonia, Norway, Poland, Portugal, the Russian Federation, Slovenia, Sweden, Switzerland, Ukraine and the United Kingdom.
80. France, Italy, Latvia, Serbia, the Slovak Republic and the United Kingdom.
81. Andorra, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Cyprus, Greece, Hungary, Montenegro, Romania, Spain and Türkiye.
82. "Protecting civic space in the EU", op. cit., p. 20. See also pp. 46-50.

Recovery and Resilience Plans being part of the Next Generation EU programme (for example, in Lithuania and Slovak Republic),[83] although the FRA also reported some good practices in this area (for example, in Italy and in Poland).[84] According to the INGO Council's study, in respect of 18 countries,[85]NGOs had been consulted on changes to laws, policies and practices that were made in connection with measures to deal with the pandemic and that, for another one (Iceland), it had been possible to make comments on proposals regarding such changes. However, in some other countries, the consultation process had not always been satisfactory (the Czech Republic, Germany, North Macedonia and Serbia) or it had either not been general or consistent (Malta, Portugal and the Slovak Republic) or it had not been "real" (Lithuania). No consultation at all occurred in 21 countries.[86]

39. Besides the above-mentioned issues, the right to respect of private life of civil society actors seems to be affected due to the granting of additional powers to law enforcement agencies to collect and use private data from cell phones, through tracing apps and other technologies. This has been an issue at least in some EU member States (for example in Germany, Ireland, and Slovenia). The Covid-19 tracing apps and other tools were not subject to data protection impact assessment reviews and/or to consultation with the data protection authorities, in breach of the EU law.[87]

4. Good practices and perception of civil society

40. Various good practices were reported to have emerged in the course of the pandemic, some relating to the approach of public bodies, and some being developed by NGOs themselves. The latter proved to be very flexible and adapted their own environment to the Covid-19 challenges, in particular through accelerating the digitalisation process, streamlining work, adjusting working methods, developing new forms of operating and co-operating with other stakeholders, building coalitions, and exchanging experiences as well as increasing their visibility.[88]

41. Although the INGO Conference's study indicated that in 10 countries, no good practices had emerged (Bulgaria, Cyprus, Denmark,[89] Monaco, Montenegro, Portugal, Romania, Slovenia, Sweden[90] and Switzerland), examples of such practices have been reported in the majority of Council of Europe member States and included:[91]

– use of online meetings and communication (in 21 countries);[92]
– online registration (in Georgia and Iceland);
– recognition of the value of online services and the need for extension to matters not currently covered (in Armenia, Spain and Ukraine);
– creation of an electronic register for notification and consultation (in Albania, Luxembourg and the Russian Federation),
– online consultation (in 7 countries);[93]
– acceptance of online assemblies even where these were not provided for in the NGO's statutes (in Azerbaijan and Croatia);
– establishing a special NGO group to share information and liaise with the government (in Ireland);

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83. "Europe's civil society: still under pressure - 2022 update", op. cit., p. 34.
84. Ibid., p. 36.
85. "The legal space for non-governmental organisations in Europe", op. cit., p. 36. The 18 countries concerned are: Austria, Azerbaijan, Belgium, Denmark, Estonia, Finland, Ireland, Latvia, Liechtenstein, Luxembourg, the Netherlands, North Macedonia, Norway, Romania, Sweden, Switzerland, the United Kingdom, as well as Kosovo.
86. In Albania, Andorra, Armenia, Belarus, Bulgaria, Croatia, Cyprus, France, Georgia, Greece, Hungary, Italy, the Republic of Moldova, Monaco, Montenegro, Poland, the Russian Federation, Slovenia, Spain, Türkiye and Ukraine.
87. "The implications of the Covid-19 pandemic on fundamental rights and civil space", op. cit., p. 22.
88. Ibid., p. 3, and "Europe's civil society: still under pressure - 2022 update", op. cit., p. 22.
89. The registration system was already online and consultations were also normally done by phone.
90. Where online arrangements already existed.
91. "The legal space for non-governmental organisations in Europe", op. cit., pp. 34-35.
92. Albania, Azerbaijan, Belarus, Belgium, Estonia, Germany, Greece, Hungary, Iceland, Italy, Liechtenstein, Lithuania, Malta, the Republic of Moldova, the Netherlands, North Macedonia, Norway, Poland, San Marino, Ukraine, as well as in Kosovo.
93. Georgia, the Netherlands, North Macedonia, the Republic of Moldova, Norway, Serbia, and the Slovak Republic.

– continuing digitalisation to allow access to information and use of services (in Azerbaijan and the Russian Federation);

– becoming more aware of digitalisation (in Germany and in France);

– working from home (Germany and the Republic of Moldova);

– provision of advice on how to continue operations consistent with the sanitary requirements (in France);

– NGOs being entrusted with a role to tackle problems arising from the crisis (Croatia) or just doing this on their own initiative (the Czech Republic);

– allowing certain activities to be rescheduled (in Luxembourg);

– not charging for rent in publicly-owned properties (in Croatia).

42. As regards the perceived change of situation for their own organisations, most of the respondents of the 2021 FRA study indicated that it remained the same in 2020 and in 2021 (50% in 2021 and 49% in 2020), but 28% of them indicated that it had deteriorated in 2021 (compared with 37% in 2020).[94] Similarly, according to the INGO Council's study, the pandemic had no impact on the perception of NGOs in the majority of surveyed countries. For 5 countries (Bulgaria, Cyprus, the Republic of Moldova, Serbia and Slovenia), it was reported that the atmosphere seemed hostile to NGOs but that this was not seen as being specifically related to the pandemic. However, the restrictions imposed in relation with the pandemic were said to have limited some of the activities of NGOs and thus to have had a negative impact on how they are perceived in Armenia, Greece and Turkey. A significant improvement in the public perception of NGOs, which had already been underway before the pandemic, has been observed in Poland.[95]

43. The following positive effects of the pandemic for NGOs were reported as regards their visibility:

– the recognition of the importance of their role in the provision of support services (in Albania, Azerbaijan, Lithuania, North Macedonia, and Spain);

– the improved confidence in them as a result of the frontline support which they provided (in Italy and North Macedonia);

– improved co-operation both among NGOs themselves and between them and public administration (in Latvia);

– the impact of online meetings with officials (in Azerbaijan);

– an increase in volunteering (in Albania, Latvia, and Sweden);

– the creation of a special support funds for affected activities (in Latvia and Ukraine);

– the receipt of protective equipment and training (in the Republic of Moldova, Switzerland, and Ukraine).[96]

5. Conclusions

44. The Covid-19 pandemic was a challenging time for NGOs. The majority of them reported a deterioration of their situation during this period, as many Council of Europe member States had restricted on purpose the exercise of certain public rights. This concerned in particular the right to freedom of assembly, the exercise of which was often limited in a differentiated manner: gatherings of opposition movements or other groups critical of the authorities were usually banned or severely sanctioned, while at the same time other groups were authorised to gather without any limitation. Moreover, when NGOs' members were not able to meet, their organisations were not able to take any action. NGOs operating in larger cities were less affected by the Covid-19 restrictions than those operating in remote areas. NGOs which did not dispose of digital technologies were most impacted. As a result, many small NGOs as well as those working in remote areas and with vulnerable groups (older people or people with disabilities) had to cease their activities.

45. The exercise of the right to freedom of assembly had been largely restricted, while the rights to freedom of association, of expression, of movement and to respect for private life have also been negatively impacted. Some countries had offered financial support to NGOs during the pandemic, but it was often insufficient,

94. "Europe's civil society: still under pressure - 2022 update", op. cit., p. 20.
95. "The legal space for non-governmental organisations in Europe", op. cit., pp. 36-37.
96. Ibid., p. 37.

although it did help some of them to survive. Moreover, NGOs working with the authorities were confronted with difficulties in accessing public information and were not consulted on changes to laws, policies and practices that were made in connection with the pandemic.

46. It is also very likely that constitutional norms as well as international human rights standards were not observed in some countries, mainly due to the lack of sunset clauses. As several applications concerning Covid-19 restrictions are now pending before the European Court of Human Rights, it is likely that the Court will soon give some guidance on the compliance of those restrictions with the European Convention on Human Rights.

47. Nonetheless, despite these negative developments, many NGOs had been flexible and quick in adapting to the new circumstances. They had reached new audiences and elaborated more effective working methods.

48. Some countries took steps to mitigate the consequences of the pandemic through the provision of financial and other support as well as by showing some flexibility as regards institutional and reporting requirements. Countries which already had online systems coped more easily with the practical difficulties stemming from the pandemic and in particular social distancing. Others adopted such systems in reaction to the pandemic and also supported NGOs in moving some of their operations online. Many countries have thus reported good practices as regards the measures taken in response to the pandemic. Nonetheless, this was not the case of all countries. This made the life of some NGOs particularly difficult precisely at a time when they were most needed to provide assistance to others.

49. To conclude, irrespective of the Covid-19 pandemic or any other future pandemic and the measures taken to counter it, NGOs should be able to continue to promote public awareness, participate in public life and foster the transparency and accountability of public authorities. The protection of public health should not be used as a pretext to limit the fundamental rights and freedoms, the enjoyment of which is necessary for the existence of a vibrant civil society. This should be borne in mind by legislators when drafting future legislation on pandemic preparedness and response.

50. States should repeal restrictive measures restricting the right to freedom of assembly, association and expression as well as other human rights and fundamental freedoms. They should consider providing long-term financing for NGOs and providing them funding in advance. They could also encourage them to create reserves for the future and promote the idea of increasing their funding from private, foreign, and international sources. Within the European Union, civil society actors should be involved in preparing and implementing national recovery and resilience plans.

51. Irrespective of the pandemic, NGOs should be involved in drafting laws, in particular those concerning them directly. The absence of online tools should not be a factor in the failure to consult and keep NGOs informed about developments relevant to their work. The more generalised adoption of such tools should not, however, be limited to times of pandemic. Such tools can be beneficial for both NGOs and public authorities, leading to speedier and less costly procedures and means of communication.

52. The Assembly should address some recommendations to the Council of Europe member States and to the Committee of Ministers, including to monitor the measures taken in all Council of Europe member States, both good and bad practices, and in particular attacks against civil society actors. Arrangements for working with NGOs could still be improved and further measures should be taken to implement Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe.

53. To conclude, the Covid-19 pandemic did not really create new problems for civil society actors but rather highlighted or worsened those that already existed before. In some countries civil society is still confronted with a hostile environment, but this is not specifically related to the pandemic.

54. Although the Covid-19 pandemic has led to the deterioration of the situation of many NGOs, it is encouraging that in many countries, steps were taken to mitigate its consequences by providing financial and other support, and by showing some flexibility with regard to the fulfilment of institutional and reporting requirements.