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Restrictions on NGO activities in Council of Europe member States

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Ms Alexandra LOUIS, France, Alliance of Liberals and Democrats for Europe

Summary

More than two years after Resolution 2226 (2018) of the Parliamentary Assembly, the Committee on Legal Affairs and Human Rights is concerned to note that the civil society space continues to shrink in several Council of Europe member States. Restrictive laws criticised by the Council of Europe – in particular, those concerning access to funding from abroad – are still being applied. Certain NGOs are targeted by smear campaigns and the restrictive measures related to the Covid-19 pandemic have created new barriers to NGO work.

Nevertheless, the committee welcomes the good practices adopted by some member States to offer an environment that is conducive to civil society activities and the amendments to legislation adopted in line with the recommendations of the Council of Europe. It also welcomes the latest developments within the Organisation to ensure greater NGO participation in its work.

The committee calls on the member States to comply with international legal standards with regard to the rights to freedom of assembly, association and expression and the relevant Council of Europe recommendations, including those in the Venice Commission report on the funding of associations. The States should repeal non-compliant legislation and refrain from enacting any new legislation of the kind and from harassing NGOs.

1. Reference to committee: Bureau decision. Reference 4394 of 29 June 2018.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls its 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, 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 to ensure respect for the rights to freedom of assembly, association and expression embodied 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 of preparing guidelines on legislation relating to NGOs, notably in Recommendation CM/Rec(2007)14 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 Organisation 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 on 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 suffer threats and reprisals.

5. The Assembly is concerned that certain member States' legislation imposing excessive reporting and public disclosure obligations on NGOs receiving funding from abroad, in order to stigmatise these organisations, has still not been repealed, despite the criticisms levelled at them 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 inherent part of the right to freedom of association, as emphasised in the Venice Commission's report 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 clear 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) "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 criminalise certain of their members' activities.

7. Referring to its Resolution 2338 (2020) "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 their deleterious effect 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.

2. Draft resolution adopted by the committee on 8 December 2020.

8. 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.

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

9.1. comply with international legal standards 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 NGOs' right to freedom of association;

9.4. 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;

9.5. 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;

9.6. 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;

9.7. 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 "Report on the funding of associations";

9.8. 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);

9.9. 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;

9.10. 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 and smear campaigns aimed at NGOs, and acts of intimidation against civil society activists.

B. Draft recommendation[3]

1. Referring to its Resolution … (2021) "Restrictions on NGO activities in Council of Europe member States", the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. fully 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 on the member States 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. take stock of the progress achieved in implementing these two recommendations;

1.4. organise regular exchanges of views with NGOs working in the field of human rights protection and facilitate these organisations' access to information on the Council of Europe's activities and to events that it organises;

1.5. continue to strengthen the synergy between all the stakeholders concerned within the Council of Europe, in particular the Secretary General, the Commissioner for Human Rights, the Conference of International Non-Governmental Organisations, the Assembly and, where appropriate, relevant expert bodies, and establish a working group composed of representatives of these entities;

1.6. 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, the Convention) when supervising the execution of judgments of the European Court of Human Rights;

1.7. establish an alert mechanism for receiving warnings of possible new restrictions on the right of association and other NGO rights and freedoms embodied in the Convention in member States, and for assessing this information and responding accordingly;

1.8. continue to promote European and international standards to protect the civil society space and exchange information on good practices in this area, 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 adopted by the committee on 8 December 2020.

C. Explanatory report by Ms Alexandra Louis, rapporteur

1. Introduction

1.1. Procedure

1. In its Resolution 2226 (2018) on "New restrictions on NGO activities in Council of Europe member States", adopted on 27 June 2018, the Parliamentary Assembly, "mindful of the shrinking space for civil society in many member States of the Council of Europe", resolved "to remain seized of the matter". Following the Bureau's decision of 29 June 2018, this issue was referred to the Committee on Legal Affairs and Human Rights (the committee) for report. At its meeting on 10 September 2018, the committee appointed as rapporteur Ms Olena Sotnyk (Ukraine, ALDE). Following her departure from the Assembly, she was succeeded by Lord Donald Anderson (United Kingdom, SOC) at the meeting of 15 November 2019. After he left the Assembly in February 2020, the committee appointed me as its rapporteur at its meeting of 29 June 2020.

2. At its meeting on 13 December 2018 the committee considered Ms Sotnyk's introductory memorandum and authorised her to hold two hearings with experts. An initial hearing took place at the committee's meeting on 4 March 2019, attended by:

– Ms Krista Oinonen, Chair of the Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST, Council of Europe), Director of the Human Rights Courts and Conventions Unit and Agent of the Finnish Government before the European Court of Human Rights, Legal Service, Ministry for Foreign Affairs of Finland;

– Ms Anna Rurka, President of the Conference of Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe;

– Ms Eszter Hartay, Legal Adviser with the European Centre for Not-for-Profit Law (ECNL).

3. The committee also agreed to the rapporteur's request to make a fact-finding visit to Hungary. However, the visit did not take place because of Ms Sotnyk's and then her successor's departures from the Assembly and subsequently on account of the restrictions imposed in response to the Covid-19 pandemic. At its meeting of 9 November 2020, the committee held a second hearing on the subject, involving:

– Mr Jeremy McBride, lawyer, Chair of the Expert Council on NGO Law of the Conference of INGOs;

– Ms Waltraud Heller, Programme Officer – Co-operation with Civil Society, Institutional Co-operation and Networks Unit of the European Union Fundamental Rights Agency, Austria;

– Mr Martin Kuijer, member of the Venice Commission for the Netherlands.

1.2. Issues at stake

4. 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. Member States of the Council of Europe are bound to ensure respect for freedom of assembly, association and expression, as enshrined in Articles 10 and 11 of the European Convention on Human Rights (ETS No. 5, the Convention), which are inextricably linked to one another and may only be restricted in accordance with criteria set out in the Convention. The Council of Europe has an established record of producing guidelines on NGO legislation, in particular Recommendation CM/Rec(2007)14 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 Organisation for Security and Co-operation in Europe (OSCE/ODIHR), 17 December 2014.

5. In April 2017, the then Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks, noted "a clear trend of backsliding in several European countries in the area of freedom of association, particularly in respect of human rights organisations and defenders".[4] Similar conclusions appear in the report of the then Secretary General of the Council of Europe, Mr Thorbjørn Jagland, on "State of democracy, human rights and the rule of law. Role of institutions. Threats to institutions", published in May 2018. According to the Secretary General, "in an increasing number of States, the space for civil society is shrinking, and peaceful public events

4. Commissioner for Human Rights, human rights comment of 4 April 2017, "The Shrinking Space for Human Rights Organisations".

are viewed and treated as dangerous".[5] These concerns have been reiterated by the Committee of Ministers in its declaration adopted in Helsinki on 17 May 2019 at its 129th session, and by the Organisation's current Secretary General, Marija Pejčinović Burić, in her annual report, "Multilateralism 2020", published in June 2020.[6] The issue of shrinking space for civil society and its impact on young people and their organisations was also discussed at a consultative meeting of the Council of Europe's Advisory Council on Youth (CCJ) in November 2018.[7]

6. The issue of inappropriate restrictions on NGO activities in Council of Europe member States has already been the subject of two reports by our colleague, Mr Yves Cruchten (Luxembourg, SOC), in December 2015 and May 2018.[8] Based on these reports, the Assembly adopted Resolution 2096 (2016) and Recommendation 2086 (2016), "How can inappropriate restrictions on NGO activities in Europe be prevented?" on 28 January 2016, followed by Resolution 2226 (2018) and Recommendation 2134 (2018), "New restrictions on NGO activities in Council of Europe member States" on 27 June 2018.

7. In Resolution 2226 (2018), the Assembly noted with concern that in several member States the space for civil society had been shrinking over the previous few years, mainly due to restrictive laws concerning registration requirements or funding, administrative harassment, smear campaigns against certain groups and threats or intimidation against NGO leaders and activists. It called on Azerbaijan, Hungary, the Russian Federation and Turkey to repeal restrictive laws and comply with the recommendations made in the relevant opinions of the Venice Commission. It also invited Romania and Ukraine not to adopt proposed draft laws imposing additional financial reporting obligations on NGOs. Recommendation 2134 (2018) contains a number of proposals for concrete measures that the Council of Europe could take to reinforce its dialogue with NGOs and promote co-operation with them. It calls on the Committee of Ministers to establish a mechanism for receiving and reacting to alerts concerning new restrictions on NGO activities and to adopt guidelines on NGOs' foreign funding, on the basis of the study currently being finalised by the Venice Commission. In its January 2019 reply to the Recommendation, the Committee of Ministers stated that the European Committee on Legal Co-operation (CDCJ) would study the desirability and feasibility of an "alert mechanism".[9]

8. Meanwhile, the Assembly and this committee have been working since 2006 on a related topic, namely the situation of human rights defenders. The most recent report on this subject, by Mr Egidijus Vareikis (Lithuania, EPP/CD), was debated by the Assembly on 26 June 2018.[10] It drew attention to individual cases of persecution in Azerbaijan, the Russian Federation, Greece, the Republic of Moldova, Serbia and Turkey. The committee subsequently decided to create the position of general rapporteur on the situation of human rights defenders, which it has been my privilege to occupy since 30 January 2020, following the departure from the Assembly of the first general rapporteur, Mr Raphaël Comte (Switzerland, ALDE).

2. Recent Council of Europe activities concerning civil society

9. The Council of Europe's Steering Committee for Human Rights (CDDH) has been tasked with the preparation of a draft non-binding Committee of Ministers' instrument and a guide to good national practices on promoting and protecting the civil society space. In 2017, the Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST) drew up a report entitled "Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights".[11] It identified a number of problems, including new legislation limiting fundamental freedoms, restrictions imposed by governments on freedom of association, assembly and expression, budgetary cuts affecting NGOs, and verbal attacks on or physical aggression towards human rights defenders. According to the CDDH-INST, the existence of a specific civil society space entails more than just the implementation of legislation: States often fail to recognise NGOs' role in a democratic society. Following Committee of Ministers' approval of this document, a questionnaire was sent to the member States with a view to preparing a compilation of good practices. On the basis of the replies received, the CDDH-INST prepared two documents on the protection and promotion of the civil-society space: an overview document and a compilation of measures and practices in place in the member States.[12]

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5. P. 5 of the report. See also at pp. 55-61.
6. See p. 16 of the report.
7. 7 and 8 November 2018, see the Conference of INGOs Newsroom.
8. Doc. 13940 of 8 January 2016 and Doc. 14570 of 7 June 2018.
9. Reply to Recommendation 2134 (2018), Doc. 14798 of 17 January 2019, paragraph 6.
10. The Assembly adopted Resolution 2225 (2018) and Recommendation 2133 (2018) following this debate.
11. CDDH-INST(2017)R87.
12. CDDH(2018)R4add, 24 September 2018.

10. The CDDH-INST also prepared a draft recommendation on the need to strengthen the protection and promotion of civil society space in Europe.[13] In response, on 28 November 2018, the Committee of Ministers adopted Recommendation CM/Rec(2018)11 on this subject. It expressed concern about reprisals against human rights defenders and "the shrinking space for civil society resulting, *inter alia*, from restrictive laws, policies and austerity measures taken recently by member States". It also referred to "the need to strengthen the protection and promotion of civil society in Europe" and recommended that member States' governments "ensure that the principles set out in the appendix to this Recommendation are complied with in relevant national legislation and practice, and evaluate the effectiveness of the measures taken". The Committee of Ministers will assess the implementation of the recommendation, five years after its adoption.

11. Strengthening civil society's role and participation in the Council of Europe's activities was also the subject of a decision adopted by the Committee of Ministers on 17 May 2019 in Helsinki, at its 129th session. The Organisation's Secretary General is currently drawing up practical measures to implement this decision.[14] The INGO Conference has urged the Committee of Ministers to carry out an assessment of how Recommendation CM/Rec(2007)14 has been implemented.

12. The Venice Commission has issued a number of opinions on proposed or enacted legislation affecting NGOs' fundamental rights and freedoms[15]. In addition, the issue of NGO funding, including funding from abroad, received detailed consideration from the Venice Commission in its March 2019 report on the funding of associations.[16] In it, the Commission presented detailed recommendations on how far States could go to restrict associations' right to seek financial and material resources. It emphasised that the ability to seek, secure and use resources was essential to the existence and operation of any association and an inherent part of the right to freedom of association.[17] This right might be restricted in accordance with the three conditions laid down in Article 11, paragraph 2, of the Convention,[18] especially in connection with information and transparency requirements, particularly for the purposes of combating terrorism and money laundering or when it is necessary to protect the State and its citizens against interference from foreign States. The Venice Commission drew a distinction between "reporting obligations" (informing the authorities about the sources of NGO financing) and "public disclosure obligations" (presenting this information to the public at large). For example, the need to combat the financing of terrorism or money laundering might justify a reporting obligation but a public disclosure obligation would not be appropriate in this context. On the other hand, the latter obligation might help to ensure the transparency of political lobbying activities. Any interference in associations' right to seek funding or other resources must satisfy the requirements of necessity and proportionality. Thus, information and transparency requirements should not be unnecessarily burdensome, and must be proportionate to the size of the association and the scope of its activities[19]. Restrictions on freedom of association could only be considered as pursuing legitimate purposes if they aimed to avert a real, rather than just a hypothetical, danger and must use the least intrusive means available. The sanctions imposed on associations in the event of a violation of obligations stemming from legislation on foreign funding must also be proportionate. The sanction of dissolution should never be imposed simply because an association has violated its obligations, but only in cases of "serious misconduct" such as terrorist financing and money laundering[20].

13. The Venice Commission also referred to possible problems of discrimination when NGOs in analogous situations were treated differently concerning the regulation of their funding, without objective and reasonable justification, for example, in the case of virulent campaigns against associations receiving foreign funding. It emphasised the importance of effective legal remedies to allow associations to challenge or seek review of decisions affecting the exercise of their rights, including the right to seek, receive and use resources from any available sources, before independent and impartial courts[21].

14. Turning to NGOs working to promote the rights of refugees and other migrants, in May 2020 the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe produced its "Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants" (CONF/EXP(2020)3). These are based on an Expert Council study in December 2019 on "Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States" (CONF/EXP(2019)1). Under the

13. CDDH(2018)16.
14. See "Multilateralism 2020", pp. 16-17.
15. See in particular the most recent (2019) compilation of its opinions: CDL-PI(2019)007.
16. CDL-AD(2019)002, Study No 895/2017, 18 March 2019.
17. Ibid., paragraph 136.
18. Ibid., paragraph 137.
19. Ibid., paragraph 139.
20. Ibid., paragraphs 146-149.
21. Ibid., paragraphs 149 and 150.

guidelines, national laws, policies and practices should not impose certain bans on NGOs, for example to prevent them from helping refugees and other migrants, monitoring their treatment, raising funds, submitting complaints and bringing legal proceedings, and should in particular protect NGOs, their members and their staff against all forms of harassment, intimidation and physical attacks. Moreover, on 7 September 2020, the Committee on Migration, Refugees and Displaced Persons adopted a report entitled "Rights and obligations of NGOs assisting refugees and migrants in Europe"[22] which considers the situation of NGOs that assist migrants and refugees and highlights various attacks perpetrated against these NGOs and their donors.

3. Restrictions on NGO activities

3.1. General comments

15. According to studies carried out by the European Union's Fundamental Rights Agency (FRA), whose geographical scope currently encompasses the European Union's 27 member States as well as North Macedonia and Serbia, several challenges currently affect the work of civil society: disadvantageous changes in legislation or inadequate implementation of laws; hurdles to accessing financial resources and ensuring their sustainability; difficulties in accessing decision-makers and feeding into law- and policy-making; and attacks on and harassment of human rights defenders, including negative discourse aimed at delegitimising and stigmatising NGOs[23]. Legal restrictions on NGO activities may be intentional, often ones enacted quite deliberately in contravention of the rules of international law, or unintentional, as a result of badly drafted legislation. In either case, they discourage the proper functioning of civil society and appear to follow similar patterns in several countries. For example, a number of countries have imposed such restrictions via laws that directly affect the right of freedom of assembly and association or ones dealing with other issues, such as taxes, the status of public interest organisations, data protection, transparency or lobbying. They very frequently form part of a more general pattern of intimidation of human rights defenders, journalists, trade unions and national human rights protection institutions.

16. Given the scale of this problem and the work of my predecessor, I will confine myself to issues relating to the legal framework and its application. Mr Cruchten's last report reviewed the changes in the civil society situation in the Council of Europe's member States between late 2015 and May 2018. It focused specifically on the situation of civil society in the Russian Federation, Azerbaijan, Turkey and Hungary, and to a lesser extent in Romania and Ukraine. However, new restrictions have been placed on NGO activities in certain other member States, or reforms for that purpose are currently being introduced.

3.2. Examples of restrictions

17. In the case of the Russian Federation, concerns have been expressed about the controversial legislation of 4 June 2014 (amending Law 121-FZ of 20 July 2012 on non-commercial organisations), which requires NGOs receiving donations from abroad to register as "foreign agents", and the legislation on "undesirable organisations" of 23 May 2015 (Law 129-FZ amending Law 272, subsequently amended on 27 December 2018), which has led to the closure of certain international donor-funded organisations. When Mr Cruchten's report was adopted, 79 NGOs were registered as "foreign agents" and 14 were classified as "undesirable".[24] The Ministry of Justice site now no longer includes information on NGOs registered as "foreign agents" and there are currently 29 "undesirable organisations" (including two added in recent months: the European Endowment for Democracy, founded by the European Union and its Member States to promote democracy in their east European neighbours, and the Ukrainian World Congress, which supports the rights of the Ukrainian diaspora).[25]

18. The "foreign agents" and "undesirable organisations" legislation continues to be used against NGOs, particularly those concerned with defending human rights, and their members are also liable to criminal prosecution. In 2019, the Minister of Justice brought administrative proceedings against several NGOs accused of breaches of the law on "foreign agents". As a result, several highly regarded organisations, including the Russian human rights centre Memorial, and the international historical and civil rights society, Memorial International, were ordered to pay heavy fines.[26] According to the authorities, these penalties were

22. Doc. 15161, rapporteur, Mr Domagoj Hajduković (Croatia, SOC). See also my opinion on the report, Doc. 15174.
23. FRA, Challenges facing civil society organisations working on human rights in the EU, report, January 2018, pp. 7-13; and Civic space – experiences of organisations in 2019. Second Consultation, 2020.
24. Paragraphs 8 and 9 of the report.
25. 30 November 2020, https://minjust.gov.ru/ru/documents/7756/.
26. Amnesty International, Russian Federation 2019.

imposed because Memorial is financed by the United States, carries out political activities and refuses to register as a "foreign agent". In October 2019, the Minister of Justice asked the Supreme Court to dissolve the Movement for Human Rights, an umbrella organisation for regional human rights organisations led by the veteran activist, Lev Ponomarev. According to the authorities, it was failing to comply with the undertakings embodied in its own statutes[27]. The organisation was wound up on 30 January 2020 but its employees have subsequently established a new human rights movement, with no legal personality. In July 2020, the Council of Europe's Commissioner for Human Rights expressed concerns about the indictment of the human rights defender, Semyen Simonov, whose NGO, the Southern Human Rights Centre, did not pay a fine imposed on it under the "foreign agents" legislation and has had to cease its activities.[28] Criminal proceedings have also been brought against the activist Aleksandra Koroleva, whose organisation, Ecodefence, based in Kaliningrad, has not paid the fines imposed on it for non-compliance with its "foreign agents" obligations[29]. An application to the European Court of Human Rights ('the Court") concerning the application of the "Foreign Agents Act" was communicated to the Russian authorities on 22 March 2017 and is still pending.[30]

19. The legislation on undesirable organisations makes any contact with such organisations an offence. Several Russian NGOs have had to pay heavy fines on the grounds that they had had dealings with "undesirable organisations". For example, in April 2019, Environmental Watch for the North Caucasus, based in Krasnodar Region, was fined for sharing links to blogs that had previously been published on the "undesirable" Open Russia movement's website. In western Siberia, the Young Journalists of Altai association was fined for having a defunct hyperlink to the "undesirable" Open Society Institute on its website.[31]

20. The Russian authorities maintain that the "foreign agents" legislation was introduced to require political activists to disclose their sources of foreign funding and that it lays down a procedure for removing NGOs that no longer undertake political activities or receive foreign funding from the register of foreign agents. Registered organisations are not prevented from carrying out their activities. Foreign or international organisations may be deemed "undesirable" if they intervene in Russian elections, referendums or election campaigns. The disputed amendments to the legislation were adopted in response to attempts by other countries to influence Russia's internal politics and to ensure greater transparency of Russian, foreign and international NGO activities.

21. New legislation was passed on 2 December 2019, namely Federal Law 426-FZ amending the Russian Federation Law on the mass media and the Federal Law on information, information technologies and the protection of information: this allows the authorities to designate as a "foreign agent" any person who disseminates information and materials and receives funding from abroad.[32] Moreover, on 10 November 2020, the government tabled a new draft amendment in the Duma to the legislation on non-commercial organisations concerning the register of foreign agents. This establishes new obligations regarding the documents to be submitted to the Minister of Justice and broadens the category of NGOs that can be considered to be 'foreign agents".

22. In October 2017 the Assembly offered a critical appraisal of the situation in Azerbaijan in its resolutions 2184 (2017) and 2185 (2017), on account of the reprisals directed at numerous activists and restrictive legislation on NGOs. Although certain rules have been simplified, NGOs and their donors are still obliged to secure authorisation from the authorities and the relevant procedures are cumbersome. It appears that the situation of independent NGOs has not improved since Mr Cruchten's report in June 2018.[33] A parliamentary initiative to amend the current legislation was halted by events linked to the Covid-19 pandemic.

23. In a group of cases concerning civil society activists and human rights defenders who had been the subject of criminal prosecutions, the Court found that these prosecutions amounted to a misuse of criminal law for the purposes of punishing and silencing them (violations of Article 18 combined with Article 5 of the Convention, and of Article 8 in one case).[34] The Court noted that there was "a troubling pattern of arbitrary

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27. See the statement of the Commissioner for Human Rights of 16 October 2019, "The Commissioner urges the authorities of the Russian Federation to discontinue the liquidation proceedings against the All-Russia Movement for Human Rights".
28. Statement of the Commissioner for Human Rights of 20 July 2020, "The Commissioner calls on Russian authorities to drop charges against human rights defender Semyen Simonov".
29. www.hrw.org/news/2019/06/25/russia-environmentalist-faces-criminal-charges.
30. *Edodefence and others v. Russia* (application No. 9988/13) and 48 other applications.
31. See footnote No. 29.
32. See the statement of the Commissioner for Human Rights of 21 November 2019, "Commissioner calls on the State Duma of the Russian Federation to refrain from adopting the new bill on foreign agents".
33. See the communication of the NGOs, EHRAC and Amnesty International, to the Committee of Ministers in connection with its examination of the *Ilgar Mammadov v. Azerbaijan* group of cases; DH-DD(2020)405 of 7 May 2020.

arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law".[35] These judgments have also been considered in detail in the committee's report on "Reported cases of political prisoners in Azerbaijan" and Assembly Resolution 2322 (2020) of 30 January 2020.[36] The Committee of Ministers is currently examining the judgments' execution.[37] However, questions relating to the legislation on the registration and operations of NGOs are being considered in connection with another group of cases concerning violations of the right of freedom of association (*Ramazanova and others v. Azerbaijan* group of cases[38]).

24. In Turkey, since the failed coup attempt of July 2016, over 1 400 associations and over a hundred foundations have been permanently dissolved under emergency decrees, and their assets have been confiscated.[39] The associations shut down include ones concerned with protecting human rights and the rights of women and children, as well as cultural associations and anti-poverty organisations. According to the authorities, these measures were necessary to combat terrorist organisations such as the so-called FETÖ/FDY[40] or the PKK (Kurdistan Workers' Party). It should be noted that the dissolved NGOs were not able to challenge these decisions in the courts. The only possible remedy has come with the establishment, in 2017, of the committee of inquiry into measures taken under the state of emergency. However, its independence and the transparency of its proceedings have been challenged by several leading figures of Turkish civil society and have been called into question by the Assembly.[41] The state of emergency was lifted on 18 July 2018, but many of the measures introduced during this period remain in force[42] and have a dissuasive effect on civil society activities. Several dozen human rights defenders are the subject of investigations or criminal proceedings, and are detained by the police or imprisoned because of their work on behalf of human rights. As general rapporteur on the situation of human rights defenders, I have strongly criticised the convictions of the leaders of Amnesty International Turkey and other activists in the "Büyükada trial" and the criminal proceedings brought against Osman Kavala,[43] a leading member of civil society, whose pre-trial detention has been found to be in breach of Article 18 in conjunction with Article 5.1 of the Convention.[44]

25. When she visited Turkey in July 2019, the Commissioner for Human Rights expressed concerns on this subject and noted that the pressures on civil society took various forms, including the tightening of an already repressive legal and regulatory framework, the closure of civil society organisations without any court decision or effective remedy, toxic political discourse and smear campaigns in pro-government media, and numerous criminal proceedings against human rights defenders.[45] She was also troubled by the amended Article 27 of the Law on Associations which left it entirely to the discretion of the President to declare which organisations

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34. *Rasul Jafarov v. Azerbaijan*, application No. 69981/14, judgment of 17 March 2016; *Ilgar Mammadov (No. 2) v. Azerbaijan,* application No. 919/15, judgment of 16 November 2017; *Mammadli v. Azerbaijan,* application No. 47145/14, judgment of 19 April 2018; *Rashad Hasanov and others v. Azerbaijan,* application No. 48653/13+, judgment of 7 June 2018; *Aliyev v. Azerbaijan,* application No. 68762/14+, judgment of 20 September 2018 and *Natig Jafarov,* application No. 64581/16, judgment of 7 November 2019.
35. *Aliyev v. Azerbaijan,* see above, paragraph 223.
36. See the report of Ms Thorhildur Sunna Ævarsdottir (Iceland, SOC), Doc. 15020 of 18 December 2019.
37. For the most recent examination of this group of cases, see the notes on the agenda of the Committee's 1377bis meeting, CM/Notes/1377bis/H46-3.
38. Application No. 44363/02, judgment of 1 February 2007. See the description of this group of cases in HUDOC-EXEC.
39. The most recent report of the Observatory for the Protection of Human Rights Defenders and the Human Rights Association (a Turkish NGO) confirms these figures and announces the publication of a report on freedom of association in Turkey this year: *Turkey. A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society,* July 2020, p. 9. According to some sources, it is probable that the assets of some of those NGOs have been transferred to pro-governmental NGOs.
40. Acronym signifying "Gülen terrorist organisation/parallel state body", the term used in official Turkish documents to signify the Fethullah Gülen movement.
41. See Resolution 2209 (2018) "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights".
42. Amnesty International, "The State of Emergency has ended but urgent measures are now needed to reverse the roll back of human rights", 18 July 2018.
43. "General rapporteur expresses concern at the arrest of Osman Kavala", 28 February 2020, and "COVID-19: Rapporteurs call for the immediate release of Osman Kavala after Strasbourg Court decision", 13 May 2020, statement made jointly with the Monitoring Committee's co-rapporteurs, and "Rapporteurs deeply concerned by the conviction of four human rights defenders in Turkey", 9 July 2020, statement made jointly with the Monitoring Committee's co-rapporteurs.
44. *Kavala v. Turkey*, Application No. 28749/18, judgment of 10 December 2019.
45. See her statement of 8 July 2019, "Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders", and her Report Following Her Visit to Turkey from 1 to 5 July 2019, CommDH(2020)1, 19 February 2020, paragraphs 126-166.

were to be considered of public benefit. Moreover, in April 2020, the Expert Council on NGO Law of the INGO Conference criticised the amendments to Articles 23 and 32 of the Law on Associations (introduced in Law No. 7226, published in the official gazette of 26 March 2020), which required associations to provide the relevant local authorities with personal information about their members and notify them of any changes in their membership, with fines for failure to comply. The Council found that they were incompatible with Articles 8 and 11 of the Convention.[46] On 16 October 2020, the Assembly's Committee on the honouring of obligations and commitments by member States of the Council of Europe (Monitoring Committee) strongly condemned the recent crackdown on political opposition and civil dissent in Turkey and urged the Turkish authorities "to take meaningful steps" to improve their standards in the field of democracy, rule of law and human rights. It particularly condemned the continued undue pressure exerted on human rights defenders and other civil society activists.[47] Since 2018, the number of Turkish NGOs has fallen from 11 to 8 million.

26. In the case of Hungary, Mr Cruchten's two reports of 2015 and 2018 identified a number of problems, such as "a general and mutual mistrust between NGOs and the authorities" and smear campaigns in the media, particularly aimed at the Open Society Foundations, founded by the billionaire financier George Soros.[48] On 13 June 2017, the Hungarian Parliament approved legislation requiring NGOs receiving foreign donations of EUR 24,000 or more to register as "organisations receiving support from abroad" ("Law on the transparency of organisations receiving support from abroad"), which laid down penalties for non-compliance with this legislation, despite criticisms levelled by a number of Council of Europe bodies.[49] Following an action brought by the European Commission, the Court of Justice of the European Union (CJEU) has ruled on this law in a Grand Chamber judgment of 18 June 2020 (case C-78/18, Commission v. Hungary). In the operative part of the judgment, the CJEU found that by enacting the legislation in question, "Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations", in breach of its obligations under Article 63 of the Treaty on the Functioning of the European Union (which prohibits restrictions on the movement of capital between member States and between member States and third countries), and under Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union (which enshrine the rights to respect for private and family life, protection of personal data and freedom of association, respectively).

27. On 20 June 2018, the Hungarian Parliament enacted the "Stop Soros" law, two days before the Venice Commission, jointly with the OSCE/ODIHR, adopted an opinion on the draft legislation (22 June 2018). The law makes certain NGO activities aimed at assisting irregular migrants criminal offences and was therefore criticised by the Venice Commission and the OSCE/ODIHR as being incompatible with Articles 10 and 11 of the Convention.[50] Following the adoption of Assembly Resolution 2226 (2018) on 20 July 2018, the Hungarian Parliament passed legislation amending certain tax laws and other related statutes, and introducing an immigration tax. The new law imposes a 25% tax on donations or funding to any group that "supports immigration". At the request of my predecessor, Ms Sotnyk, on 8 October 2018, the committee asked the Venice Commission for an opinion on the compatibility of Article 263 of the new law with international human rights standards. The Venice Commission, in conjunction with the OSCE/ODIHR, issued its opinion on 17 December 2018. It concluded that this law constituted an unnecessary and disproportionate restriction of the associations' freedom to determine their objectives and activities and therefore disproportionate interference with their right to freedom of association. The immigration tax also represented unjustified interference with NGOs' right to freedom of expression, since it limited their ability to undertake research, education and advocacy on issues of public debate.[51] On 28 September 2018, the NGO Open Society Institute filed an application with the Court challenging the two items of legislation, namely those of June and July 2018.[52]

28. Certain other Council of Europe member States appear to be planning legislation requiring NGOs to publish information on funding from abroad. In Ukraine, in September 2018, one of the parties in the ruling coalition – the Popular Front – and the then President, Petro Poroshenko, requested the tabling of draft

46. CONF/EXP(2020)2, Opinion on the Compatibility of Amendments to the Turkish Law on Associations with European Standards, April 2020, paragraphs 39-40.
47. Doc. 15171 "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards", co-rapporteurs, Mr Thomas Hammarberg (Sweden, SOC) and Mr John Howell (United Kingdom, EC/DA).
48. For more information, see also the information supplied by the Hungarian Helsinki Committee: www.helsinki.hu/en/timeline-of-governmental-attacks-against-ngos/#.
49. See the opinion of the Venice Commission of 20 June 2017, CDL-AD(2017)015-e, Opinion No. 889/2017.
50. Opinion No. 919/2018, CDL-AD(2018)013 of 25 June 2018.
51. Opinion No. 941/2018, CDL-AD(2018)035 of 17 December 2018, paragraph 78.
52. www.opensocietyfoundations.org/litigation/open-society-institute-budapest-v-hungary.

legislation that would require certain bodies to be registered as "agents acting under the influence of an aggressor State".[53] However, this initiative was not accepted. In Bulgaria, on 3 July 2020, draft legislation to amend the law on non-profit organisations was tabled in Parliament by a group of MPs from the nationalist United Patriots party, one of the partners in the coalition government.[54] This would impose a fresh obligation on non-profit public-interest organisations receiving more than 1 000 Bulgarian lev (around 500 euros) from foreign natural or legal persons. They would be required to declare the sums involved to the Ministry of Justice, which would maintain a special register for that purpose. Failure to comply would entail heavy penalties, including dissolution of the NGO concerned. In Poland, on 7 August 2020, the Minister of Justice announced proposed government legislation on the transparency of financing of non-governmental organisations.[55] The bill would establish, at the Ministry of Justice, a computerised public register of NGOs that received at least 10% of their funding from foreign sources. Any NGO receiving more than 30% of its funding from abroad would have to inform the public, by appropriate visual means, that it was a non-governmental organisation appearing on the register of non-governmental organisations receiving funding from abroad. The Minister of Justice would be empowered to levy fines ranging from PLN 3 000 to 50 000 (approximately EUR 800 to 12 000).

29. Mr Cruchten's report also referred to the situation in Romania and Ukraine, where draft legislation that had been criticised by the Venice Commission and the OSCE/ODIHR[56] was being drawn up to impose additional reporting obligations on NGOs. The proposed Romanian legislation (Bill 140/2017) to amend government order 26/2000 on associations and foundations was intended to transpose Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and the relevant MONEYVAL recommendations. It required NGOs (associations and foundations) to make several types of financial declaration and adopted a very broad definition of the term "beneficial owner" used in the directive, by extending it to associations whereas the directive confined its application to foundations. It was approved by Parliament on 26 November 2018 but was declared partially unconstitutional by the Constitutional Court on 23 January 2019 and has been referred back to parliament.[57] A new version of the legislation has been enacted (law 129/2019). This makes no reference to either associations or foundations among the entities obliged to make financial declarations and narrows the scope of the notion of "beneficial owner".

30. In Ukraine, after considering the contested provisions of the legislation on the prevention of corruption, which required anti-corruption activists to lodge electronic declarations (criticised, *inter alia,* by the Venice Commission and OSCE/ODIHR), on 6 June 2019 the Constitutional Court ruled that they were unconstitutional and declared them null and void. The Ukrainian Parliament then amended the prevention of corruption legislation on 2 October 2019. The obligation to present electronic documents now only applies to NGO members who take part in selection procedures for certain State bodies: the civil service, local and regional authorities and the judiciary.

31. The Expert Council on NGO Law has expressed concerns about the new regulations in Greece on the registration and certification requirements for NGOs (both Greek and foreign) working in the areas of asylum, migration and social inclusion, which it has judged to be incompatible with Articles 8 and 11 of the Convention.[58] To be registered, such NGOs must submit numerous documents, including translations and certified copies of foreign documents. The Migration and Asylum Ministry has wide discretion in this regard. NGOs receiving public funding or working in State establishments must be "certified", which again requires the submission of a whole range of additional documents, and the members and employees of NGOs working in such State establishments must also be registered.

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53. Observatory for the Protection of Human Rights Defenders, "Ukraine: Adoption of a 'Foreign Agents' law would threaten human rights work", 19 October 2018.
54. Observatory for the Protection of Human Rights Defenders, "Bulgarian draft NGO law violates EU law and stigmatizes groups receiving foreign funding", 21 July 2020, and Statement of the President of the INGO Conference of 9 July 2020, "The proposed amendments to the Non-Profit Legal Entities Act in Bulgaria give rise for concern".
55. Article in *Rzeczpospolita* of 7 August 2020, "Projekt ustawy o transparentności finansowania organizacji pozarządowych".
56. Concerning Romania, Opinion No. 914/2017, CDL-AD(2018)004 of 16 March 2018, and concerning Ukraine, Opinion No. 912/2018, CDL-AD(2018)006 of 16 March 2018.
57. Civic Space Watch, "Romania: The government is fighting terrorism with red tape, forcing NGOs to send thousands of TINs to ministries", 23 January 2019.
58. Article 66 of Law 4636/19 of 1 November 2019, Article 191 of Law 4662/2020 of 7 February 2020, ministerial decision 3063/2020 of 14 April 2020 and Article 58 of Law 4686/2020 of 8 May 2020. See "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration", CONF/EXP(2020)4, 2 July 2020, paragraphs 105 and 106.

32. Moreover, the Committee of Ministers[59] and the President of the Conference of INGOs[60] have noted with concern that the registration applications of three associations (including Tourkiki Enosi Xanthis) have still not been re-examined by domestic courts on their merits in the light of the Court's case law. As a result, two of the associations concerned are still unregistered and Tourkiki Enosi Xanthis remains dissolved twelve years after the Court's judgments.

3.3. Examples of good practices

33. Despite these negative developments, most of the member States offer an environment that is conducive to civil society activities. Various good practices in European Union member States have been reported in the FRA 2018 report on the public financing of NGOs and their involvement in public debates and legislative proceedings, particularly in Croatia, Estonia and Slovenia[61]. The recent European Commission 2020 "Report on the rule of law situation in the European Union" stresses the important part played by civil society in the rule of law debate as part of the checks and balances process[62]. It also notes that the Croatian government is about to approve a national plan to improve the system of legal, financial and institutional support for civil society organisations' activities and that in Slovenia the national strategy for the development of the non-governmental and voluntary sector aims to improve support for non-governmental organisations between now and 2023.

34. The Conference of INGOs has also recorded positive developments within the Council of Europe. In the Republic of Moldova, in May 2020, the parliament resumed consideration of Bill No. 109 on non-commercial organisations, which had had its first reading in May 2018. The draft legislation would be a welcome improvement on the current regulation of non-profit legal entities, particularly as it would extend the right to establish associations to all physical and legal persons[63]. In the United Kingdom, in October 2018, for the first time in 15 years the government published its Civil Society Strategy, following a public consultation in May 2018[64].

3.4. Civil society during the Covid-19 pandemic

35. The Covid-19 pandemic has had a highly adverse impact on NGO and civil society activities. The restrictive measures introduced by governments during this period have considerably restricted the fundamental rights and freedoms of NGOs and their members, particularly their rights to respect for their private lives, freedom of expression (especially the freedom to receive and communicate information and ideas), freedom of assembly and association and freedom of movement[65]. Governments frequently fail to consult NGOs on these measures or on their strategies for protecting public health[66].

36. Various criticisms have been levelled at certain declarations of states of emergency and derogations from the requirements of the Convention by NGO representatives who consider that the scope, duration and effect of these measures place further limits on their rights and freedoms.[67] On 8 April 2020, the Council of Europe's Secretary General published a "toolkit" for all European governments on respect for democracy,

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59. In connection with the examination of three Court judgments of the *Bekir-Ousta and Others v. Greece* group of cases, Application No. 35151/05, judgment of 11 July 2007, see its most recent decision adopted at the 1377*bis* meeting (1-3 September 2020), CM/Del/Dec(2020)1377bis/H46-12. This subject has also been examined by the committee's rapporteurs on implementation of the judgments of the European Court of Human Rights: see the most recent report on this subject adopted by the committee at its meeting of 5 June 2020, rapporteur Mr Constantinos Efstathiou (Cyprus, SOC), Doc. 15123 of 15 July 2020, paragraph 80.

60. Statement by Anna Rurka, President of the Conference of INGOs, regarding the Case of Xanthi Turkish Union (Tourkiki Enosi Xanthis) on freedom of association in Greece of 15 October 2020.

61. See pp. 29-30 and 40-45 of the report.

62. See p. 27 of the report.

63. The decision was welcomed by Anna Rurka, and the President of the Expert Council on NGO Law, Jeremy McBride: "Call to the Parliament of Moldova to Pass Draft Law No. 109 on Non-Commercial Organisations", 7 May 2020.

64. Report on the INGO Conference's fact finding visit to the United Kingdom 20-21 May 2018 and 16 October 2018, "Civil participation in the decision-making process", October 2018.

65. United Nations, Office of the High Commissioner for Human Rights, "Civic Space and Covid-19: Guidance". For more information on measures introduced by country, see Covid-19 Civic Freedom Tracker, International Center for Not-for-Profit Law (ICNL) and "Covid-19 and Civic Freedoms", European Centre for Not-for-Profit Law (ECNL).

66. "States' responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr Clément Voule, UN Special Rapporteur for Freedom of Assembly and Association, 14 April 2020.

67. See "Multilateralism 2020", *op. cit.*, p. 16, and the Amnesty International report, "Policing the Pandemic. Human rights violations in the enforcement of Covid-19 measures in Europe", 2020.

human rights and the rule of law during the COVID-19 crisis[68], stressing that the rights and freedoms enshrined in Articles 10 and 11 of the Convention (freedoms of expression, association and peaceful assembly) can only be restricted if the relevant limits are established by law and are proportionate to the legitimate aim pursued, including the protection of health. While heightened restrictions of these rights may be justified in time of crisis, harsh criminal sanctions must be subject to strict scrutiny. The Conference of INGOs is currently drawing up a questionnaire on the pandemic's impact on NGO activities. The Assembly has already considered "The impact of the Covid-19 pandemic on human rights and the rule of law" in its Resolution 2338 (2020)[69].

4. Conclusion

37. I fully agree with the findings of my predecessors and of other Council of Europe bodies that the situation of civil society in some member States requires further attention from the Assembly and the Council of Europe as a whole, and that there is a worrying trend towards the adoption of new laws restricting freedom of association and instigating smear campaigns against NGOs and their leaders. In this report, I have focused particularly on legislative measures taken in certain member States to limit the scope for civil society action – above all ones designed to restrict access to funding, especially funding from foreign sources, or impose excessive registration or reporting requirements – and on their effects.

38. Over the last two years, new constraints have been placed on NGOs in the countries referred to in Mr Cruchten's report, because of the introduction of new restrictive legislation and/or the continued application of restrictive laws already in force. What makes this particularly worrying is the fact that, far from repealing this disputed legislation, governments – particularly in Russia and Turkey – have amended it to shrink still further the civil society space. As the FRA has clearly demonstrated, certain patterns emerge from the restrictions imposed on NGO activities in different countries. One particular concern is that the Russian legislation on "foreign agents" appears to be a model for certain European Union member States that have already passed legislation imposing specific obligations on NGOs receiving funding from abroad, as in the case of Hungary, or are considering doing so, as in the case of Bulgaria and Poland. I wish to emphasise, in this context, that NGOs' right to freedom of association includes the right to seek, secure and use resources, including resources from abroad, as the Venice Commission's March 2019 report on the funding of associations makes quite clear.

39. Another worrying trend is the introduction, as in Greece, of regulations to impede the work of NGOs helping refugees and other migrants and criminalise their members' activities. This problem has already been raised by the Committee on Migration, Refugees and Displaced Persons.

40. The COVID-19 pandemic has added new obstacles to NGO activities, by limiting their members' and activists' ability to meet and move around and their access to information and public debate. Moreover, the use of new technologies to enforce surveillance measures exposes activists to possible violations of their right to privacy. The Assembly has already turned its attention to the pandemic's impact on human rights and the rule of law but I believe that a more detailed examination of the impact of these measures on civil society would be of value in the coming months.

41. Some of the measures reducing the scope for civil society action have been taken in deliberate violation of international standards on freedom of association and other human rights and fundamental freedoms. I wish to stress, therefore, that despite these malpractices the relevant international standards remain unaltered, as exemplified by recent Venice Commission conclusions and certain Court judgments, and must continue to be respected. Restrictions of these freedoms must be proportionate and necessary in a democratic society and if NGOs are penalised for any acts or omissions on their part they must have access to appropriate remedies in the courts.

42. Consideration of the cases described earlier and the activities of other Council of Europe bodies and of the FRA show that assaults on and harassment of civil society activists, directly or indirectly orchestrated by government agencies or by private individuals, are now commonplace. Activists working on human rights issues or other politically sensitive matters, such as combating corruption, or promoting LGBTI or migrants' rights, are especially subject to such acts. Moreover, certain countries are opting for a negative discourse aimed at discrediting and stigmatising NGOs and activists. This is very worrying. As general rapporteur of the

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68. Information Document: "Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis", pp. 6-7.

69. Adopted by the Standing Committee on 13 October 2020, based on the report of this committee, rapporteur Mr Vladimir Vardanyan (Armenia, EPP/CD), Doc. 15139 of 16 September 2020.

Assembly on the situation of human rights defenders, I have already reacted, through public statements, to certain disturbing events and will continue to monitor these issues closely and inform the committee of developments when appropriate.

43. Despite these backward trends, we must nevertheless welcome certain positive developments. In a number of countries, laws have been amended in accordance with recommendations from European bodies such as the Venice Commission, Romania and Ukraine being particular examples. Certain countries have also taken steps to facilitate access to public funding, based on transparent and clearly expressed rules, and to develop strategies for co-operation with civil society at governmental level.

44. In conclusion, the Council of Europe is to be commended for its recent contributions to protecting and promoting the civil society space and strengthening its participation in the Organisation's activities. Since my predecessor's report, significant progress has been made in this field. I would simply urge the relevant Council of Europe bodies and institutions to complete their efforts to give effect to the Helsinki declaration of the Committee of Ministers of 17 May 2019.