



## Conclusions of the conference “Countering Shrinking Civic Space and Creating Enabling Environment for Civil Society in the EU” – 24-25 November 2022, Zoom online platform

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Recording of the first day: <https://www.youtube.com/watch?v=wvBQUJdqni8>

#### Panel “Shrinking civic space in the EU: processes, trends and perspectives”, 24 November 2022

##### **Małgorzata Szuleka, Helsinki Foundation for Human Rights, Poland**

About 150,000 CSOs are registered in Poland. In recent years, the legislative and policy framework for the functioning of civil society organisations has shrunk and there is an increasing number of SLAPP lawsuits against civil society (“strategic lawsuit against public participation”), especially targeting human rights organisations and organizations dealing with the promotion of democracy, which make about 2 % of all registered CSOs. The space for public gatherings has also been shrinking due to almost 1,000 lawsuits pending, for example against organisers of protests to protect women's right to abortion. Civic space has shrunk only for those who are critical of the government, while associations that are pro-government enjoy support, and these are often organisations close to the extreme right that, for example, organise protests against welcoming refugees. Lately, it has been much harder for civil society to reach state institutions and bodies, for example parliamentary committees that play a major and important role in setting the agenda for debate and are crucial for policy making. However, great mobilisation of citizens to support Ukrainian refugees gives hope that the bad climate towards civil society will change. Also, at this moment, about 70 % of Polish civil society is in some way involved in providing this support.

##### **Ionut Sibian, Civil Society Development Foundation, Romania**

About 121,000 civil society organisations are registered in Romania, of which about 100,000 are associations and about 20,000 foundations, with less than half of them active. The turning point was the referendum initiated by organisations close to the Orthodox Church on the definition of family in 2018, which did not pass thanks to the efforts of civil society organisations that organised a public and informative campaign and motivated the public to vote against. This week, a proposal for amendments to the Associations Act was sent to the Senate, which would reduce the scope of civil society rights, for example, the possibility for local initiatives to influence spatial planning if they perceive it to be harmful to the public interest and public good, as well as their ability to bring actions before court against harmful construction contrary to the public interest, etc. The rationale of such a proposal before the Senate is that associations hinder Romania’s progress and that they are damaging



the country's reputation. Nevertheless, the public and some politicians have recognised the value of civil society's work with refugees. From the position of Romanian civil society, an anti-SLAPP action plan at the EU level is absolutely necessary and therefore pressure should be put on the European Commission to adopt it.

### **Barbara Rajgelj, Faculty of Social Sciences, Legal Network for the Protection of Democracy, Slovenia**

The Network was formed last year in response to the COVID-19 crisis and the ban on the right to protest imposed by the then Prime Minister Janša. Even after the recent change of government, the struggle for the right to freedom of speech and protest continues. In the beginning, the Network provided support to people who were being sued for organising or participating in protests or violating freedom of speech, but over time they began to understand that the problem is systemic – there was a complete ban on protests, which is unconstitutional. SLAPP lawsuits the network deals with mostly come from the Slovenian authorities. Creating legal networks is a good practice for opposing authoritarian rule. The biggest problem with such an approach is work overload and worker burnout, which often occurs. Only one person is employed in the Slovenian Network, while the others volunteer and they are financed by donations. The Network does not want to participate in the market of EU projects because they believe that this will add to their administrative burden.

### **Ivan Novosel, Human Rights House Zagreb, Croatia**

In just six months of 2016, great damage was done to civil society by conservative politicians attacking from multiple directions the institutional framework for the work and development of civil society, from which we are still recovering today. Such policies towards civil society continue to this day, which is the reason for status quo – there is no progress, but there is also no significant regression, which is difficult to explain to EU institutions. There are three key points in the process and trends of shrinking civic space in Croatia: first, the Croatian government despises the idea of engaging in any real dialogue with civil society, fears it, dodges criticism and always sees it as an attack. Dialogue created in the pre-accession period is today without any substance, and the Council for Civil Society Development as a space of dialogue is completely non-functional and exists only on paper. The Council has been completely taken over by the government and its institutions, and the CSOs have no power in it despite the name which should suggest the opposite. Citizens' participation through public consultation is getting weaker and it exists only for form's sake because there is a lack of constructive dialogue through this form. Only politically suitable civil society organisations are chosen to take part in working bodies and working groups. The Government Office for Cooperation with NGOs is ineffective, it has destroyed platforms and instruments for public participation through its incompetent governance. Secondly, the government actively turns organisations into docile social service providers, rather than human rights advocates. The European Social Fund (ESF) is almost entirely focused on the provision of social services, which is a misuse of these funds and has a negative impact on civil society organisations in this field. And thirdly, the government has less and less capacity to create quality legislation and policies, while institutions are captured by people from the ruling HDZ party (Croatian Democratic Union).

Conclusions:

- EU Member States share many of the problems regarding the shrinking of civic space. What's at issue is either a case of a more serious or direct "Orbanisation" or a soft "Orbanisation", where civil society is restrained, burdened by administration, and thus struggling and wearing out in segments that are not relevant to the realisation of organisations' visions and missions.
- It is important to pool and use shared resources, especially for the use of legal mechanisms.
- Authorities specifically target advocacy watchdog organisations that are critical, vocal and question policies that are potentially harmful and against the public interest.
- Attacks on civil society and restrictions on their work largely come from political sources.

## Panel "SLAPPs as a tool against civil society organisations and activists", 24 November 2022

### Nora Wehofsits, Human Rights House Foundation, Norway

SLAPP suits are aggressive lawsuits aimed at sabotaging those who talk about abuse of power, and they are usually initiated by politicians or companies. Defendants are drawn into unnecessary court proceedings, which take up their resources - time, health and material capacities. The goal of complainants, and these are usually persons to whom civil society (activists or journalists) brings attention, is not to win in court, but to intimidate the opposing party (journalists, activists, associations, unions, researchers, etc.) and waste its resources. Thus, such actions have a direct impact on freedom of association and freedom of speech. The Coalition against SLAPPs in Europe (CASE), a network of organisations that provide support to SLAPP defendants, has identified over 500 cases of such lawsuits in Europe from 2010 to 2021, and the number is constantly growing. A major problem Wehofsits points out is that many people still do not know about the negative phenomenon of SLAPP lawsuits and therefore they do not know how and where to seek help and how to tackle this problem. In addition, SLAPP lawsuits specifically target environmental activists and investigative journalists who speak out about projects harmful to the public interest. This is why the Foundation is calling for an anti-SLAPP directive to be adopted at the EU level. In addition, it is important to educate judges about SLAPP lawsuits so that they know how to recognise and dismiss them at an early stage of the proceedings. However, this is not easy, since it is a matter of political will, especially when complainants are connected to political parties in power and their interests are intertwined, which is often the case.

### Charlie Holt, Greenpeace International, Coalition Against SLAPPs in Europe (CASE)

The CASE coalition monitors SLAPP lawsuits, provides support and education, and advocates for national and EU legislative changes that would prevent SLAPP lawsuits or better protect their victims. At the level of EU Member States, CASE specifically monitors some individual members in order for them to incorporate anti-SLAPP mechanisms into their national legislation. However, if there was an EU anti-SLAPP directive, this would greatly help to establish mechanisms against SLAPP lawsuits at the level of all Member States. Back in 2020, CASE called for the adoption of such a directive, along with the publication of a policy document and analysis on how to address SLAPP lawsuits at the national level, and this year a model directive was published, i.e. an example of what an anti-SLAPP directive

would look like. Meanwhile, the European Commission presented a proposal for such a directive, CASE welcomes it, despite the shortcomings identified by an internal analysis. CASE considers that such legislation must meet three objectives: first, it must adopt measures to resolve SLAPP lawsuits as soon as they come before the court, second, it must enable minimising the costs for victims of such lawsuits, and third, it must enable sanctioning of those who use SLAPP lawsuits, which are usually persons with much more power and thus financial means than the defendants. This proposal for a directive is currently under consideration by the European Parliament and the European Council. At the level of the European Council there is a potential obstacle to the adoption of this directive because the Council is made up of representatives of Member States, and some of the politicians of those Member States are actively using SLAPP lawsuits. The proposal for a directive also contains recommendations for the necessary training of judicial staff, better regulation of the legal profession, and other important proposals for which the European Commission has set up national contact points that will facilitate the creation of curricula and the implementation of additional education. However, it remains crucial to change the national legislation.

### **Maja Sever, The European Federation of Journalists**

Many journalists say it is easier for them to deal with threats than with the pressure of lawsuits. They are afraid that if they lose in court, they will also lose their jobs or their media outlet will go under. As a result, they become mentally and physically exhausted and vulnerable, simply because they published a fact or quoted a statement. In Croatia, we see such behaviour and such lawsuits as institutionalised threats against journalists, which can be considered censorship. Unfortunately, there is no official definition of a SLAPP lawsuit in Croatia. There were 951 recorded lawsuits against journalists and media outlets in the total amount of HRK 10,300,000 (approximately EUR 1,362,744.52) in claims. Last year alone, for example, Hanza Media handled the highest number of lawsuits, 443 of them, each with an average of more than EUR 12,000 in claims. They were followed by Styria with 196 lawsuits, amounting to a total of over HRK 2.5 million (approximately EUR 330,875.49) in claims. On average, there are approximately 380 new lawsuits per year against journalists and the media. In general, it can be said that journalists live in a culture of harassment, the perpetrators of which are mostly high-ranking officials, local sheriffs and even judges, all of whom are frequent claimants. For this reason, amendments are requested to the Criminal Code in the part concerning crimes against honour and reputation (Title XV), on which such lawsuits are most often based. However, after more than five years of outpouring SLAPP lawsuits, journalists are exhausted and can't wait much longer for solutions as new lawsuits are initiated every day.

### **Conclusions:**

- An anti-SLAPP directive should be adopted at EU level addressing three key points: early prevention of SLAPP lawsuits, reduction of burden on defendants, and sanctions against those who use such lawsuits and abuse the system. Such a directive would provide a framework for further development or adaptation of national legislation.
- At national level, it is necessary to amend legislation to follow these principles in order to protect freedom of expression of journalists and all citizens from lawsuits aimed at intimidating, burdening and silencing them.

- It is necessary to train judges about SLAPP lawsuits so that they recognise them as early as the first hearing and to help lawyers understand that when they accept certain cases, they support such harmful and undemocratic practices that ultimately result in censorship.

Recording of the second day: [www.youtube.com/watch?v=abmVzuvNwTwa](https://www.youtube.com/watch?v=abmVzuvNwTwa)

### Panel “EU responses to shrinking civic space”, 25 November 2022

#### Waltraud Heller, EU Agency for Fundamental Rights (FRA)

The EU Agency for Fundamental Rights believes that there are four problem areas in civil society work: 1. legislative framework, 2. access to resources, 3. access to decision-making and participation, 4. threats and attacks. These problems are present to some extent in all Member States. Shrinking civic space has long been a blind spot for the EU, but this is no longer the case, as can be seen from the announcement that the European Commission will publish its first report on the working conditions of civil society in December this year. Next year, the EU Council plans to draw conclusions on the subject. The EU is increasingly turning to civil society, which is under various pressures and threats. Unfortunately, the EU has limited power to intervene in certain Member States' problems, except in matters where it has legal competence. For example, the EU has initiated two proceedings against Hungary over the problematic Association Act, which, among other things, regards associations as so-called “foreign agents”, and due to the problematic access to financing civil society receives from EU funds. Due to such situations, it is important that there is constant contact between the EU and civil society organisations. The EU has mechanisms for dialogue between its institutions and civil society, but unfortunately they are not consistent nor structured, and the recommendations made at the level of a specific Member State are often vague and leave too much room for interpretation in order for the civil society of that Member State to be able to use them unambiguously in advocacy. The upcoming opportunity for a meeting and dialogue with the European Commission is a recently established dialogue on the rule of law organised by the Commission, and the next one will be held in January 2023 in Croatia.

#### Balázs Dénes, Civil Liberties Union for Europe

Unfortunately, the EU is like a large tanker that is so huge that it turns very slowly and adapts to the space in which it is located. For years we have witnessed attacks on civil society organisations – as early as 2012, Russia was the first in Europe to pass a law on the so-called “foreign agents,” a catchphrase often used in attacks on civil society, especially foreign-funded ones. Ten years later, however, the concept of “civic space” finally penetrated the entire EU agenda and almost all spheres of EU institutions include this area in their work. To a large extent, this is also thanks to the EU Agency for Fundamental Rights – FRA, which in the last six years as an institution has been a platform for discussing various problems for the work of civil society and has introduced this topic into the agendas of various EU institutions. Also, the new EU financial framework over the next seven years offers more funding for civil society than ever before through the programme Citizens, Equality, Rights and Values

(CERV), which are resources organisations can use to counter shrinking civic space and attacks to which they are exposed. Unfortunately, and in parallel with this positive process, the EU lags behind many donors who increasingly turn to institutional support for organisations and their core activities, and not so much to project financing. Project financing is particularly problematic for advocacy organisations that do not provide social services, which is a major focus in EU funding, especially through the European Social Fund (ESF). The European Commission has also taken a stand and started to directly finance some civil society organisations that are combating shrinking civic space in the Member States where they operate. An example is a consortium of Hungarian organisations that received direct financial support of EUR 4 million to promote EU values and raise the level of protection of human and civil rights in Hungary. We are increasingly witnessing the raising of the EU's voice on the issues of the rule of law and respect for fundamental rights in the Member States, for example in the reaction against Poland for non-compliance with the EU Charter of Fundamental Rights, which forms the basis for the suspension of EU funding. The European Commission also adopts individual recommendations for Member States drawn up on the basis of reports received from these countries, however, if the implementation of these recommendations is not monitored, they remain a dead letter. For this reason, the proposal of the Liberties network is to establish the position of a High Representative of the European Commission for Civic Space, which would be the EU's contact point for civil society organisations in EU Member States. That position would have to have real political power, with access to high levels of decision-making within the Commission, and in order to be effective, it would have to cooperate closely with the EU Agency for Fundamental Rights – FRA.

### Tommaso Nodari, Civil Rights Defenders

Nodari believes that a large part of the problems mentioned so far at the EU level are also present at the level of the Western Balkans. There is an increasing number of attacks on foreign-funded civil society organisations and they are perceived as the so-called “foreign agents”, for example, in Serbia. Nodari believes, however, that the laws in the region are generally good, which is surprising. As an example, he cites the area of protection of the rights of minorities or LGBTQIA+ persons. The reason, he says, is that the governments of the countries in the region have tried to satisfy the EU in this regard, and the problem is that mostly this legislation is poorly applied or not at all. Furthermore, the implementation of strategic policy documents is not adequately funded, the implementation of measures and objectives is not monitored and there is no analysis of the effects and performance of these policies at a later stage. As a result, the EU could have a strong influence in the region in the accession process, which gives the EU institutions more power in the legislation for the protection of rights. Precisely for this reason, in the countries of the Western Balkans, which are in the EU accession process, we can find legislation that is in many aspects more modern and precise than in some countries of Western Europe, that is, older EU Member States. It is known that once a state becomes a full member of the EU, it is much less supervised by the EU institutions. However, what is alarming in the Balkans is the increasingly frequent exploitation of the right to assembly, the adherence of which often depends on the attitude of the ruling party towards a particular assembly. The first pride parades in Sarajevo, Bosnia and Herzegovina were taken as an example. Also, prescribed measures to mitigate the spread of the COVID-19 pandemic were exploited, which in the Balkans were often more restrictive than in many other EU Member States, and many gatherings of citizens or associations were

prohibited, while, for example, gatherings related to political campaigns were allowed by the government. The European Commission reports on these violations in some places, but does not sufficiently address such problematic trends in progress reports, using a neutral language such as “no progress” or “little progress” for certain points, i.e. problems it reports on, while the real issue is that there is a significant backlash under these points.

### Conclusions:

- It is necessary to create better quality and accessible mechanisms for meetings between EU institutions and civil society, for example by appointing a representative or contact point of the European Commission for civic affairs that has real influence and power, or by creating a civic space observatory/office as a contact point for civil society and problems related to civil society work.
- EU legislation on civil society needs to be strengthened, for example by adopting a statute for European cross-border associations and non-profit organisations.
- In the reports and other documents of the European Commission, it is necessary to use clear language that addresses the problematic trends and behaviour of individual Member States, so that there is no room for misinterpretation or distortion of these texts.
- The European Commission's reports and documents should be written in a less bureaucratic and technical language in order to be accessible and applicable for public use.
- Specific recommendations for Member States adopted by the European Commission should be monitored.
- The enlargement of EU membership is an opportunity to strengthen the rights of citizens and civil society organisations in the Western Balkan countries; an opportunity that significantly decreases after the country joins the EU.

### Panel “Civil society responses and initiatives against shrinking civic space”, 25 November 2022

#### Giada Negri, European Civic Forum

Civil society organisations at EU level are currently advocating the adoption of a civil society strategy, a document containing all legislative and non-legislative measures that the EU could, should and must take to support the work of civil society. Commission President von der Leyen put discussions on this topic on the European Commission agenda for 2023. A possible problem identified by Negri could be the term “strategy” because the Commission sees “strategy” as a policy with a specific outcome and obligations on its part and therefore reluctantly adopts such binding documents. Also, in 2024 elections for the European Parliament will be held, which opens an additional opportunity to discuss support for civil society in public space. On the other hand, a major problem, in addition to the already mentioned shrinking civic space and lack of adequate funding, is severe burnout of persons employed in civil society organisations. According to Negri, employees are tired and traumatised by constant job insecurity and attacks and put-downs that accompany their work, which is a consequence of the current financial, project system and is a structural problem that donors need to see. It is precisely for

this reason that it is necessary to rebalance the roles of donors and civil society, i.e. the power relations. It is unsustainable that an enormous amount of administration and bureaucracy is required of civil society for financially modest projects.

### **Marta Pardavi, Helsinki Committee Hungary, Recharging advocacy for Rights in Europe - RARE**

Countries that are shrinking civic space are called illiberal democracies, and the publication “[III Democracies](#)” was issued on this topic in 2017, stating how to recognise and combat such systems. Civil society organisations will face different pressures depending on what they do, regardless of whether they are an informal student activist organisation, an advocacy organisation, social service providers or associations working in the field of culture. However, organisations experiencing the greatest amount of pressure are advocacy watchdog organisations. Pressures on civil society are also pressures on all of us – our right to express ourselves, to be heard as citizens and to present our ideas. This is why the space for civic action and work should not be seen as separate, but as directly linked to the value of democracy and the rule of law. However, the resilience of civil society cannot and should not be the only objective of our struggle, because it alone will not solve the problems of illiberal democracies. This is a systemic problem that needs to be addressed from several sectors.

### **Anna Fedas, Stefan Batory Foundation, Poland**

In the Polish context of shrinking civic space, there are examples of attempts to ban civil society organisations from holding trainings in schools. People who helped asylum seekers were threatened with lawsuits by authorities based on the criminalisation of solidarity. The biggest threat is the upcoming 2023 parliamentary election, when politicians are expected to take advantage of the economic crisis and the unresolved issue of support for Ukrainian refugees as topics for encouraging waves of frustration among citizens, in order to score political points. This, of course, has a negative effect on the attitude and mood towards the civil society that works in these areas of protection and support in Poland. Already, anti-Ukrainian sentiments are felt, and protests are being organised in public against further admission of Ukrainian refugees. Due to frequent attacks against individual civil society organisations, coalitions have been established to make it more difficult to attack and abuse an individual organisation. United in coalitions and networks, organisations share resources and knowledge with each other and cope more easily with a range of attacks that often include SLAPPs and smear campaigns. These coalitions or networks additionally fill gaps in social services that the state refuses to offer, and further efforts are made to build sustainable and resilient networks based on shared values. In this endeavour, they are greatly assisted and supported by organisations from Hungary, which share their past experiences to them, for example mechanisms and instruments for advocacy work on EU public policies.

### **Conclusions:**

- The European civil society strategy or similar EU policy could lay a new foundation for supporting civil society work, meaning that organisations must actively participate in discussions throughout 2023 and call for the European Commission to take as much responsibility as possible for supporting civil society.





- The elections for the EU Parliament in 2024 are an opportunity to raise the topic of shrinking civic space with the general public.
- Networking and further joint organisation of civil society within countries is important, but also cross-border exchange of experiences in combating illiberal democracies and building organisations' resilience.
- Donors must establish a more equal and considerate relationship with civil society, because CSO employees find themselves in situations of burnout, mental health problems and trauma due to attacks and difficult working conditions.