FUNDAMENTAL RIGHTS
AND THE RULE OF LAW

National developments from a civil society perspective, 2018-2019

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European Economic
and Social Committee

CONTENTS

Foreword

by EESC president Luca Jahier

We are living in challenging times for Europe – challenging times for the future of the European project and for our collective capacity to attain the Union's aim: "to **promote peace, its values and the well-being of its peoples**" and a sustainable future for all.

Europe is facing democratic challenges linked to increasing the polarisation of our societies, nationalistic and populist trends, shrinking civic space and the abuse of electoral majorities with attempts, among other things, to dismantle check and balances and independent judiciaries. The challenges are great, but as the German poet Friedrich Hölderlin wrote: "where the danger is, also grows the saving power".

The EU needs a comprehensive mechanism to assess Member States on a regular basis in order to verify compliance with the EU's fundamental values and avoid a breakdown of mutual trust. The EESC has been calling for such a mechanism since 2016, and has stressed the need for a **strong civil society component**[1]. The Committee is pleased that the European Commission has taken on board this view and, as stated in its July 2019 Communication **Strengthening the rule of law within the Union – A blueprint for action**, is planning to follow up on the idea of an annual rule of law event open to national stakeholders and civil society organisations.

As the European Commission further develops its "Rule of Law Cycle", and with the Member States also possibly coming up with a "peer review" mechanism, there is a space where the **EESC can play a key role: that of facilitating cooperation and dialogue** in order to prevent problems from reaching the point where a formal response is required.

The EESC is in a privileged position to play such a role because it represents the voice of organised civil society in Europe and because it has more than half a century of experience in reaching dynamic compromises at European level between many diverse interests. The Committee has taken many initiatives in the area of participative democracy over the past years, for example by supporting the **European Citizens' Initiative**.

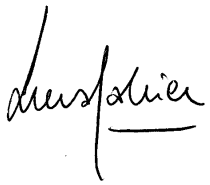
A recent **Eurobarometer survey**[2] shows that 89% of European citizens believe that it is important for all EU Member States to respect the core values of the EU, including fundamental rights, the rule of law and democracy. Practical actions in this field will bring the Union closer to its citizens. Fostering participatory democracy in the area of fundamental rights and the rule of

1 EESC Opinion, on a "European control mechanism on the rule of law and fundamental rights"

2 https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2235

law includes creating an open, transparent and regular dialogue between civil society, the EU institutions and the Member States on these topics. This is the idea behind all EESC activities in the area, including the present report, which gives an account of the first country visits carried out by EESC members. The report seeks to highlight trends on the European continent as a basis for discussion and as part of the search for solutions to support the universal values on which the EU is founded, values which are common to all the Member States: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

I hope that this report and the increased efforts of the EESC can play their part in **strengthening the culture of fundamental rights, the rule of law and democracy in Europe**, especially in the year in which we celebrate the tenth anniversary of the entry into force of the **Charter of Fundamental Rights of the European Union**.



Luca Jahier,
EESC President

Introduction

The present report proposes a synthesis of the work of the EESC Fundamental Rights and Rule of Law (FRRL) Group covering its first two years of existence (2018-2019). It concerns the seven initial country visits led by the FRRL Group (to Romania, Poland, Hungary, Austria, France, Bulgaria and Italy) as well as its first conference, held on 5 November 2019[3]. The report integrates and replaces the interim report published in November 2019.

The EESC Group on Fundamental Rights and the Rule of Law

The FRRL Group was created in 2018 as a horizontal body within the European Economic and Social Committee, and was tasked with enhancing the contribution of organised civil society in strengthening fundamental rights, democracy and the rule of law and responding to the shrinking civic space for civil society organisation. Its work is structured around an approach that covers areas that are considered particularly important and relevant to the work of the EESC: freedom of association, freedom of assembly, freedom of expression and freedom of the media, discrimination, and the rule of law as the guarantor of fundamental rights[4].

Context
Trends in Europe from the civil society perspective

The creation of the FRRL Group in 2018 was necessary in order to address the concerns of organised civil society in the face of increasing challenges to their activities. As a keynote panellist in the conference on 5 November 2019 mentioned, EU citizens are increasingly drawn to illiberal political forces that offer reinterpretations of principles such as democracy and which openly violate fundamental rights and the rule of law. This backsliding in the rule of law has become such a serious concern in several Member States that academics no longer talk about the rule of law crisis but about a wider crisis of democracy and the rule of law. It is therefore essential to understand better how citizens see this crisis and why many are ready to believe alternative interpretations of the rule of law. This was also one of the key motivations behind the Opinion adopted by the EESC in December 2019 on Populism and fundamental rights in suburban and rural areas[5]. The situation is multifaceted as, in addition to this attraction to populism, over half of Europeans do not feel sufficiently informed about the EU's fundamental values – which means that there is a demand for more information.

The conference organised by the EESC on 5 November 2019 also provided an opportunity to hear the viewpoints of key EU institutional representatives on this complicated issue. Juan

3 EESC conference on Fundamental rights and the rule of law: Trends in the EU from a civil society perspective, 5 November 2019, https://www.eesc.europa.eu/en/agenda/our-events/events/fundamental-rights-and-rule-law

4 For more information on the FRRL Group's work and methodologies, see Factsheet, The EESC's Group on Fundamental Rights and the Rule of Law (FRRL Group), https://www.eesc.europa.eu/sites/default/files/files/eesc_frrl_group_factsheet_1.pdf

5 EESC Opinion on Populism and fundamental rights - suburban and rural areas (own-initiative opinion), https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/populism-and-fundamental-rights-suburban-and-rural-areas-own-initiative-opinion

Fernando López Aguilar, Chair of the European Parliament Committee for Civil Liberties, Justice and Home Affairs (LIBE), explained that the financial crisis did not have consequences only for the economic and social spheres but also for political spheres. According to him, the erosion of fundamental rights had gone hand in hand with the erosion of mutual recognition and trust. This assessment was supported by the Council of Europe, as Ambassador Zoltán Taubner, Head of the Council of Europe's Liaison Office to the European Union, explained while referring to the findings of the CoE Commissioner for Human Rights. Its report highlights worrying trends such as attempts to bring courts under political control, the increasing pressure and attacks on media and CSOs, and challenges to the supremacy of the European Court of Human Rights on the part of populist and nationalist forces.

Tiina Astola, European Commission Director-General for Justice and Consumers, mentioned that the rule of law could no longer be taken for granted within the EU, which is particularly concerning as the rule of law is a prerequisite for fundamental rights and democracy. Ms Astola welcomed the EESC's contribution to raising awareness of the socioeconomic importance of the rule of law. In her opinion, the rule of law was also crucial for the functioning of the EU, for the effective application of EU law, for mutual trust, for the internal market and for an investment-friendly environment and economic growth. Speaking for the Finnish EU Presidency, Malin Brännkärr, Finnish Secretary of State for Justice, noted that the major challenges the EU is facing today were also a test of the ability of European actors to work together. She considered that the preservation of the values on which the EU was based required greater trust both amongst Member States and between them, the EU institutions and citizens, as fundamental rights, the rule of law and democracy were the essential basis for inclusive and resilient societies.

The EESC's role
The importance of a comprehensive approach, including socio-economic perspectives, to fundamental rights and the rule of law

During his opening speech to the conference[6], the EESC president emphasised the role and added value of the FRRL Group and of the EESC as a whole. Representing a large group of diverse national society organisations, including social partners, the EESC had the possibility to build bridges and contribute actively to the development of a joint "rule of law culture" in Europe, which entailed the promotion of a mature dialogue involving all stakeholders, including civil society.

The conference on 5 November also provided a space for the presidents of the three EESC groups to explain why fundamental rights and the rule of law were essential in the eyes of employers, workers, and those CSOs covered by the Diversity Europe Group.

Jacek Krawczyk, president of the Employers' Group (Group I), indicated that fundamental rights and the rule of law were crucial for employers' organisations. To highlight the involvement of Group I in preserving the rule of law and fundamental rights, Mr Krawczyk

6 Luca Jahier, EESC President, 'Fundamental rights and the rule of law – Trends in the EU from a civil society perspective', https://www.eesc.europa.eu/en/news-media/presentations/fundamental-rights-and-rule-law-trends-eu-civil-society-perspective

referred to the recently signed joint declaration on Open Europe[7]. In this declaration, the EESC Employers' Group, represented by Mr Krawczyk, along with the Confederation of Finnish Industries and Finnish Chamber of Commerce, called for the fostering of an open, values-based society, defending the rule of law as a foundation of both the economy and society. Furthermore, Mr Krawczyk mentioned the European Social Partners' statement from May 2019[8] in which they stressed their full commitment to supporting the rule of law as one of the foundations of the European project. Mr Krawczyk explained that the rule of law was important for employers because it was a precondition for any business-friendly environment – enterprises needed predictability and legal certainty. Respect for fundamental rights was also essential, as many entrepreneurs were also citizens. The Charter of Fundamental Rights of the EU included the freedom to create a business and the right to property.

Oliver Röpke, president of the Workers' Group (Group II), highlighted the indivisibility of all rights, from civil and political rights to economic, social and cultural ones. All these rights had been affected by the economic crisis and the people who suffered the most as a result of the crisis were not the same people who had been responsible for the crisis. Inequalities had grown amongst and within Member States since the 2008 crisis, partly as a direct consequence of the crisis and partly because of the austerity measures which had particularly affected vulnerable groups, such as young people who were facing a surge in unemployment. The crisis and the wave of austerity that had followed had also affected the ability of workers to defend their rights through collective bargaining. Not only Member States, but also EU institutions, had a responsibility in this regard. According to Mr Röpke, one lesson to be learned for the future was that there should never be any exceptions to the defence of fundamental rights, in particular in a crisis context.

Arno Metzler, president of the Diversity Europe Group (Group III), spoke about the resistance that the work of the EESC Fundamental Rights and Rule of Law Group had to face when carrying out its work. Mr Metzler considered that the EESC's work on such issues deserved not only administrative support but also a genuine political commitment. In his view, the existing momentum on fundamental rights and the rule of law needed to be translated into a structured approach. Mr Metzler defended the idea of organising a genuine stakeholders' forum that would incorporate the views of grass-root civil societies into the discussions. He considered that citizens would take a careful look at those who defended fundamental rights and the rule of law and demand results. It was particularly essential to ensure that the people who defended fundamental rights and the rule of law in Member States received full support and protection.

7 Helsinki Declaration on Open Europe, Issued at the Conference of the EESC Employers' Group, the Confederation of Finnish Industries EK and Finland Chamber of Commerce, 9 October 2019, https://www.eesc.europa.eu/sites/default/files/files/helsinki_declaration_on_open_europe.pdf

8 European Social Partner's Statement on the Rule of Law, 8 May 2019, https://www.businesseurope.eu/sites/buseur/files/media/press_releases/2019-05-08_eu_sp_joint_statement_-_final.pdf

This report

The present synthesis report sets out some developments in Europe which were communicated to the EESC Fundamental Rights and Rule of Law Group in 2018-2019. The main sources of this content are the contributions made by CSO representatives, media professionals, legal professionals and some independent human rights institutions during country visits. The observations on the part of the authorities, made in response to these concerns, are also mentioned, where directly applicable. Finally, some wider perspectives put forward by the participants in the conference on 5 November are also included.

This synthesis does not claim to be a legal analysis on the part of the EESC, nor does it provide an exhaustive representation of, or draw final conclusions on any given topic. It is rather an effort to promote European and national dialogues on fundamental rights and the rule of law, which are essential concerns at the present time. The first step towards the development of a culture of dialogue is to put forward the main concerns as expressed at a given moment by the civil society to the EESC, and the authorities' observations on these comments. The present exercise does not pretend to be comprehensive nor exhaustive; rather, its objective is to contribute to the development of a constructive debate to develop mutual trust between the European institutions, national authorities and civil society. The reader should not infer from this report that the issues highlighted by civil society and the replies from the authorities, in the instances where these issues were addressed, are an exhaustive account of the debates in question. On the contrary, putting them in perspective is a building block and aims to encourage further discussion on these subjects. On the other hand, the reader should not interpret the absence of any mention of an issue concerning a given country as a sign that there are no good practices or challenges worth highlighting in the given area. All these views are reported by the EESC in good faith and do not represent its own position on or assessment of a situation. For more details on a given topic, the reader is invited to read the full country visit reports and the Member States' observations, to be found at the end of this report.

The FRRL Group decided from the outset to visit *all* the EU Member States. By the time the EESC FRRL Group has visited all EU Member States, it will be in a position to publish an overall synthesis that will address the situation in every country. Such a report will enable medium-term trends on the continent to be highlighted, but it will only be possible in a few years' time, when every country has been visited. In the meantime, this first synthesis offers an initial, partial glimpse of the current developments. The seven countries mentioned in the report do not present the same level and severity of challenges. Two of the countries examined are still under the Cooperation and Verification Mechanism (CVM) procedure, and still have some way to go before they can fully close outstanding issues not solved at the time of accession. Two countries face Article 7 procedures under the Treaty on European Union (TEU) over serious concerns regarding systemic breaches of the rule of law. The other three countries do not face any such procedures. The EESC is nevertheless trying to pinpoint trends which, although they manifest themselves in different ways and in very different circumstances, would require joint efforts to promote fundamental rights and the rule of law. By identifying trends that need to be addressed, civil society organisations can help to actively create a rule of law culture.

Freedom of association

In all the countries visited, the overall legal framework protected the right to freedom of association. However, one trend observed to varying degrees in all these countries is the phenomenon of **shrinking space**, that is to say the reduction of the freedom to exist and to act as Civil Society Organisations (CSOs), because of various factors such as the imposition of legal restrictions by the authorities, the administrative burden and judicial harassment, or due to threats and stigmatisation coming from public or private actors.

Legislative and operational frameworks

In the conference on 5 November, it was noted that many CSOs were experiencing a shrinking civic space. Some explained that although certain **legislative developments** in Europe may not have been developed with the intention of purposely restricting the freedoms of CSOs, this has been the effect in practice. Examples of this phenomenon included laws in the area of tax, transparency, anti-money laundering, and terrorism, which were developed without bearing in mind the specific nature of the CSOs' environment. These new legal and administrative constraints created uncertainty for CSOs, which became dependent on the good faith of the authorities.

- In *Romania*, the CSOs that participated in the EESC's visit explained that new annual reporting obligations had recently been imposed on all CSOs – whatever their size or capacity – leading to the risk that a CSO could be disbanded at any moment at the discretion of the authorities. Anti-money laundering legislation was another example of disproportionate administrative requirements being imposed on CSOs as a way of limiting their activities. The Romanian authorities observed that freedom of association and other fundamental rights were guaranteed by the constitution and the law.

- In *Hungary*, some CSO participants explained that although the general legal framework on freedom of association was in line with international standards, they felt that they were coming under increased pressure in practice. The Hungarian authorities replied that "CSOs may carry out their activities freely" and that less than 1% of the 60 000 CSOs currently in existence "seek to play a political role without any democratic mandate or accountability".

- In *Italy*, CSOs met assessed positively the harmonisation of the legislative framework for CSOs through the adoption of the single code for the third sector in 2017.

Stigmatisation

Tangible legal or administrative hurdles often take place against a backdrop of increasing **stigmatisation** of CSOs, sometimes even taking the form of campaigns. These stigmatisation campaigns have had the direct effect of amplifying existing difficulties for CSOs performing watchdog activities to support their activities.

- In *Romania*, CSOs participating in the EESC's visit explained that a negative image was being propagated against those CSOs that performed watchdog activities or criticised the government, in which they were depicted as political opponents. Some CSO representatives reported that they also received threats.
- A similar phenomenon was also described in *Poland*, where stigmatisation also affected other actors, including some judges and prosecutors who were accused of being partisan, whereas in fact they had merely referred to recognised standards in their public statements.
- In *Hungary*, CSOs indicated that they were being portrayed in the media as acting against the nation and were sometimes labelled as "Soros' agents". The Hungarian authorities replied that the campaign against George Soros did not target him personally, but rather his "political objectives and methods" and that it responded to a growing concern amongst Hungarian voters that security must be a top priority and a firm position must be taken against illegal migration. Some CSO representatives explained that the pressure on those speaking out was also taking the form of restrictions in access to public activities such as lectures and training. The Hungarian authorities replied that the law did not contain any discriminatory measure against CSOs that defend human rights or carry out advocacy and watchdog activities.
- In *Poland*, campaigns to discredit CSOs in the media contained accusations of financial impropriety, making it impossible for these CSOs to collaborate with local authorities and benefit from their funding.
- In *Bulgaria*, some CSOs were afraid that a "foreign agents" law might be introduced. CSO representatives also pointed out to the existence of "fake" CSOs advancing an anti-EU rhetoric. Attacks and smear campaigns against CSOs were reported, including in relation with gender debates. Calls had been made for the largest human rights CSO of the country to be closed down. The Bulgarian authorities replied that the expressed opinion of certain political groups in relation to this CSO did not represent an official position of the government and that the prime minister had made a statement of support to its work.
- In *Italy*, CSO representatives mentioned an emerging climate of suspicion fed by some politicians to stigmatise the work of CSOs, in particular the ones working in solidarity with migrants.

During the conference it was claimed that **threats and physical attacks** against CSO employees or volunteers and on their premises, as well as cyber attacks, were visible all over the EU to different degrees, and not only in a certain number of Member States. During the conference, calls were made for increased efforts to protect human rights defenders in EU Member States, including through dedicated protection mechanisms.

Access to funding

The EESC delegations could observe that **restrictions on the right of CSOs to access funding** represented a worrying trend on the continent, and one that was taking multiple forms.

- In *France*, CSO representatives expressed their concerns about the increasing tendency for public and private financing for CSOs to dry up. The French authorities replied that public withdrawal in the area of funding was extremely relative, indicating that while the share of public funding had not increased in line with CSOs' needs, it still had grown from EUR 30 to 50 billion over the last twelve years.

- In *Hungary*, CSOs indicated that the 2017 Law on the "transparency of organisations supported from abroad" and the 2018 so-called "Stop Soros" legal package had severely affected them. They explained that some now had to register as "foreign agents" and were supposed to pay a tax on funding received from outside the country. On the other hand, CSOs performing service functions in the health care services, for instance, seem to be favoured by the authorities. The Hungarian authorities replied that the 2017 law on the Transparency of Organisations Receiving Support from abroad did not contain the term "foreign agent", an approach which they said "has been endorsed by […] the Venice Commission"[9]. The Hungarian authorities also denied the existence of a tax on foreign funds, indicating that it was rather "a special immigration tax of 25% [that] is imposed on the financial support related to immigration-supporting activity" to oblige CSOs conducting activities in the field of migration to "bear the costs that have arisen as a result of their associative activities, which contribute to the growth of immigration and the growth of related public tasks and expenditure". The Hungarian authorities denied favouring CSOs performing service functions, referring to the National Cooperation Fund and its five thematic colleges.

- In *Poland*, the EESC delegation heard concerns regarding the creation of a new institute responsible for awarding some of the public funds and reporting directly to the prime minister's office, something the participants feared could lead to self-censorship of CSOs performing watchdog activities in order to maintain access to funding. Restrictions on funding in Poland already seemed to be having a particular impact on CSOs working on issues such as equality, LGTBI persons and migrants, as well as the ombudsman, who

9 In its conclusions on the law, the Venice Commission indicated that "while on paper certain provisions requiring transparency of foreign funding may appear to be in line with the standards, the context surrounding the adoption of the relevant law and specifically a virulent campaign by some state authorities against civil society organisations receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic, raising a concern as to whether they breach the prohibition of discrimination, contrary to Article 14 ECHR. In particular, although the label "organisation receiving support from abroad" objectively appears to be more neutral and descriptive compared, in particular, to the label of "foreign agent", it should be emphasised that placed in the context prevailing in Hungary, marked by strong political statements against associations receiving support from abroad, this label risks stigmatising such organisations, adversely affecting their legitimate activities and having a chilling effect on freedom of expression and association".

European Commission for Democracy through Law (Venice Commission), Hungary, Opinion on the draft law on the transparency of organisations receiving support from abroad, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017), https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e

had been very active in the defence of civil rights. The Polish authorities replied that the supervisory body had no power to control the annual reporting submitted by CSOs, but could only ask for missing information.

- In *Austria*, CSO participants testified that there had been severe cuts over the past years in funding available for CSOs, especially for the smaller ones. It was noted that several organisations had lost public funding in unexpected ways, especially organisations that were critical of the government. The Austrian authorities indicated that the funding available under the Directorate for Women's Affairs and Equality had remained unchanged since 2011.

- In *Bulgaria*, the accessibility of public funding was a serious issue for CSO representatives. Good examples were mentioned at the municipal level, where some programmes supported civic participation projects, but they were poorly funded. CSO representatives also considered that EU funding was largely inaccessible to small CSOs because of too high eligibility requirements. They explained that the largest source of public funding for Civil Society Organisations was earmarked for social services rather than for civic activism. The Bulgarian authorities pointed that 150 CSOs had benefited from around 6,5 million Euros since 2015 under the 'Operational Programme Good Governance' of the European Structural and Investment Funds (ESIF). CSO representatives also reported that environmental CSOs that opposed large infrastructure projects were denied funding at national level. On that point, the Bulgarian authorities indicated that the Ministry of Environment had always made efforts to cooperate with CSOs, including supporting their initiatives by all available financial instruments.

- In *Italy*, according to CSOs met, the climate of suspicion and calls for stricter controls of CSOs management have led to a reduction of donations by individuals and private foundations, in a context where public funding has also been cut.

In the conference the main trends concerning civic space in Europe, both "moving space" and "shrinking space", were highlighted. Some CSOs contended that restriction to **access to funding** was not so much a result of the decrease in the availability of public funding so much as a consequence of the redirection of funding, which was increasingly aimed at CSOs performing social services provision rather than human rights advocacy or monitoring. It was also noted that private donors were more and more active in financing CSOs that did not defend the interests of the common good.

During the conference it was also explained that, in some countries, support from some of the public for certain CSOs prompted a reduction in financial support from the rest of the public, and led to greater dependence on funding controlled by the authorities. According to one of the keynote panellists, what CSOs sought in addition to financial independence was therefore also solidarity, partnership and political support.

Participation

Another major concern which the EESC delegations encountered in all the countries visited was the feeling of a lack of **participation and meaningful and timely consultation** of CSOs.

- In *Hungary*, several CSOs indicated their goodwill and their proactive stance in trying to establish a dialogue with the government, which to their regret had not, however, led to the establishment of a formal consultation platform. The Hungarian authorities replied that in 2012 they had created a Human Rights Working Group to monitor the implementation of Hungarian human rights obligations, in which 73 CSOs took part.

- In *Austria*, many CSOs considered that their expertise was not taken seriously by the authorities and that their contribution to the drafting of laws was largely ignored, as formal consultation processes did not lead to any real partnership. The Austrian authorities asserted in a more general way that they considered that "the role and opinions of NGOs, social partners and the media were important in a vibrant democratic society".

- In *Poland*, CSO representatives participating in the meetings agreed that there was a need for more meaningful consultation and for peaceful dialogue on legislation.

- In *Romania*, CSOs also considered that the existing consultation processes were mostly formal, noting that they were often circumvented in legislative emergency procedures, and that they did not compensate for the absence of a response by the authorities to the suggestions made by civil society and their reluctance to meet CSOs. According to the Romanian authorities, legislative changes of an emergency nature were debated at the level of the line ministries and the opinion of the Economic and Social Council was sought.

- In *Bulgaria*, CSO representatives regretted that the public consultation process on new legislations was too narrow, insufficiently transparent, and did not lead to a meaningful outcome. They considered that impact assessments rules were not always followed. The Bulgarian authorities denied such criticisms, insisting that public consultation and full impact assessments were always carried out for all draft bills.

During the conference it was stated that, across Europe in general, authorities often considered that providing information or organising online consultations was sufficient to represent genuine civil society participation, while in reality these were only the first degrees of an engagement that should be much deeper. Various degrees of civil society engagement indeed included information, consultation, dialogue and active involvement such as the co-creation of policies. Participants felt it was essential to ensure that CSOs were engaged into deeper forms of consultation for laws deemed to have an impact, even indirect, on their activities, and it was suggested that training could be offered to civil servants to ensure better standards of consultation.

Social dialogue

Interaction with the **social partners** was an integral part of the EESC's visits. They generally showed a strong interest in the issues of fundamental rights and the rule of law, in addition to the usual topic of negotiations with the social partners.

- In *Hungary*, the social partners indicated that they would have liked to be involved by the authorities in key legislation on a minimum wage and on overtime.

- In *Austria*, the social partners noted that legislation in the area of social policy was well implemented. However, they complained that key legislation such as the law on working time – which raised working hours to 12 per day and 60 hours per week, legalising a previously illegal practice – had been adopted without consulting them.

- In *Romania*, trade unions mentioned violations of fundamental workers' rights illustrated, for example, by the obligation for trade unions to receive written permission from the employer in order to become established in the workplace. They also mentioned outdated requirements for representativeness and the banning of strikes in sectors where collective agreements were in place. Furthermore, some representatives of CSOs in the Romanian Economic and Social Council had been replaced in the middle of their terms, arguably because they adopted opinions that were considered too negative on some legislative proposals. On these points, the Romanian authorities replied that freedom of association and workers' rights were guaranteed by the Romanian Constitution and the law. The Romanian authorities also indicated that the law on the Economic and Social Council agreed by social partners established the exclusive competence of the government to appoint representatives of the associative structures of civil society.

- In *Poland*, the EESC delegation was informed that, despite a longstanding tradition of social dialogue in the country, the opinions of the Social Dialogue Council were all too often ignored by the current government and important pieces of legislation were often adopted without meaningful consultation.

- In *Bulgaria*, social partners considered that social dialogue was developing positively and was generally very good. Organised civil society was largely represented at the Bulgarian Economic and Social Council. However, impediments to union membership existed concerning army and police trade unions. Bulgarian workers were not always aware of their rights and the authorities did not organise awareness-raising campaigns. The Bulgarian authorities confirmed that police and army staff organisations could not be members of the general confederations, but considered that it did not mean that there was a restriction on their right to freedom of association.

- In *Italy*, social partners acknowledged that their rights were well protected by the law but they regretted that social dialogue was too fragmented and not always valued by the authorities.

During the conference reference was made to the increasing difficulties involved in being a trade unionist, indicating that 7 out of 10 trade union members in one country considered that carrying out trade union activities resulted in discrimination against them during promotions and in their career development. Other difficulties included the lack of resources, limited social dialogue, and excessive use of force by security forces, which made exercising the right to demonstrate more difficult.

Freedom of assembly

Freedom of assembly is protected by law in all the countries visited. However, concerns such as administrative difficulties in obtaining permission, the use of court injunctions to prevent assemblies and the **policing of assemblies** were highlighted during the meetings.

Demonstrations

- In *France*, inadequate management of demonstrations and the excessive use of force was a problem that clearly stood out during the visit. CSOs reported a large number of disproportionate and unjustified arrests and the excessive use of force by security forces – notably through intermediate force carried out using non-lethal, hand-held weapons (LBD-40). They deplored the fact that complaints brought against the police had not led to consequences. On these points, the French authorities replied that the French Council of State (*Conseil d'Etat*) had judged the use of force around the "yellow vest" demonstrations to be "strictly necessary, graduated and proportionate". The use of LBD-40 was restricted to the situations in which mobs caused physical violence or serious damage to public spaces. Admitting the possibility that cases of misuse of the LBD may exist, the authorities indicated that such misuse was subject to standard disciplinary and judicial procedures and did not call into question the regular use of this weapon in cases of extreme necessity, that is to say in case of self-defence or when the police had no other means to defend the position they occupied. Concerning complaints brought against the police, the French authorities indicated that 409 complaints had been filed concerning the 50 000 demonstrations organised since the beginning of the "yellow vest" movement. No condemnation had been pronounced so far but many procedures were still being handled by the judiciary.

- In *France* and in *Austria*, the EESC delegations received testimony from police union representatives concerning a very challenging environment in terms of lack of staff, resources and training, which has strongly affected the health and morale of personnel. The French authorities indicated that there had been 1900 injured amongst the law enforcement personnel since the beginning of the "yellow vest" movement.

- In *Poland*, CSOs reported that the criminalisation of protestors had led to thousands of court cases being brought against protesters for misdemeanours, in what is perceived as a strategy to intimidate and therefore prevent future demonstrations. Concerning the protests, the Polish authorities indicated that the police only took action against people who violated law and order.

- In *Romania*, massive peaceful grassroots demonstrations gathering tens of thousands of citizens against corruption have taken place recently. In the summer of 2018, police used violence against the protestors.

Legislative developments

Given the importance of the right to demonstrate, the EESC paid attention to civil society's analysis concerning important changes in the **legislative framework.**

- In *Austria*, CSO representatives explained that freedom of assembly had become restricted for some third country nationals, as the so-called 'Lex Erdogan' bans foreign political campaigns and rallies in the country.

- In *France*, provisions that would have allowed Prefects to issue preventive administrative bans on demonstrating were withdrawn at the last moment. Concerning this point, the French authorities indicated that the Constitutional Council censored this provision because of the lack of proposed safeguards, not because the provision was deemed unnecessary.

- In *Poland*, according to CSOs, the new law on public gatherings favours "cyclical assemblies" such as marches for independence day, while it makes it very difficult to organise counter-protests and it is generally time-consuming to organise any type of protest at all. Polish CSOs also explained how difficult it was to obtain permission to march in favour of politically controversial issues. CSOs indicated that a law was also specifically adopted to prevent spontaneous protests in relation to the 24th Conference of the Parties (COP 24) of the United Nations Climate Change Conference in Katowice in 2018. Concerning these points, the Polish authorities indicated that the Law on Assemblies allowed municipal authorities to ban a meeting if it was to take place at a time and in a place where cyclical public gatherings took place. They also indicated that "regrettably organizers of public gatherings usually wait until the last moment" to provide notification of the intention to hold a gathering. Concerning the ban on public gathering during COP 24, the Polish authorities justified the banning of demonstrations because of the "rank of the climate summit and public security considerations".

Right to strike

The **right to strike** was also raised during interactions with the social partners.

- In *Hungary*, it was considered that the right was well respected and industrial action had led to an improvement in working conditions.

- In *Poland*, it was considered that the right to strike was well established, although trade union representatives complained of the use of court injunctions as a tool to prevent strikes.

- In *Romania*, trade unions explained that they were not allowed to strike while collective agreements were in place – even if they were not respected – which meant that unions were reluctant to enter into collective agreements. The Romanian authorities replied that "the right to trigger collective labour conflicts and strikes in relation to the interests of collective bargaining and respect for the principle of social peace during the collective contract are guaranteed according to the recommendations and standards of the ILO".

Freedom of expression and media freedom

Pluralism of the media

The media landscape varies in the countries visited. However, challenges to **pluralism in the media** appeared in various forms in all the countries visited, which over the last few years have seen at best a stagnating or more generally downward trend in their ranking in the annual World Press Freedom index of Reporters without Borders.

- The economic concentration and the politicisation of the press were common concerns, shared for example in *Austria*, where media representatives were wary of the reform of the national public service broadcaster, whose Board of Trustees was appointed by politicians, already exposing it to political influence. The Austrian authorities replied that the appointment of the Board of Trustees of the national public service broadcaster was regulated in Article 20 of the ORF-Act[10]. The Austrian authorities also indicated that the independence of broadcasting was guaranteed by the Federal Constitutional Act of 10 July 1974.

- In *Hungary*, concerns centred on the establishment of the Central European Press and Media Foundation, a media conglomerate. On these points, the Hungarian authorities replied that CSOs' views on the matter were "unfounded or based on subjective perceptions". They indicated that the prevention of media concentration was guaranteed in Hungary by the constitution and by law and asserted that they were committed to ensuring freedom of expression and media freedom.

- In *Bulgaria*, media specialists considered that media ownership was directly or indirectly concentrated in the hands of a very small group of people (in particular political figures), a trend which was facilitated by the authorities. These media generally adopted a pro-government and anti-opponent line. The Bulgarian authorities replied that that the Radio and Television Act (RTA) offered guarantees against the concentration of licences and that the Council for Electronic Media (CEM) regularly updated a "Register of Ownership in Electronic Media", which traced ownership to "real owners" (individual persons).

- In *Italy*, it was considered that restructuring processes had led to some media concentration within the limits of the existing regulation in the matter.

During the conference, it was explained that one of the consequences of the 2008 crisis in some countries had been the selling of many enterprises, including in the media sector, which had

10 Article 20 of the ORF-Act indicates that "The members of the Foundation Council shall be appointed subject to the following provisions: six members [out of 35] shall be appointed by the Federal Government in proportion to the number of seats of the political parties in the National Council [...]", nine members are appointed by the provinces, nine by the Federal Government, six by the Audience Council, five by the Central Staff Council.

Federal Act on the Austrian Broadcasting Corporation (ORF Act),
https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1984_379/ERV_1984_379.html

allowed oligarchs to step in and take control of many media platforms. On the other hand, the authorities were only allocating public funding to pro-government media, in what was seen as a misuse of public money requiring further monitoring.

Limits on the independence of the media

According to testimonies received, **pressure on the independence of the media** often took the form of the authorities' direct or indirect influence on the media market through advertising, public financing or shareholding of media outlets.

- In *Hungary*, according to CSOs, the bulk of advertising seems to go to media outlets that are close to the government. The Hungarian authorities indicated that the managerial decisions of privately owned media companies largely fell outside the competences of the government.

- In *Poland*, a similar trend was exposed, with an apparent drying-up over the last years of commercial advertising benefiting media providers that were seen as critical of the government. The Polish authorities indicated that they were considering establishing new legal regulations that would limit any potential excessive concentration in the hands of a limited number of people, and ensure greater pluralism of the market.

- In *Bulgaria*, media specialists considered that despite the legal guarantees for public service media editorial independence, the government could exert editorial pressure through funding. Local media were overwhelmingly dependent on the local authorities' budget, and therefore even more susceptible to political influence. The Bulgarian authorities reasserted that the Radio and Television Act (RTA) guaranteed the independence of media service providers from political and economic interference, including prohibiting that journalists receive instructions.

- In *Italy*, a key challenge put forward by participants was the evolution of the journalism industry in a direction that was affecting quality journalism. This was due to a variety of reasons including the harsh competition imposed by online platforms, and the weakening of the status of journalists.

During the conference it was explained that authoritarianism generally established its grip by imposing **limits on media freedoms, which could take many forms**. Limitations could result from economic control, leading to the concentration of the media in the hand of a few oligarchs. They could also take the form of legal limitations, such as a strategic lawsuit against public participation (SLAPP). Such judicial harassment aimed to intimidate a journalist or news outlet into removing critical coverage or self-censoring reports by repeatedly taking them to court in order to exhaust their time and resources. A climate of hatred against the media was also encouraged by some politicians and non-state actors, leading to a situation where investigative journalists needed special protections to confront threats and violence – which had resulted in several murders in Europe in recent years. Amongst several proposals for action was an early warning mechanism to connect alerts from the ground to the EU institutions.

Individuals and entities that threatened journalists should also face sanctions in a systematic way. Competition policy should promote the diversity of news and information. Addressing fake news should primarily involve fostering trustworthy, standards-based and collaborative journalism. Finally, some participants considered that more investment should be devoted to independent journalism and new ways of financing journalism.

Threats and attacks on journalists

A more worrying development of which the EESC delegations were informed was the proliferation of incidents of judicial harassment or direct **threats and attacks** against journalists.

- In *Poland*, media representatives explained that an estimated twenty lawsuits were pending against news outlets. Politicians seemed to regularly call journalists "traitors" and some advocated for a "re-Polonisation" of foreign-owned media outlets. On this point, the Polish authorities replied that the Government did not carry out any work aimed at reaching such an objective.

- In *Austria*, media representatives gave examples of direct challenges to journalists by interviewees themselves, and of online harassment campaigns.

- In *France*, media professionals described the regular discrediting they were currently facing (so-called "media bashing") by many politicians. They also mentioned examples of violence by the police and demonstrators against journalists during the "yellow vest" protests. The French authorities replied that they always systematically condemned any act of violence against journalists, and that they provided regular information to the Council of Europe Platform on the projection of journalists[11].

- In *Bulgaria*, pressure and attacks on journalists were considered as common and stemming from both public authorities and from private actors. This pressure often came in the form of smear campaigns run against independent journalists that covered sensitive topics, or termination of employment. The Bulgarian authorities emphasised their strong political will to bring to justice the perpetrators and masterminds of crimes, pointing out to the fact that rapid and unbiased investigations were carried out in all cases involving attacks on journalists, some of them already being in court.

- In *Italy*, CSOs have monitored numerous cases of threats, intimidation, seizures and other types of abuses, in particular against investigative journalists or journalists reporting on sensitive developments concerning politicians, the mafia, or speculative projects. The Italian authorities have taken efforts to address this issue, notably through the setting up of a Coordination Centre which serves as a contact point for representatives of journalists and the Ministry of the Interior, and takes immediate action in cases where threats have been made, assessing individual incidents and providing the necessary safeguards.

11 Council of Europe, Platform to promote the protection of journalism and safety of journalists, https://www.coe.int/en/web/media-freedom

Right to information

Another fear put forward by members of the media during the visits concerned challenges in the areas of the **right to information** and transparency.

- In *Austria*, the absence of a law on the right of access to information – presented as a unique case in the EU – was considered as particularly problematic. In addition, members of the media described other challenges such as the bribing of media outlets and journalists and the fact that independent press coverage was limited in rural areas. The Austrian authorities replied that these views gave the impression that there was no regulation at all on the right to information in Austria, which they felt was incorrect, referring in this connection to the Austrian Constitution (Article 20 paragraph 4) and the "Duty to grant Information" Act.

- In *Poland*, journalists complained that many public authorities refused to grant access to information, including by avoiding inviting some press representatives to press conferences and refusing to grant them interviews.

During the conference it was contended that the most appropriate way to **address fake news and the influence of foreign interests in European media**, especially in the context of elections, was to promote quality journalism content, including investigative journalism, and trust indicators. It was claimed that in at least one Member State, EU funds were used to finance pro-government media; it was therefore proposed that the European Commissioners for competition, internal market and innovation be tasked with working on press freedom, including from the perspective of competition and copyright law. More attention also needed to be paid to the consequences of international investment on media plurality, according to the participants.

Freedom of expression

Freedom of expression was also seen as being endangered in several countries.

- In *Poland*, CSOs participating in the visit considered that this right was appropriately protected by law. Some examples, however, illustrated the pressure and disciplinary procedures imposed on judicial actors who had used their right to freedom of expression in support of an independent judiciary or who had undertaken educational activities in the area of the rule of law. The Polish authorities indicated that the jurisprudence of the Supreme Court had not questioned the disciplinary tort of the judge.

- In *Hungary*, the authorities' interference was also seen in the area of academic freedom, including through stricter controls on funding.

- In *France*, media actors feared that the law against the manipulation of information, aimed at combating the propagation of fake news and anti-cyber hate speech, could have restrictive effects on media freedom. The French authorities replied that the December 2018 law on the manipulation of information addressed fake news online by reinforcing

the responsibility of online platforms and providing access to remedy. According to them, the law reinforced the protection of the public without limiting the freedom of the media.

- In *Italy*, the high number of defamation cases brought against journalists were often found to be unfounded and therefore dismissed by judges. However, they represented a serious hurdle which was described as a "tax on truth" infringing on media freedom.

Hate speech

The EESC delegations also heard accounts of the media being used as a tool to stigmatise civil society and the opposition, or to amplify **hate speech** against some groups.

- In *Hungary*, CSOs said they experienced difficulties in having their voice heard in the mainstream media. Those who are seen as critical of the government generally face negative treatment by the press. By labelling some CSOs and other actors such as academics as enemies, media close to the authorities also prevented any debate on topics considered as too sensitive, which blocked any possibility for peaceful national dialogue.

- In *Austria*, several examples were given of the press – and in particular free newspapers – spreading racist and anti-Muslim political discourse. The phenomenon was all the more worrying given that documentation and reporting of hate speech seemed particularly low in that country. The Austrian authorities rejected what they considered a "generalized reproach" concerning articles bordering on racism.

- Online media were seen as particularly conducive to the spread of hate speech and verbal violence against many groups, notably in *Austria* and in *France*. Concerning this point, the French authorities indicated that a bill on online hate speech was being discussed in the French parliament and that the creation of a council on the deontology of information was envisaged.

Non-discrimination

The principle of non-discrimination was recognised by all Member States as part of their commitments under international law, but discrimination against certain groups was observed in practice in the countries visited.

Working on non-discrimination

The EESC delegations heard several testimonies of the phenomenon of **sidelining CSOs working on contentious topics**.

- In *Hungary*, CSOs explained that the phenomenon of shrinking space particularly affected CSOs working in support of human rights protection and anti-discrimination, including in the areas of migration, Roma people, disability and gender and transgender issues. The Hungarian authorities indicated that taxpayers may assign one percent of their income taxes to a qualified non-profit organisation, which – according to the Hungarian authorities – "ensures independent funding for CSOs".

- In *France*, the EESC delegation heard from CSOs that provide assistance to migrants, who considered that the legal proceedings or detention of their volunteers and workers was abusive. In their reply, the French authorities firmly contested this view, indicating that while the great majority of CSOs working on migrants' rights respected the law, some of them had acted illegally. They indicated that penal exemptions for acts of solidarity with illegal migrants concerning residence but that this exemption could not be extended to efforts to help migrants enter the country, even with a humanitarian aim.

- Challenges to CSO support to migrants were seen as particularly acute in *Austria*, where it was feared that the creation of a federal agency under the auspices of the Ministry of Interior in charge of legal counselling for asylum seekers would marginalise the role of independent CSOs previously undertaking such tasks. Concerning this specific point, the Austrian authorities replied that the agency in question would only cover legal counselling and representation services that were deemed indispensable under European Union law. Therefore, according to them, asylum seekers would remain free to procure legal counselling from outside the agency. They also mentioned safeguards ensuring the independence of the agency's legal counsellors.

- In *Italy*, CSO representatives explained that CSOs working in solidarity with migrants had seen their activities being criminalised by the 'Security Decrees'. The Italian authorities met during the visit acknowledged that there had been a degradation of the CSO climate around migration under the previous government but indicated that the current government had changed the narrative on the question.

During the Conference it was explained that hate speech had a silencing effect on marginalised groups, and that equality bodies – public institutions fighting discrimination at the national level – should be reinforced to tackle this phenomenon. This implies providing better information to members of minorities on the existence and role of these equality bodies. It also involves reinforcing the financial capacity and independence of these equality bodies and increased training for their staff members to promote positive social inclusion. The need to adopt a rights-based approach to ending discrimination, including the phenomenon of multiple discriminations, was mentioned. Some called for the adoption of the horizontal Directive on equality – which had been blocked by Member States for several years, thus creating protection gaps amongst Member States. It was also essential to include members of the minorities in debates that concern them.

Non-discrimination against migrants and ethnic or religious minorities

The situation of **migrants**, including asylum seekers and especially child migrants, was seen as particularly worrying in some countries.

- In *France*, the situation of migrants – including asylum seekers – and especially child migrants, was considered as particularly worrying in terms of the increasing violation of their human rights. Participants also mentioned the phenomenon of social discrimination and worrying developments in the area of online hate speech and violence.

- In *Austria*, CSOs participating in the meetings noted that asylum seekers experienced discrimination in several respects. The law was seen as restricting asylum seekers' access to rights rather than helping them to integrate through the labour market. According to CSOs, this encouraged a deplorable situation of exploitation of undocumented workers, mainly migrants and asylum seekers, who were almost totally denied access to the formal labour market. In their reply, the Austrian authorities indicated that persons who were employed without a work permit had the same entitlements as legally employed persons. They also indicated that the Equal Treatment Act prohibited discrimination on the grounds of religion or belief. Finally, the Austrian authorities mentioned that asylum seekers who were admitted to the asylum procedure and who had a high probability of being granted international protection had access to German courses.

- In *Italy*, CSOs described how the two 'Security Decrees' adopted by the previous government had led to an abolition of humanitarian protection for asylum seekers. The impossibility for asylum seekers to obtain legal address was also presented as a factor keeping them on the margins of society. The Italian authorities indicated that the country had clear channels for asylum, through resettlement, humanitarian corridors and humanitarian evacuation and called for a collective EU response.

Discrimination based on religion or ethnic appearance was considered to be strong, in some countries.

- In *France*, the groups most vulnerable to discrimination were said to be persons of Arab and African descent – who were often subject to ethnic profiling during police controls – in addition to LGTBI people, homeless people and Roma. The French authorities replied that the fight against hatred and discriminations was a priority in terms of public prosecution. They also referred to the inter-ministerial delegation on the fight against racism, anti-Semitism and anti-LGBT hatred, which finances CSO activities in these areas.

- In *Austria*, according to CSOs, recent legislation banning "ideological and religiously influenced clothing" has led to a serious restriction on the human rights of Muslim persons, who are subject to clear discrimination compared to other religious groups. The Austrian authorities replied that this law was not about religious freedom but about integration into Austrian society, which according to them, requires the facilitation of interpersonal communication and the recognition of others, including their faces.

- In *Hungary*, several organisations mentioned that the anti-Soros campaign was anti-Semitic in nature, which further triggered anti-Semitic hate speech, in the context of a climate already conducive to racist, xenophobic and Islamophobic speech. Some CSOs indicated that, unlike other areas, the government was cooperating well with CSOs in the area of hate speech and hate crime, but that hate crimes were often insufficiently investigated. Regarding the situation of the Roma population, participants mentioned discrimination in the child protection system, in housing, work and education, and discrimination by law enforcement authorities (including ethnic profiling) and by local governments. In their reply, the Hungarian authorities indicated that they were strongly committed to combating racism, anti-Gypsyism and any incitement to hatred, including anti-Semitism. They mentioned that all thirteen nationalities, including Roma, living in the country had the right to use their mother tongue, including in education, and to form autonomous governments at both local and national level. They mentioned the role played by Hungary in the setting up of the EU Framework Strategy on Roma inclusion, which became the basis for the Hungarian National Social Inclusion Strategy, leading to "a great number of positive results" including in terms of reduction of Roma poverty and unemployment.

- In *Bulgaria*, it was considered that hate speech against minorities by public figures and politicians was common, and that authorities did not offer an adequate response. The Bulgarian authorities replied that these claims were objectively unverifiable but pointed out to the fact that in 2019 and 2020, a number of actions were taken to limit and deter hate speech and, in certain cases, to prosecute it. Despite the existence of comprehensive legislation, CSOs met during the mission considered that the Roma minority was being socially excluded, in particular in the area of housing, health, and education. In spite of some general progress in the education level, segregation was still considered as prominent at school. The Bulgarian authorities replied that social housing and the removal of illegal constructions followed a non-discriminative approach, and that healthcare services were provided to all Bulgarian citizens (while special measures were specifically available for the Roma community). They also indicated that segregation by classes or buildings was strictly forbidden and that funding was earmarked for municipalities to carry out desegregation activities.

- In *Italy*, the clear anti-Roma narrative and policy of the previous government increased the discrimination they suffered in terms of housing, education and health. A worrying development that was mentioned was the order made by the previous government for local authorities to map out informal Roma, Sinti and Camminanti settlements to facilitate their destruction.

During the conference reference was made to analysis that shows that individuals coming from ethnic minority groups generally have more difficulties than the rest of the population to access justice. Moreover, criminal justice is often biased against these individuals while the perpetrators of offences committed against members of minorities escape justice more easily than perpetrators of other offences. This raised the question of the weakening of minorities' trust in institutions, in a narrative context where the populist anti-migrant rhetoric that has surged in Europe often associates migrants with insecurity. According to conference participants, neo-liberal socio-economic policies and exclusive nativist policies promoting the interests of native inhabitants against those of immigrants contribute to the marginalisation of minorities. Others called for a more structural and institutional approach to tackling these issues, including by taking into account the intersectional aspects. The idea of exploring further the role that social partners could play in fighting discriminations was also mentioned. Others also referred to the need to share best practices, using positive examples such as the mentoring programme for migrants, which promote the integration of migrants through the labour market in a Member State.

Women

Women's rights and gender equality featured as an important topic during several visits.

- In *Austria*, CSOs complained that public funding in this area had been drastically reduced recently. This was considered as a wrong signal in a country that was second to last in the EU gender pay gap statistics. In their reply, the Austrian authorities underlined that the budget of the Directorate for Women's Affairs and Equality had remained unchanged since 2011. They acknowledged the possible reduction of co-financing of projects, but indicated that this had not affected the Austrian-wide counselling services or shelters for women and girls.

- In *Hungary*, women's rights organisations stressed a deterioration in gender equality and women's and girls' rights. According to them, public narratives presented an image of women as mere agents of the family, thus reinforcing gender stereotypes and drawing on the concept of "familism" instead of feminism. In their reply, the Hungarian authorities rejected what they called "the artificial dichotomy between families and women's rights". They indicated that the country devoted 4.7% of GDP to financial support for families, above the 2.5% EU average. They indicated that an appropriate balance between family and work, equal treatment, and working conditions for pregnant women were priorities of the government's employment policies and that the Criminal Code was punishing violence against women more severely than before.

- In *Bulgaria*, CSO representatives strongly criticised the decision by the Constitutional Court to declare unconstitutional the Istanbul Convention on preventing and combating violence against women and domestic violence. Measures were considered to be inadequate in that area, especially since new legislation only criminalised repeated offences (requiring at least three acts of violence). The Bulgarian authorities replied that combating violence against women was an important long-term priority for the country and that all cases under the Law on Domestic Violence are handled with priority by the public prosecution. They also indicated concerning discrimination in general that the Anti-discrimination Commission monitored and investigated complaints.

- In *Italy*, it was described how the perception of violence against women was low compared to the reality, and too often approached through the prism of conflict within the couple. Access to justice for female victims of violence and compensation offered by courts were considered as insufficient.

LGBTI rights

- *Austrian* CSOs mentioned **LGBTI rights**, noting that despite the existence of registered partnerships and marriage, for a period of time, gay spouses were not able to adopt a "family name", and referring to heated debates in the country on the concept of family. They also explained that LGBTI asylum seekers were often subject to prejudice and homophobia on the part of asylum officers.

- In *Bulgaria*, CSO representatives explained that LGBTI persons were only protected by the general Anti-discrimination Law, but did not benefit from other specific protection. The Bulgarian law did not permit same-sex marriages or civil unions and authorities and courts rarely recognised or sanctioned abuses or discrimination against LGBTI people. Hate speech was present in the media and perpetuated by some public figures. The Bulgarian authorities indicated that the national Anti-Discrimination Law was comprehensive. They added that the Commission for Protection against Discrimination (CPD) reviewed and ruled on a number of LGBTI complaints and alerts over the years, and that various projects had been launched to increase the capacity to effectively combat discrimination and to detect, investigate and prosecute hate crimes.

- In *Italy*, it was considered that despite some advances in social perceptions and law, significant challenges remained, for example in the areas of hate speech and hate crime, the visibility of LGBTI persons in media, or bullying at school.

During the conference, some participants mentioned that there was an increase in the number of anti-LGBTI hate crimes and hate speech in Europe and that the political trend in many countries is also geared towards pitting the majority of the population against the supposed "enemies of the nation", which generally include LGBTI persons. In such contexts, the media are often part of the scapegoating of LGBTI persons and the police sometimes refuse to play the role of maintaining security, which is necessary to ensure freedom of assemblies such as gay prides. Participants explained that LGBTI persons who are also members of other minority groups suffer greater harassment and marginalisation.

Persons with disabilities

- In *Austria*, despite a solid legal framework for the protection of **persons with disabilities**, some specific examples of discrimination were highlighted, notably in the area of inclusive schooling, leading to equivalent impacts in the area of access to the labour market.

- In *Bulgaria*, it was considered that the requirements of the UN Convention on the Rights of Persons with Disabilities were not being fulfilled. CSO representatives considered for example that in Sofia the environment was completely inadequate for people with disabilities, and that the situation was worse in small towns and villages. The Bulgarian authorities recalled that it was the responsibility of the municipalities to ensure accessibility for people with disabilities, in line with the requirements of national law whose implementation was currently being reviewed.

- In *Italy*, it was considered that discrimination remained widespread, in particularly concerning economic and social inclusion. It was hoped that the recent adoption of a law to favour the inclusion of persons with disabilities in the education system would address the educational and employment marginalisation of persons with disabilities.

Rule of law

Participants in the visits considered that, along with fundamental rights, the rule of law was an essential component in the development and maintenance of a **culture of democracy** in Europe. Many representatives encountered during the visits felt that negative developments, in particular in some EU Member States, had a spillover effect in neighbouring countries. According to them, the authorities seem to be testing the limits and the response, or lack of response, by the EU. The question of maturity often came up in relation to institutions and political practices, but also in relation to political opposition and civil society – considered to be too divided or disorganised, or even co-opted by the authorities, in some of the countries visited. The social partners generally considered that the rule of law was an important topic, for example for improving the business climate and ensuring respect for workers' rights, as explained for instance in *Romania*. A positive example of a culture of fundamental rights was given in *Austria*, where participants explained that the judiciary had played a major role in bringing about many positive changes in this respect in the country.

Corruption

The question of the lack of effort and public means in addressing **corruption** came up in the course of some country visits.

- In *Hungary*, participants considered that although the courts were showing independence in this domain, cases were very rare due to the lack of independence of public prosecutors. Some participants also indicated that there was a need to control the use of EU funds better to ensure that such funding did not end up abetting corruption rather than helping to strengthen the rule of law.

- In *Romania*, CSOs explained that an event linked to corruption had galvanised massive grassroots demonstrations mobilising tens of thousands of citizens, eventually leading to the fall of the government in place at that time. Some participants encouraged observers to also consider the role of foreign companies from reputable countries, which in their view also had their share of responsibility for bringing corruption into the country.

- In *Bulgaria*, CSOs considered that the situation was getting worse with regards to the fight against corruption and organised crime. The media sector largely associated the dramatic fall of the country in the press freedom rankings with the rise of corruption that has followed Bulgaria's accession to the EU. The Bulgarian authorities insisted that they were working hard against corruption at all levels. They pointed to the fact that the Council of Europe Group of States against Corruption (GRECO) considered that the country had complied with most of its recommendations and to the fact that a new anti-corruption agency had been established. They also added that national efforts has significantly limited the impact and scope of organised crime and the fight against corruption was beginning to deliver positive results, and the reforms were visible and irreversible.

A panellist at the conference explained that systemic corruption could endanger the legitimacy and viability of democratic institutions. It is particularly worrying to observe that democratic institutions can be used by corrupt actors to pass laws to ensure them impunity. Another panellist at the conference considered it essential to address the root cause of civil unrest in Europe, which included corruption.

Balance of powers

Some participants met during the EESC's visits expressed their fear of slowly entering into a new era of governance marked by a decisive tip in the **balance of power**.

- In *France*, the idea was associated with the pre-eminence of security over rights and freedoms in the political agenda, leading to a weakening of the role of the judiciary in favour of that of the administrative authorities, and to the permanent introduction into ordinary law of legal derogations adopted during the state of emergency. The French authorities replied that the 2017 Law on internal security and on the fight against terrorism did not introduce into ordinary law provisions from the state of emergency regime, but was rather inspired by measures of administrative policing. They specified that the law was restricted to acts of terrorism (rather than applying to all acts of all public disorder) and is submitted to the regular control of the parliament.

- The sense of an unjustified political emergency affecting the normal course of democratic governance was also found in very different contexts. Participants consulted in *Romania* pointed out that the government's recourse to urgent procedures was leaving little or no time for consultations with civil society. The Romanian authorities replied that legislative changes of an emergency nature generally concerned reform measures set out in advance in the Government Programme and/or measures to ensure compliance with European jurisprudence.

- In *Poland*, some participants felt that the key principle of legal certainty was being undermined by the new possibility, under certain circumstances, of reviewing any judgment made in the last twenty years without further appeal. On this point, the Polish authorities replied that "the introduction of a review mechanism, the goal of which is to restore legal order by eliminating judgments violating the Constitution, grossly violating the law, and obviously contradicting the evidence collected in a case, is the sovereign's right and protects the public order".

- In *Bulgaria*, civil society representatives pointed out to the issue of state capture, characterised by a diversion of the work of institutions, including the judiciary, to the benefit of various groups instead of the public interest. The Bulgarian authorities underlined improvements brought by the 2016 Judiciary Act, including for example the random distribution of cases in the courts. They asserted their commitment to ensure the independence of the judiciary.

- In *Italy*, legislation restricting search and rescue activities was mentioned as an example of the possibility for a political majority to pass legislation in a formally correct way while its content would breach international and constitutional law as well as fundamental rights. It was also mentioned that the country had known unprecedented attacks on the checks and balances under the previous government, which had forced some heads of independent institutions to resign after they had warned about the impact that some public policies would have.

Judicial reform

Processes of **judicial reform** were under way or in preparation in some of the countries visited by the FRRL Group. They generally led to some anxiety about the future of the independence of the judiciary.

- In *Hungary*, participants considered that the judiciary benefited from a high level of independence but feared that this could be called into question as a result of the creation of a new parallel public administrative court system, which according to them was being carried out in an expedited way and without proper impact assessment. The Hungarian authorities replied that the entry into force of the act on Administrative Courts had been indefinitely postponed since 2019, although the process of reform had taken place, according to them, in a transparent way and following a broad public consultation. The Hungarian authorities insisted that the establishment of administrative courts was in keeping with international examples, and that it could ensure "the self-restraint of the executive power" and "more efficient control over actions of the administration".

- In *France*, participants feared that the ongoing judicial reform could affect fundamental rights, in particular the right of defence in the criminal procedural code. The French authorities replied that the reform aimed to make the criminal procedure more effective while ensuring respect for fundamental rights. They explained that the Constitutional Council declared almost all the criminal procedural provisions necessary, proportionate and compliant with the Constitution, and that the few provisions that did not pass this test did not enter into force.

- In *Poland*, some participants considered that judicial reform was an attempt to dismantle the justice system to allow for the adoption of legislation without proper judicial control. The Polish authorities felt these considerations were too general in nature.

- In *Bulgaria*, the concrete positive impact of the Cooperation and Verification Mechanism (CVM) on judicial reforms was questioned, despite promising first years. According to CSO representatives, some efforts towards judicial reform in the last years have been upset by bills that sometimes risked directly undermining the independence of the judiciary. The reform of the prosecution was presented as a too long delayed necessary step to reinforce the independence of the judiciary. The Bulgarian authorities recalled that the independence of the judiciary was guaranteed by the Constitution and that all Bulgarian institutions were very committed to satisfying the requirements of the CVM. In the 2019 CVM report Bulgaria was considered to have met all six benchmarks.

- In *Italy*, it was feared that a reform currently under discussion concerning the composition of the High Council of the Judiciary could put at stake the feature of the Italian judicial system which meant that prosecutors belonged to the judiciary and were totally independent from the executive.

Budgetary and political independence of the judiciary

These questions were closely linked with challenges concerning adequate **budgetary allocations** to the judiciary. These concerns were expressed in *France,* in *Hungary* and in *Austria*, where participants considered that underfinancing, leading to a reduction in judicial personal, could only affect the quality of justice, illustrated by the high number of pending cases. Concerns over the slowness of the judicial system were also voiced in *Romania*.

The most worrying developments heard during the visits concerned explicit interference in the **independence of the judiciary**.

- In *Romania*, examples of such interference mentioned by CSO participants included incentives offered to judges to retire, unjustified additional qualification requirements for judges and the absence of objective criteria for promotion.

- In *Poland*, some participants explained that interference in the independence of the judiciary also took the form of political appointments of judges in courts close to the authorities, based on a biased decision-making process and biased rules for the submission of applications from candidates. Participants also estimated that disciplinary procedures could also be initiated against judges and prosecutors on the sole basis of the content of their judgments. The Polish authorities denied the idea that some judges could be "political allies" to the government and insisted that "all judges in Poland are independent and cannot be considered politically involved". They also denied the existence of any applicable law for disciplinary procedures on the basis of the content of a judge's judgement.

- In *Hungary*, some participants explained how judges could be appointed to the new administrative courts without the support of peers, in what was described as a politicised process. Participants also mentioned examples of explicit stigmatisation of judicial actors and the negative portraying of the National Judicial Council in the media. The Hungarian authorities replied that the procedure of appointing administrative judges contained all the necessary safeguards required by the Venice Commission and therefore could not be considered as politicised.

- In *Bulgaria*, it was reported that judges and their court decisions had been confronted with unprecedented attacks. It was also mentioned that access to justice was made difficult by a disproportionate increase in court fees in some instances. The Bulgarian authorities argued that the increases had only been moderate and were the first ones since 1998.

- In *Italy*, participants explained that the judiciary and associations of judges and prosecutors had been attacked following unpopular judgements protecting migrants' rights. This has taken place in a climate where some politicians had sought to impose the public narrative that elected politicians were the only representatives that had the legitimacy to act on behalf of the people, creating a dangerous delegitimisation of the role of the judiciary in the eyes of the people – even reaching some points where the judiciary as a whole was being portrayed as being "against the people".

During the conference participants supported the idea of reinforcing a culture of the rule of law in Europe, which cannot be implanted from the top down. According to some, what is needed is a two-way street approach combining top-down and bottom-up channels of exchanges. Reinforcing the role of civil society is all the more vital given that "populist constitutionalism" grows where civil society is weak. Participants explained that citizens did not feel that there were enough meaningful ways to engage with institutions, and that this was one of the key aspects to address in collaboration with CSOs. CSOs indeed play an essential role in raising awareness, empowering and bringing citizens together – a role that is needed more than ever on a continent where Article 2 values are no longer self-evident.

Other participants in the conference explained that National Human Rights Institutions (NHRIs) could play an important role in ensuring that a broad range of voices are considered in national discussions concerning fundamental rights and the rule of law. NHRIs address the current challenges to democratic space in Europe by monitoring national developments in the area of human rights, implementing awareness campaigns and education activities, but also through their strategic interventions before courts, or through visits to detention centres and reporting to international mechanisms.

Conclusions

The synthesis presented in this report does not claim to offer a comprehensive overview, nor does it provide an exhaustive analysis delving into the detailed legal complexities of each particular setting. Although some positive elements were raised, civil society organisations mostly concentrated on the areas where they would like to see improvement. This means that examples of positive implementation and respect for the rule of law were brought up less frequently.

The EESC believes that the report is useful insofar as it makes it possible to highlight the views of civil society, media professionals, legal professionals and the social partners regarding some key general trends in the area of fundamental rights and the rule of law in various countries on our continent, and to clarify the position of the authorities on these topics.

What is the picture that emerges? First of all, civil society actors in all the countries visited expressed to varying degrees the increasing difficulty faced by CSOs in performing their role in society effectively. This is in part because of the insufficiently pro-active approach of the authorities in creating a space for meaningful participation of civil society in the democratic decision-making process. Nor do authorities sufficiently prioritise the funding of vital civil society activities, such as monitoring and watchdog activities. Lack of support for CSOs can also take more severe forms, through the deliberate deprivation of adequate funding for critical CSOs or through explicit threats and attacks by public or private actors.

When national dialogues and avenues for organised participation do not appear to give the desired results, citizens still have the opportunity to exercise their right to assemble and protest directly in the street, one of the most obvious manifestations of direct democracy. Demonstrating, however, seems to be becoming more complicated in some countries because of a restrictive legal framework or because of inadequate management of such events by the public security forces.

The positive point is that citizens can still speak freely in Europe, where freedom of expression is generally well protected in the legislation of the countries visited. This does not mean that challenges are absent, however, as some CSOs experienced negative repercussions for publicly criticising government policy, and a feeling of lack of transparency of public decision-making and of insufficient protection of the right of access to information was keenly felt in some countries visited. A common point in all the countries visited were the concerns of both media professionals and civil society in general regarding the difficulties faced by the media, which are at risk of economic concentration, political pressure, stigmatisation and outright attacks.

Another common trend that emerged from all the countries visited is the increasing difficulty faced by CSOs in defending particular groups that are subject to specific forms of discrimination. Instead of being seen as a way of building stronger, more inclusive and fairer societies, some private and public actors choose to single out, stigmatise and occasionally attack the members

of these groups as well as the individuals and CSOs that defend them. The situation appears to be particularly acute in relation to migrants, asylum seekers and citizens of a visibly different ethnic or religious background from that of the majority.

The rule of law provides an indispensable framework for protecting all the above-mentioned fundamental rights. The general picture that emerges from the EESC's country visits is not promising in this respect. Even in countries where there are strong institutions, consolidated through a long tradition of democracy, concerns were expressed about the budgetary sustainability and independence of the judiciary and the potential risk of developing a culture of "preventive justice". In some countries with a shorter democratic history, independent institutions that had emerged as the guarantors of this path now seem under increasing pressure because of political influence and/or budgetary restriction.

These findings may not seem very positive at first glance. However, despite all the challenges mentioned above, the country visits have brought to the fore the vibrancy of civil society. The EESC is heartened to see that the committed and courageous representatives of CSOs, of the media, of the legal professions and of the social partners are devoting their time and energy to this cause, because they believe that they can make a positive contribution to the future of their countries.

What civil society demands first and foremost is to be heard and supported. The EESC has listened to this demand and intends to play to the full its role in facilitating dialogue between these vital forces and the relevant actors at national and European levels.

In that spirit, the objective of this report and of the process of engagement led by the FRRL Group is not to bring an end to the debates, but on the contrary to encourage all stakeholders and authorities to continue clarifying their positions and discussing these issues in order to reinforce positive practices or develop inclusive solutions to the challenges mentioned above.

Through this report and this process, the EESC aims to contribute to the development of a common "culture of the rule of law" in Europe, a culture of dialogue where no topic in the area of fundamental rights, the rule of law or democracy would be off limits when it comes to constructive and rational dialogue between all parties.

As mentioned by EESC president Luca Jahier during the conference on 5 November 2019, in order to play its part in the development of a culture of the rule of law, the EESC hopes to upgrade the format of its interaction with stakeholders to one of a genuine forum gathering grass-root organisations from all over the EU. Such a forum could be associated with a permanent structured dialogue to develop the civil society component of the Rule of Law Review Cycle.

As expressed by Mr Jahier, this forum and the accompanying permanent structured dialogue would be indispensable additions to the current process of reinforcing the EU toolbox on the rule of law. The Rule of Law Review Cycle proposed by the European Commission, and discussions around the setting up of a peer review process amongst Member States, should indeed complement rather than replace tools such as the Article 7 and infringement procedures.

By providing a channel of expression for organised civil society and by facilitating understanding and dialogue on the part of all stakeholders and authorities, the EESC has an indispensable role to play in the EU inter-institutional dialogue on democracy, the rule of law and fundamental rights. The EESC and its Fundamental Rights and Rule of Law Group will continue to work hard in this regard over the coming years.

The EESC Fundamental Rights and Rule of Law Group

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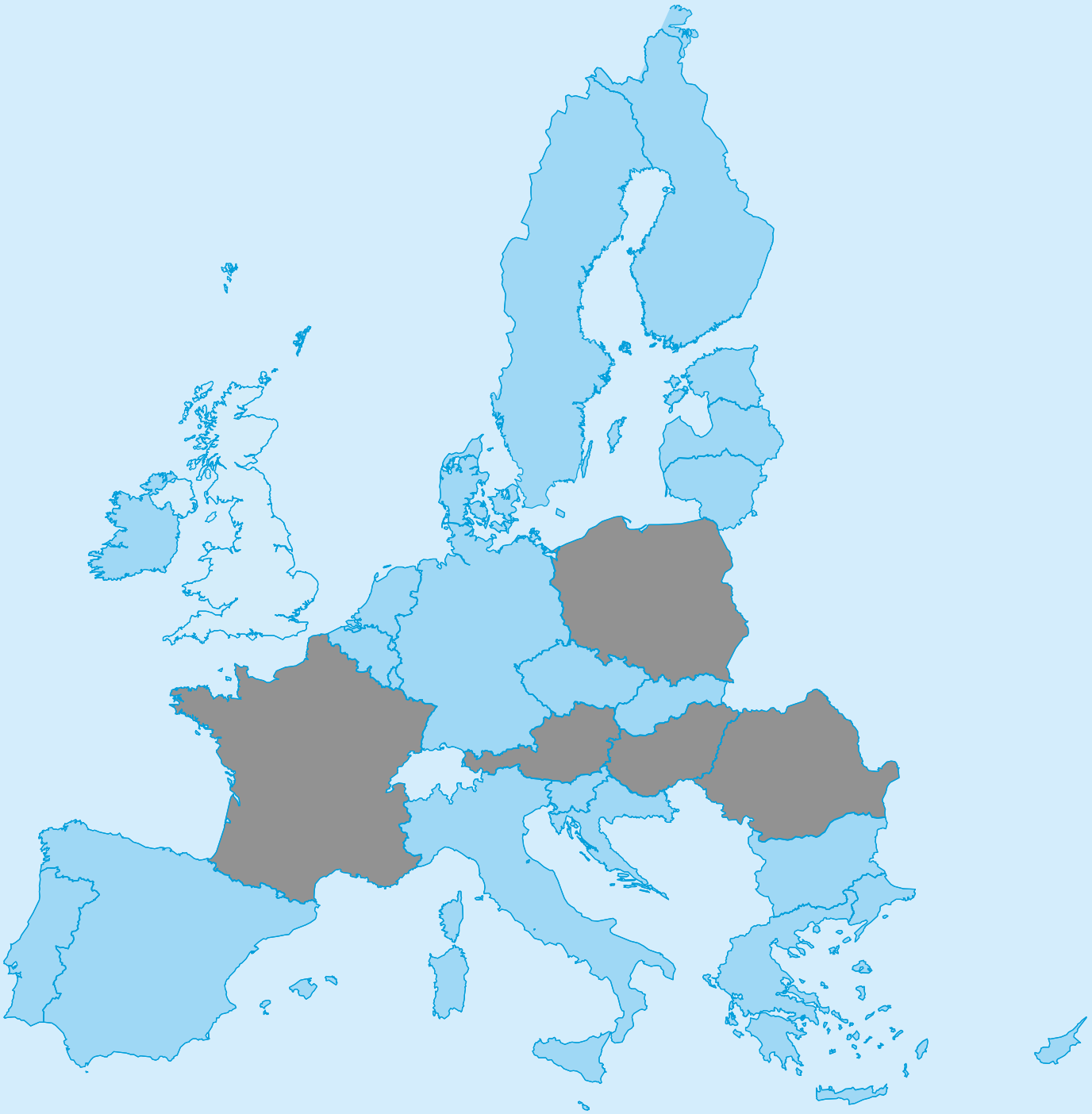
Karolina Dreszer-Smalec, Vice-President

Jukka Ahtela, Vice-President



APPENDICES

Country reports of the visits to:

Romania
(19-20 November 2018)

Poland
(3-5 December 2018)

Hungary
(29-30 April 2019)

France
(28-29 May 2019)

Austria
(3-4 June 2019)

Bulgaria
(10-11 October 2019)

Italy
(5-6 December 2019)

Reports on Romania, Poland, Hungary, France, and Austria were already published in the interim report, but minor changes might occur for clarification or linguistic reasons.

Report on the visit to Romania 19-20 November 2018

Six members took part in the country visit to Romania. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, independent human rights organisations and the legal profession on the one hand, and the Romanian authorities on the other. [The aim of this report is to faithfully reflect and reproduce the views of civil society.].

Freedom of association and assembly – CSOs

CSOs reported a shrinking civil space and a negative image being propagated against CSOs performing watchdog activities or criticising the government, which are presented as being political opponents. CSOs now have an obligation to report every year, and if they do not so, they risk being dissolved. The same reporting obligations apply to very large CSOs performing public services (for example building hospitals) and small CSOs with much smaller budgets and which rely on voluntary work. Most CSOs can *de facto* not meet these reporting obligations, and are therefore dependent on the goodwill of the government, which can choose to close them at any time for non-compliance.

According to CSOs, the government only responded to popular demand after lots of pressure, and was in turn applying a lot of pressure on CSOs. This pressure on CSOs took the form of stigmatisation and creating obstacles to their access to funding. This has even affected CSOs which provide social services to compensate the absence of public services. Some organisations reported that threats had been made against them. Legislation was used to burden CSOs with disproportionate administrative requirements. For example, the money laundering legislation was used to require excessive reporting obligations on funding.

According to CSO representatives, negative developments in other EU Member States have not helped improve the situation in Romania. They felt that the authorities were testing the limits in the absence of a proper response at EU level, including by using methods such as manipulation and propaganda. Participants also mentioned the weakness of the opposition as part of this systematic lack of maturity in the democratic culture.

The CSOs complained about the government's planned transposition of the 5th Anti-Money Laundering Directive, as it was planning to include CSOs as "beneficial owners", increasing reporting requirements for CSOs. The CSOs felt that the EU should look into this. The CSOs also thought that it would be helpful if the EESC were to establish an annual platform/forum, where CSOs could meet and provide information at European level.

CSOs also mentioned the lack of proper consultation. Despite the existence of the so-called "Sunshine Law" (Law 52/2003 regarding Transparency of Decision-making in Public Administration) most public consultations were done on a website, which was not easy to find. Furthermore, the government and public authorities did not respond to suggestions made and were extremely reluctant to meet face-to-face. When meetings were organised, documentation was not made available or was provided at extremely short notice. Consultations generally took place in spaces that were inappropriate for a proper consultation exercise, preventing real interaction and contribution by the audience. Many misgivings were also expressed with regard to the government's recourse to urgency procedures, leaving little or no time for consultations with civil society, but others felt that it was less problematic. However, there was a consensus that consultation could be improved, notably to improve trust.

A deadly fire in a nightclub in November 2015 led people to understand that corruption – in this instance the issuing of an operating license without a fire safety permit – could literally kill people. This event propelled massive grassroots demonstrations mobilising tens of thousands of citizens, which led to the fall of the government.

Freedom of association and assembly – social partners

The social partners mentioned challenges concerning labour market legislation adopted under urgency procedures that did not leave time for proper consultation. The five laws governing the labour market were all changed within a month. The coverage of collective agreements was very low. There were also concerns that the justice system was slow in settling cases.

Trade unions mentioned violations of International Labour Organisation (ILO) Conventions C087 on Freedom of Association and Protection of the Right to Organise Convention and C098 on the Right to Organise and Collective Bargaining Convention. Indeed, unions needed written permission from the employer to form, had to meet outdated requirements for representativeness in a changed labour market, and were not allowed to strike while collective agreements were in place – even if they were not respected –, which meant that unions were reluctant to enter into collective agreements.

The business community was interested in the rule of law, as an important factor to improve the business climate and help ensure that business could be done smoothly. This was also an important parameter for attracting investment. They expressed their expectations of greater transparency, accountability and consultation with stakeholders. Some felt that the European Commission's evaluations in the 2018 Report on Progress in Romania under the Cooperation and Verification Mechanism raised important challenges. The business community felt a need for better dialogue with authorities in the consultation phase on new legislation, as well as more time to adapt to new legislative requirements. They specifically mentioned the legal introduction of minimum wages.

On 18 October 2018, the Romanian Economic and Social Council replaced 13 Council representatives of civil society organisations in the middle of their term. The official reason for their removal was unjustified absences, however all of these organisation representatives had

been removed regardless of their attendance record. The organisation representatives removed believed that the removal was more linked to negative opinions given on a number occasions on legislative proposals, including when proper consultation had not been carried out, and were considering legal action to be reinstated. They had not been given the opportunity to respond to the criticism made.

Some also found it important to underline positive developments and not to focus only on corruption in Romania, when corruption was an issue in many other countries. They also asserted that foreign companies from reputable countries were also responsible for bringing corruption to Romania.

Non-discrimination

CSOs were not asked about anti-discrimination, however, the Romanian authorities informed the EESC delegation about the Romanian Presidency (first semester of 2019), whose priorities include the defence of a "Europe of common values". The government also explained their wish to counter the anti-system discourse that had gained ground across Europe. The Romanian government shared the objectives of the EESC in promoting European values, in particular the fight against racism, discrimination and exclusion.

Rule of law

CSO representatives met during the visit and explained that transparency was not the only issue affecting the country, but that it was part of a more systemic problem, namely– the lack of maturity in democratic institutions. They described how Romania had only lived through 30 years of democracy, which could explain a resurgence of autocratic practices in the form of a lack of transparency, the adoption of legislation without consultation, and pressure on the judiciary.

Although diverging positions were expressed, many representatives of the CSOs and of the legal profession felt that the authorities had embarked upon a worrying trend towards interference in the judiciary. Examples mentioned were the incentives offered to judges to retire, the additional qualification requirements for judges, and the increased number of judges required to hear a case, promotion no longer being based on objective criteria, and insufficient time allowed to conclude cases, which were all slowing down the judiciary or rendering it ineffective.

According to representatives of the governing party, who had helped introduce the reforms, and some CSO representatives, the changes had been proposed to address earlier shortcomings and mostly to respond to rulings of the Constitutional Court. According to them, the reform proposals had been debated widely, and the authorities did not violate any rules during the reform, although they could have explained it better. The representatives of the governing party indicated that the Constitutional Court always checked compliance with international obligations, and therefore the new laws fulfilled all the requirements made by the Venice Commission, the Group of States against Corruption (GRECO) of the Council of Europe, etc. They contended that the European Commission's evaluations in the 2018 Report on Progress in Romania under the Cooperation and Verification Mechanism were politically motivated.

Report on the visit to Poland
3-4 December 2018

Six members took part in the country visit to Poland. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession on the one hand, and the Polish authorities on the other. [A public hearing on the same topic was also organised in conjunction with the visit. The aim of this report is to faithfully reflect and reproduce the views of civil society.]

Freedom of association

According to the Civil Society Organisation (CSO) representatives with whom the delegation met, there were no legal barriers to setting up an organisation, although they felt administrative procedures could be improved. However, a majority expressed concerns that the overall environment for democracy, rule of law and fundamental rights risked negatively affecting them.

There were concerns that the recent creation of a new institute responsible for awarding all public funds [to organisations involved in human rights and watchdog activities] could lead to interference or self-censorship by CSOs. The National Institute of Freedom – Centre for Civil Society Development (*Narodowy Instytut Wolności - Centrum Rozwoju Społeczeństwa Obywatelskiego*) is a new central body under the Prime Minister's Office charged with administering public funding to CSOs. According to the latter, rules introduced for the awarding of funding were unclear. A watchdog reported several cases where CSOs selected during the awarding process did not receive any funds, and vice versa.

Some contended that CSOs that steered clear of criticising government policies were likely to maintain access to funding and CSOs working on unpopular issues such as gender equality, LGTBI rights, and migration experienced cuts in funding. Other CSOs felt that it was within the government's right to choose its priorities, and maintained that this was a positive development that allowed many funds to be distributed to small local organisations with no "political agenda". They also pointed out that the amount of available funds had tripled.

[It was feared that t]he new institute would also act as an advisory body for drafting legislation; however, it was unclear how this would function. Members of the institute's opinion-issuing body, Council of the National Freedom Institute, were most often appointed by the government. Because of this, some CSOs had raised questions regarding representation and the criteria for appointment. They were disappointed that the institute had accepted that decisions regarding control of CSOs could be taken within a period of 24 hours, meaning that raids could take place at any time.

In addition, there had been campaigns to discredit CSOs in the media, such as accusations of financial impropriety against some organisations. As a result, some CSOs had lost the support

of local authorities and others had received threats. CSOs and some judges and prosecutors' associations were accused of being partisan. Some participants believed that the threat to freedom of association came from political polarisation, stating that some CSOs promoted a liberal "ideology" and criticised the government for issues that already existed previously. Others disagreed and felt that the threat to civil rights had reached an unprecedented critical level that justified stronger criticism. For the latter, it was alarming that the Ombudsman's funding had been severely cut following interventions to promote civil rights.

All CSOs agreed that there was a need to consult CSOs more on legislation and make space for more peaceful dialogue. Plans had reportedly been made to change the law on the non-profit sector without informing CSOs about the content or timing of the proposal. CSOs may be consulted on the final proposal with short deadlines to provide their feedback, but they were unable to provide meaningful input on the scope of the proposal.

According to the Polish officials with whom the EESC delegation met, the authorities did not interfere in freedom of association. They could only refuse to acknowledge registration if forms were incomplete. Organisations were required to provide annual reports to supervisory mechanisms. Such reports did not amount to excessive questioning about CSOs' finances, and ministry representatives insisted that they only asked for additional information concerning financial settlement issues.

Freedom of assembly

The CSOs explained that it sometimes took months to approve assemblies, and that the new "Law on Public Assemblies" favoured "cyclical assemblies" (regular events), such as marches for Independence Day. The restrictions on holding multiple protests within a certain distance of each other at the same time made it difficult to schedule spontaneous counter-protests. They also complained about the recent limits introduced on access to the Polish parliament, which seek to prevent protests. More than one hundred individuals had been banned from accessing parliament despite the fact that access to parliament was a constitutional right. In addition, a law was adopted specifically to prevent spontaneous protests in relation to the 24th Conference of the Parties (COP 24) of the United Nations Climate Change Conference in Katowice in 2018.

According to the CSOs, it was difficult to obtain permission to march in favour of politically controversial issues. In one case, an equality march had been banned due to the risk of violence by counter-protestors, but was allowed after appeal. The CSOs had also noted inconsistencies in the policing of assemblies. During Independence Day marches, there was almost no police presence, but in equality marches, police officers often outnumbered protestors. Police officers targeted several protesters for using fireworks during equality marches, but not during the independence marches.

According to the CSOs, many court cases had been brought against protesters – an estimated 1000 were pending. People had been taken to court for misdemeanours and, for example, charged with obstruction of legal assemblies. Although the court quickly dismissed such charges, the CSOs consider that they represented a form of intimidation. An example was given of a small group of women who were beaten up during a peaceful counter-protest, at which point the police did not intervene to protect them. Afterwards, the women were charged with disturbing a legal assembly, whereas their attackers were not charged.

The Polish authorities with whom the EESC delegation met, explained that public order personnel protected demonstrators, and ensured their right to freedom of assembly. They did not discriminate between different types of demonstrations and their staffing levels were consistent. Assembly bans could be appealed and may last up to 15 days. Counter-demonstrations could not take place within 100 metres of a legal assembly. The authorities would not comment on the reasons for the various pieces of legislation, nor would they comment on individual cases.

Freedom of association and assembly – social partners

The delegation was informed that there was a longstanding tradition of social dialogue in Poland. The Tripartite Commission for Socio-Economic Affairs (*Trójstronna Komisja ds. Społeczno-Gospodarczych*) was established in 1994, and extended to include the Provincial Social Dialogue Commissions (*Wojewódzkie Rady Dialogu Społecznego*) in 2001. Despite initial successes, the three main trade unions left the Tripartite Commission and Provincial Social Dialogue Committees in June 2013.

Following negotiations between representative organisations of trade unions and employers, a new form of social dialogue was proposed to the government. This led to the creation of the Social Dialogue Council (*Rada Dialogu Społecznego*) in 2015, which must be consulted on legislative initiatives. However, according to the CSOs, this new body was often ignored by the government and important pieces of legislation were often adopted without holding meaningful discussions, either because of shortened deadlines or because legislation proposed by individual Members of Parliament (MPs) was exempt from consultation requirements.

Some CSOs complained about different treatment received by certain trade unions from the authorities. Trade unions in Poland had called for the implementation of the European Pillar of Social Rights, and for social rights to be guaranteed at European level. Trade union representatives were disappointed by limits imposed on the right to assembly, for example through injunctions by the court to prevent strikes.

Freedom of expression and freedom of the media

All participants agreed that freedom of expression was protected in Poland, but some believed that further action was needed to protect this right. Some contended that prosecutors and judges had been harassed after exercising their right to freedom of expression in support of an independent judiciary, and now needed to seek a supervisor's approval before publishing documents. Disciplinary procedures had been initiated against prosecutors who had spoken to the press about participating in protests, or carrying out educational activities and applying the rule of law. This had created a rather chilling effect.

Most commercial advertising commissioned by either media houses or companies with a public ownership stake was for pro-government magazines, despite these not having the biggest circulation. Representatives from some of the principal and most popular newspapers, which were viewed as supporting the opposition, had presented figures on the difference in revenue from commercial adverts before 2014 compared to now. They asserted that this revenue had been used to put pressure on them in recent years. Some claimed the main distributing company discouraged the distribution of releases that were critical of the government. Others denied this and highlighted that outlets which were critical of the present government were previously favoured and received more advertising money under the former government.

There were an estimated 20 pending lawsuits against news outlets. Politicians used harsh language against journalists, calling them traitors, and called for the "re-polonisation" of foreign-owned media outlets, which were depicted as foreign stooges.

Another key problem raised was that many public authorities refused to grant access to information. Some media outlets were not informed about, or allowed to ask questions at press conferences, and ministers would refuse to give interviews to them. Allegedly, one journalist was fined for refusing to reveal their sources, although this had been denied by others.

Another problem raised was access to government buildings and parliament and the physical or verbal attacks against journalists that had taken place even in front of parliament. Although trade unions for journalists existed, they were not well organised, so most joint actions were carried out in conjunction with journalists' associations or clubs. Some felt that fake news and disinformation was rife, and that this was the case across Europe. Others felt that the system worked and that there were no major issues in Poland, and viewed the alternation of advertising revenue between different media positively.

Non-discrimination

CSOs were not asked about non-discrimination directly; however, the fact that CSOs dealing with vulnerable groups faced more difficulties in obtaining funding came up during other discussions. Notably, CSOs dealing with gender equality, LGTBI rights, and migration had experienced funding cuts. These groups were also faced with challenges in obtaining permission to assemble, and they felt that they received unequal treatment with regard to the policing of assemblies, with police often outnumbering protestors in equality marches.

Rule of law

The changes to legislation affecting the judiciary were frequently brought up during discussions. These changes were seen as an attempt to dismantle the justice system and enable the adoption of legislation without restraints from judicial control. Legal professionals (mainly judges) who were political allies of the current government supported the changes being implemented in the judicial system. They had reportedly been appointed to a newly created public affairs chamber in the courts. Rules for the submission of applications and the decision-making process had been widely criticised by the opposition. There were street protests against the reforms, but these only led to slight modifications.

Some claim that making it possible to review any judgment dating back twenty years without the possibility for an appeal undermined legal certainty. Only the Prosecutor General and the Ombudsman were able to file such an extraordinary procedure, and there were several restrictions concerning time limits and the nature of the case under consideration. Reportedly, only a very limited number of complaints had been filed so far.

Concerns were also expressed about the expanded possibilities for disciplinary procedures against judges and prosecutors, which could be initiated based on the content of judgments. Some contended that critics of the government were not being objective, as pre-existing problems with the judiciary had not previously been criticised under the former government.

Report on the visit to Hungary 29-30 April 2019

Six members took part in the country visit to Hungary. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession on the one hand, and the Hungarian authorities on the other. [The aim of this report is to faithfully reflect and reproduce the views of civil society.]

Freedom of association

CSO participants explained to the EESC delegation how, in practice, civic space has been shrinking in recent years. CSOs now have significantly fewer possibilities to carry out their advocacy activities. Several participants mentioned how CSO freedoms had been systematically dismantled and an 'atmosphere of uncertainty' had been created. Some remarked that limitations on freedoms also affected both the media and the academic world.

The 2017 law relating to the 'Transparency of Organisations Supported from Abroad' and the 2018 so-called "Stop Soros" legal package have had a negative impact on CSOs and were, according to them, accompanied by a campaign aimed at tarnishing their public image. Legislation requiring relevant organisations to register as "foreign agents" and to pay 25% tax on foreign funds have created uncertainty. To date, about 130 organisations have registered as "foreign agents"; however, some organisations indicated that they had decided to boycott registration and had not as yet encountered any negative consequences. Although the general legal framework for freedom of association is in line with international standards, they believe that the legislation has had a chilling effect on their activities.

CSOs in Hungary do not constitute a homogeneous group and, according to participants, the government favours CSOs that for instance offer healthcare services while, at the same time, stigmatising CSOs that carry out advocacy and watchdog activities or that grant funding. Some CSOs have been called "Soros knights" in the media, which subjects them to constant stigmatisation. This situation has had a negative effect on their daily functioning. Citizens have grown suspicious of them, resulting, on the one hand, in an increasingly negative public perception of the activities of all NGOs, and, on the other hand, preventing them from getting funding from municipalities. However, micro-CSOs or CSOs that are close to the government have been granted increased funding. According to participants, the government has created "fake CSOs". They described how, with no previous track record of civic work, these new actors had begun to spring up, implementing their activities in accordance with the government's agenda. Very often, this means that they exclude topics such as women's rights and LGBTI rights. Additionally, concerns were expressed about the campaign against immigrants, which has also been targeted at CSOs that work with migrants.

CSOs explained that they had experienced difficulties in accessing EU money, because of the requirement for applicants to prove that they work with State institutions, local authorities, or the church. This is particularly concerning as EU funding is the only source of funding still available to CSOs that are not directly aligned with the government. Some CSOs explained how they had never received any State funding, despite having regularly applied each year. Others pointed out that funding could be accessed, although only through cumbersome and bureaucratic procedures. Some pointed out that certain State funding previously available to CSOs had since been redirected to churches.

Most agreed that the political environment in Hungary was deeply polarised and that there was a need for better dialogue. Several participants highlighted efforts made by CSOs to establish a dialogue with the government, however they expressed regret at the absence of a formal consultation platform and the lack of genuine willingness on the part of the authorities to engage with them. They also mentioned the pressure put on those who speak out, notably by restricting the ability of civil servants to gain public promotion, give lectures and receive training.

According to the authorities, they valued the importance of CSOs (of which there are more than 6000) and held regular consultations with them. The majority of these are active in the fields of culture, sports, leisure and education. Only 0.9% are active in the area of human rights. The government explained that it had increased funding to CSOs.

Freedom of association and assembly – social partners

The social partners indicated that while some social dialogue existed they would welcome improvements. The first Hungarian Conciliation Council was established in 1990 and a national economic and social council was created in 2011. The government does not have members on this Council, although members are appointed by the government. The Council comments on new pieces of legislation and can make proposals, but it does not take any decisions.

According to the social partners, both the legislation relating to the minimum wage and to overtime were not submitted to the Council for consultation. Despite an agreement reached between workers and employers, the government decided to push forward legislation allowing 300 hours of overtime, which prompted a wave of demonstrations. While the legislation has not been withdrawn, it has not yet been applied. According to the government, the legislation would not give rise to serious problems, but would instead provide employers with more flexibility while respecting the EU working time directive.

According to the social partners, freedom of assembly was respected. Trade unions gave examples of successful strikes that led to improved working conditions. Social partners in general did not feel that their actions were being restricted, nor did they feel affected by any problems relating to fundamental rights and the rule of law. Some however mentioned that their access to the media in order to raise issues relevant to them was limited.

Freedom of expression and freedom of the media

Serious concerns were expressed about the establishment of the "Central European Press and Media Foundation" media conglomerate. Although this conglomerate was legally independent, CSOs were concerned about the extent to which it was genuinely independent. Questions were also raised about the lack of independent legal scrutiny regarding the setting-up of such a large conglomerate through transfer of ownership.

The organisations interviewed shared their concerns about how the organisation of media outlets is being centralised by the government, which particularly affects the local level. CSOs explained the difficulties they have encountered in trying to have their voices heard in the media and how they have had to resort to using the internet (blogs or websites) as an alternative. In absolute terms, the readership of critical media is higher than that of the pro-government media. However, the influence of the government is strong because of its dominant position in the media market, both in terms of financing and market share.

Several participants mentioned that the media was a "propaganda machine" aimed at controlling public discourse. They talked about a snowball effect whereby news taken from marginal websites is then copied by other media. CSOs suggested that the government was using fake news and social media as a means of influencing the population. According to these CSOs, the government has left a newspaper, with critical views on the government, continue as a way of showing that it allows critical media to exist. In reality, however, it does so only because the readership of this newspaper is limited.

Several participants raised the point that the bulk of advertisements, which constitute an essential source of funding, go to media outlets close to the government. This means that State advertisement money is not connected to a newspaper's performance but rather is used as a means of financing particular media outlets. Participants also felt that private companies were reluctant to advertise in media outlets that were critical of the government. Some of the media that are critical of the government have had to look for funding directly from their audience to compensate for the lack of advertising revenue. In the view of some CSOs, the manner in which authorities interfere with academic freedoms follows a similar pattern of control but through funding in this case, including through EU funds intended for innovation.

The delegation was informed that those who are critical of the government face negative treatment in the media. The authorities uses their influence in the media to discredit CSOs and their attempts to raise sensitive topics in the public sphere. CSOs and academics are often labelled as enemies in pro-government media, which has a negative influence on the general image the public has of them. A list of organisations that were said to be financed by George Soros was published in a pro-government daily newspaper. According to participants, this general climate of stigmatisation increased the level of fear, for example a negative portrayal in the media could lead the individual involved to receive an increased number of death threats. They argued that the government had created a polarised narrative between the good, namely those who "defend" Hungary, and the bad, namely any critical voice.

The authorities felt that the situation in Hungary was often misrepresented abroad and that the situation there was not worse than in other Member States.

Non-discrimination

CSOs raised concerns about the general decrease in support for human rights protection and non-discrimination, including in relation to Roma, disability, gender and transgender issues. The phenomenon of shrinking space for CSOs particularly affected CSOs working on these issues and have led to a fall in the number of organisations and professionals in the field and in the amount of research carried out in these areas. According to CSOs, the authorities no longer see them as partners.

Several organisations mentioned that the anti-Soros campaign was anti-Semitic in nature, which further triggered anti-Semitic hate speech, in the context of a climate already conducive to racist, xenophobic and Islamophobic speech. Some CSOs indicated that, unlike other areas, the government is cooperating well with CSOs in the area of hate speech and hate crime, but that hate crimes are often insufficiently investigated.

Regarding the situation of the Roma population, participants mentioned discrimination in the child protection system, in housing, work and education, and discrimination by law enforcement authorities (including ethnic profiling) and by local governments.

Women's rights organisations stressed a deterioration in gender equality and women's and girls' rights. Public narratives presented an image of women as mere agents of the family, thus reinforcing gender stereotypes and drawing on the concept of 'familism' instead of feminism. According to participants, gender inequality gives rise to violence against women. They expressed their regret at the absence of a comprehensive political response to this phenomenon. Instead, professionals in the public and private sectors adopt a victim-blaming attitude, which serves to highlight the inadequate gender-sensitive training that they have had. Although an infrastructure for victims of gender-based violence exists, it is not sufficiently promoted and its activities are unclear. As far as academic issues are concerned, participants lamented the fact that the State had cancelled the accreditation for a Master of Arts in gender studies. Women's rights organisations also explained how they had been the target of a negative media campaign.

The situation of transgender people was also discussed, notably the fact that they cannot benefit from any legal gender recognition.

Rule of law

Many CSOs expressed serious concerns about the creation of a new parallel public administrative Court system and a new national judicial office. These changes are part of a step-by-step reform of the judiciary which has been taking place since 2011-2012. The consultation period relating to these changes lasted only three days. As CSOs emphasised in many other cases, the consultation process for proposals relating to legal acts is very short and does not allow for any meaningful input, nor does it take into account the submitted comments.

According to some CSOs, the current judiciary retains a high level of independence, but the ongoing reform of the Court system is a cause for concern as no accompanying needs assessment has been carried out. The EU Justice Scoreboard showed in 2018 that Hungarian Courts were the second most efficient court system in the EU. Therefore, it is unclear to CSOs why the current system needs to be reformed.

The competence of new administrative Courts include economic and social rights, including politically sensitive cases such as asylum. Concern was expressed about the independence of individual judges and the jurisdiction of the administrative Courts. Participants described a politicised process whereby new administrative Courts judges could be elected without the support of peers. In general, participants complained that this new structure lacked clear checks and balances.

Another key issue was the lack of cooperation between the National Judicial Council of Hungary (*Országos Bírósági Tanacs*, OBT) and the National Office for the Judiciary (*Országos Bírói Hivatal*, OBH) appointed by the government. The President of the OBH has widespread powers over the whole judiciary, in the areas of budget and appointment of judges and Court Presidents. By comparison, the OBT does not have the necessary financial means and human resources to counterbalance the changes introduced by the OBH – and is the target of stigmatisation in some media, which have represented the OBT as "Soros agents".

Although the Courts have shown their independence in the past with the State often losing in cases brought by CSOs, cases related to corruption were rarely prosecuted.

Participants indicated that there was a need to control the use of EU funds better to ensure that such funding did not end up abetting corruption rather than helping to strengthen the rule of law.

Report on the visit to France 28-29 May 2019

Six members took part in the country visit to France. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, independent human rights organisations and the legal profession on the one hand, and the French authorities on the other. [The aim of this report is to faithfully reflect and reproduce the views of civil society.]

Freedom of association

From a legal point of view, freedom of association is well protected in France[12]. However, according to the CSOs met during the visit, the full and unhindered enjoyment of this freedom is currently facing challenges from two sides. On the one hand, in a context of scarce resources, public and private financing available for CSOs has decreased. Associations are particularly badly affected by this situation. According to the representatives met during the mission, they are seen only as easy budgetary adjustment variables, while their civic, democratic, social and economic functions are forgotten or even challenged.

On the other hand, CSOs – and particularly those that provide assistance to migrants – report increasing attempts to stop or hinder their activities through threats of legal proceedings or detention of their volunteers and workers. According to representatives met during the mission, a process is underway in France of criminalising organisations whose sole purpose is to save human lives. Some also mentioned smear campaigns against CSOs by private actors. Trade union representatives met during the mission felt that they were being subjected to increasing obstacles and discrimination in the conduct of their activities.

Freedom of assembly

According to representatives met during the mission, the entry into force of the law on "the maintenance and reinforcement of public order during demonstrations" in April 2019 has led to a deterioration in the otherwise solid legal protection of the right to demonstrate in France. Before this law was published, the Constitutional Council removed a provision that would have allowed Prefects to issue preventive administrative bans on demonstrating (*interdiction administrative de manifester*).

12 In a 1971 Decision, the French Constitutional Council (Conseil Constitutionnel) gave freedom of association the status of "fundamental principle recognised by the laws of the Republic", i.e. a Constitutional-level value.

CSOs criticised of the fact that the right to demonstrate was being curtailed through a large number of disproportionate and unjustified arrests, and through the use of excessive force by security forces. CSOs also mentioned the abuse of custody ("*garde à vue*") as a means of neutralising activists – notably environmental activists – and preventing them from taking part in protests. They lamented that complaints brought against the police had not led to consequences.

These legal developments have taken place in the context of an evolution in the social dynamic of demonstrations in France, through the waves of "yellow vests" protests. These demonstrations have been spontaneously convened through social media by a number of loosely coordinated organisers, in multiple places at the same time and on a recurring – weekly – basis over several months. Participants explained that these originally peaceful demonstrations had been infiltrated by well-organised rioters who had systematically sought to give the protests a violent turn. Some participants mentioned that disproportionate use of force by the police predated the "yellow vests" demonstrations and that it had been used during authorised events that had been well supervised by their organisers.

The police has had to face an increasingly challenging environment in a situation of shortages of staff, resources and training, which has strongly affected staff morale. The representatives from the police trade union met during the mission claimed that the use of LBD-40s (*Lanceur de Balle de Défense*/Defensive Ball Launchers) – an intermediate force non-lethal weapon – was the only way they had of protecting themselves during demonstrations marked by a radicalisation of the yellow vests movement and infiltration by violent fringes ("black blocs"). Numerous stakeholders at national and international level have demanded that the use of LBD-40s be suspended. CSOs met during the mission denounced the fact that their use has resulted in a high number of people being injured and mutilated. The French authorities have however so far refused to suspend their use of LBD-40s, remaining the only EU country to do so.

The French authorities denied the existence of genuine abuses by the police forces, attributing the high number of detentions, accidents and injured people to the unprecedented number of demonstrations that have taken place since November 2018, as well as to the presence of rioters among the demonstrators. The authorities also assured the delegation that the police used force only in the event of violence by or between demonstrators, and that its use was progressive and proportionate, as stated by the State Council (*Conseil d'Etat*) consulted on this matter. The authorities are looking into other ways to keep demonstrations safe and secure, if possible avoiding direct contact between police and demonstrators.

Freedom of expression and freedom of the media

According to the organisations met during the mission, freedom of the media is guaranteed by law and in practice, but there are some challenges in France. Journalists and the profession in general are increasingly facing systematic discrediting ("media bashing") by many politicians. Some recent laws, like the French Act on combating the manipulation of information, aimed at combating the propagation of fake news and anti-cyber hate speech, could have limiting effects on media freedom.

The media representatives met during the mission expressed their deep concerns about the severe and numerous cases of police violence against journalists during the "yellow vests" demonstrations. They informed the mission about journalists being prevented from passing roadblocks, being intimidated or injured, and being detained in police custody while their material and press cards were confiscated by the police or deliberately damaged.

Non-discrimination

According to CSOs and independent human rights organisations met during the mission, discrimination seems to be on the rise in France, in particular in the areas of employment, access to justice, housing and healthcare. The groups most vulnerable to discrimination are said to be persons of Arab and African descent (who are also subject to ethnic profiling during police controls), LGBTI people, homeless people, and Roma people. Despite advanced legislation, women still face discrimination, even more so if they are of Muslim origin. The situation of migrants – including asylum seekers – and especially child migrants, is particularly worrying in terms of the increasing violation of their human rights. Participants also mentioned the phenomenon of social discrimination and worrying developments in the area of online hate speech and violence.

Rule of law

Representatives met during the mission expressed their concerns about a general trend that had followed the terrorist attacks, which had seen the authorities introducing state of emergency provisions into ordinary law. They considered that this had tipped the institutional balance towards security, at the expense of other rights and freedoms, and had led to a weakening of the role of the Judiciary in favour of that of the administrative authorities. In their view, the extension of the state of emergency has progressively blurred the distinction between administrative police, who deal with prevention, and judicial police who are oriented towards enforcement.

The 2017 Law on strengthening internal security and the fight against terrorism permanently incorporated a number of state of emergency provisions into ordinary law. This was criticised by many of the organisations met during the mission, who were worried by the suspension of certain rights that this law entailed and by the tip in the balance of powers granting the administrative authorities some powers that were normally assigned to the judicial authorities.

The mission heard some concerns from the legal profession over the proposed reform of the French judiciary. Although it aims to make justice simpler and more efficient for the public, it is taking place against the backdrop of increasing constraints on the public financing of the judicial sector. Participants drew attention to the risk that the reform could affect fundamental rights, in particular with regard to the penal procedural code. According to these representatives, the rights of the defence are being excessively diminished, causing an imbalance in relation to those of the prosecution.

According to the representatives met, the aforementioned Law on the maintenance and reinforcement of public order during demonstrations also presents worrying developments concerning the judiciary[13]. Generally, participants expressed concerns about a shift towards preventive justice, which could endanger the independence of the judiciary and fundamental rights in the long term.

13 A circular sent by the Ministry of Justice to Prosecutors, encouraging them to call for "complementary penalty" (peines complémentaires) that can entail individual interdictions to take part in demonstrations.

Report on the visit to Austria 3 and 4 June 2019

Six members took part in the country visit to Austria. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, independent human rights organisations and the legal profession on the one hand, and the Austrian authorities on the other. [The aim of this report is to faithfully reflect and reproduce the views of civil society.]

Freedom of association

The most serious concern, mentioned by many CSOs, was the May 2019 law on the creation of a Federal Agency for Supervision and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH*) under the Ministry of the Interior, which was to take over the task of legal counselling for asylum seekers – a task previously performed by civil society organisations. As the Federal Agency was financed by the Ministry of the Interior, it raised serious questions regarding its independence. CSOs saw the creation of this agency as an attempt to marginalise civil society, which had until then played a major role in legal counselling for asylum seekers. A representative of the relevant public authority noted that asylum seekers could also consult lawyers, and that the Ministry of the Interior did not have a monopoly in this area.

Furthermore, civil society representatives reported severe cuts in funding over the past few years, especially for smaller CSOs. It was noted that some cuts had affected CSOs financed by the Ministry for Women's Affairs and Equality in 2016 and 2017 (for example, a leading women's movement had seen the funding it had been receiving since 1969 drastically reduced in 2018). However, the authorities indicated that the budget cuts concerned subsidies and projects that did not focus on direct help for women.

The CSOs also said that this loss of public funding had been sudden, especially for organisations that were critical of the government. However, it was impossible to determine the exact number of CSOs affected, as there was no law on the right to information in Austria (it was claimed that Austria was the only EU country not to have this right enshrined in law).

According to civil society representatives, this feature was part of a wider tendency to strongly restrict the civic space in Austria. The public authorities stressed that there had, however, been no cuts for CSOs working in the development and cooperation area.

Regarding the consultation of CSOs in drafting legislation, CSOs said that their contributions were now being largely ignored, which had not previously been the case. CSO representatives did not feel that the consultation process could be regarded as a real partnership and said that they were not being taken seriously as experts.

Freedom of association and assembly – the social partners

The Austrian social partners noted that social legislation was being properly implemented: 98 % of all employees were covered by trade union agreements and minimum wages were in place; 99 % of Austrian companies honoured minimum wage agreements.

Regarding freedom of assembly, the social partners reported that the law had been changed in 2017 and had become more restrictive towards third-country nationals (the so-called *Lex Erdogan* bans foreign political campaigns and rallies in Austria).

The social partners noted that the 2018 Working Time Act (*Arbeitszeitgesetz*), which increased working hours to 12 per day and 60 hours per week, legalised a formerly illegal practice in certain companies, weakening the rights of trade unions and employees. The law had been adopted without consulting the social partners. The representative of the relevant public authority explained that discussions on this proposal had been ongoing since 2013, without any solution being reached, and this had eventually led to it being adopted without proper consultation.

Freedom of expression and freedom of the media

Media representatives noted with concern that 2018 was the first time that Austria's ranking in the World Press Freedom Index of Reporters without Borders had fallen; it had dropped from 11th to 16th place. They said that the last government had been very harsh on the media, with the authorities trying to "correct" journalists and lacking respect for press freedom. The representative of the relevant public authority disagreed, noting that the authorities had been very inclusive when it came to the media, and gave examples of the former Chancellor speaking to journalists before and after each weekly Council of Ministers meeting and taking journalists on trips abroad.

Regarding the media landscape, it was noted that the mass media were very concentrated and politicised in Austria. Access to some printed media in rural areas was limited. A worrying aspect mentioned by media representatives concerned the newspapers that were available for free (for example, in metro stations): it was reported that one of them in particular featured almost daily articles with content that bordered on racism. Another aspect mentioned related to online media portals, many of which were funded or sponsored by players with a regressive agenda. These were very active and had considerable outreach and a huge impact on the Austrians who made use of them.

It was noted that the biggest media outlet in Austria, especially in rural areas, was the public broadcasting corporation (Österreichischer Rundfunk, ORF). One important issue at present was the upcoming ORF reform. ORF was already exposed to political influence, as its Board of Trustees was appointed by politicians. From the point of view of journalists, how public broadcasting laws would be set up in the future was crucial. They stressed the need for an independent system of financing, which would enable innovation by the public broadcaster and a strong role for it in promoting media literacy.

Another concern raised by journalists was the bribing of media outlets and journalists. It was reported that Austria had a serious transparency problem. Moreover, journalists were very much affected by the lack of right to information in Austria. The relevant public authority representative's response was that several drafts had been put to Parliament over the past years, but had not yet been adopted.

The media representatives stated that journalists were often cut off from information and suffered direct attacks either in interviews or via organised online harassment campaigns. They deplored the fact that there had been occasions when sensitive information was not shared with "critical" media, a point which the representative of the relevant public authority denied.

Journalists reported that hate crime and hate speech needed to be better documented in Austria; levels of documentation were extremely low (392 reported cases in 2018 in Austria compared to 60 000 in the UK).

Non-discrimination

The Austrian CSOs mentioned several issues relating to discrimination against members of vulnerable groups in the country, at the same time acknowledging the high level of the social and welfare system in Austria. However, it was noted that the situation had worsened in the past two years.

Regarding discrimination on religious grounds, it was said that there had been significant reductions in the human rights of Muslims in Austria in the past few years, compared to other religious groups. The most recent example was a law adopted in May 2019 by the Austrian Parliament which banned "ideologically or religiously influenced clothing (…) associated with the covering of the head" in primary schools. The law was labelled the '*hijab* ban' because it only affected Muslim girls up to the age of 11, whereas it provided exemptions for male Sikh and Jewish headwear. The CSOs working in this area underlined that this legislation was discriminatory, as it focused on only one specific religious group. In addition, CSOs criticised the 2017 law banning full-face covering in public, which banned women wearing a *niqab* from working in the public sphere. CSOs' criticism was based on the assumption that all religious symbols should be equally prohibited, not only Muslim head covering.

Regarding asylum seekers, it was noted that they experienced discrimination in several aspects in Austria. Legislation on asylum had been changed 15 times in the past 10 years, which had had the effect of complicating the situation. Instead of improving access to rights, it actually reduced the freedom of CSOs active in support of asylum seekers. CSOs deplored the absence of German courses as part of the reception procedure, as mastering German was indispensable for access to the job market. According to the Reception directive, asylum seekers were entitled to labour market access after nine months if there had been no first instance decision on their status. However, the relevant CSOs reported that, in reality, no matter how long the asylum procedure took, asylum seekers did not get access to the labour market, because the labour market test nearly always led to the selection of a better-integrated person than asylum seekers.

Another problem mentioned was the exploitation of undocumented workers, mainly migrants and asylum seekers, who were almost completely denied access to the formal labour market except for seasonal work, and therefore ended up working on informal labour markets with excessively long working hours, wages far below the level of collective agreements, no social security, violence, blackmail, sexual harassment etc. It was reported that the legal framework was inadequate and did not allow undocumented workers to take any legal steps against such exploitation because they faced the threat of being deported if they did not receive a residence permit during their lawsuit.

Regarding people with disabilities, the relevant CSO reported that Austria had ratified the UN Convention on the Rights of People with Disabilities in 2008 and there was also a legal framework in place in national legislation. However, on closer examination, many examples of discrimination could be identified. For example, it was noted that it was very hard for children with disabilities to receive the same education as children without disabilities. It was mentioned that there had been attempts to start more inclusive schooling, but, especially in the last two years, inclusive schooling had been reduced in importance. This had had a huge impact on the chances of people with disabilities of accessing the labour market, resulting in a rate of unemployment which was a lot higher among this group. It was acknowledged that Austria had some very good measures that helped people with disabilities to work, such as subsidies for technological and human assistance. However, when it came to leisure time activities, assistance was not harmonised among the federal states. It was also noted that women with disabilities suffered even greater disadvantages compared to men.

Regarding LGBTI people, it was reported that with the introduction of the partnership law in 2010, the term "family" was not allowed for same-sex couples, and only a "last name" could be used in official documents. However, this was abolished when the Constitutional court decided on opening marriage to all as of 1 January 2019. Furthermore, LGBTI refugees experienced discrimination as well, being stereotyped and suffering homophobia from asylum officers, *inter alia* lacking training in non-offensive approaches to credibility checks.

Regarding the gender pay gap, the social partners noted that Austria ranked second last in the EU. They indicated that this was partly due to part-time work, which was being particularly promoted for women. Nevertheless, statistics showed that the gender pay gap remained even when the part-time work was not taken into account.

Rule of law

CSOs noted that, although there had been no interference by the executive in the judiciary, reductions in budget and staff were an indirect way of weakening it. By contrast, security issues, which had been very high on the political agenda in Austria, had benefitted from budgetary trade-offs between the administrative, civil and criminal courts. This was having a significant impact on the length of time entailed in processing asylum applications.

Civil society representatives were of the opinion that the judicial system in Austria generally worked well. It was noted that every positive change in the human rights situation in Austria had come either from the judiciary (as a court decision) or from the EU. For example, the same-sex marriage and gender identity verdicts were positive human rights developments coming from the judiciary. However, it was noted that the independence of judges in administrative courts was different from that of judges in civil and criminal courts. Funding was sufficient in civil and criminal courts but not in administrative courts.

Regarding security and counter-terrorism measures, civil society representatives noted that, while the security situation was improving in Austria, the Austrian people's perception was that it had deteriorated. It was reported that since July 2018 police officers were carrying military rifles in police cars, and wore armoured vests and helmets. The police had experienced shortages in personnel, leading to an increase in night shifts and double shifts, which had resulted in exhaustion. Another concern was police reporting in Austria: a report by the European Fundamental Rights Agency (FRA) showed that, compared to seven other countries, Austria had the highest prevalence of racial profiling.

The authorities described 2015 as a very challenging year, marked by a very large amount of requests for asylum. This had created a bottleneck in the second instance administrative court due to a very heavy caseload and lack of budget. The duration of asylum procedures would then take up to 5-10 years, due to a lack of judges in the second instance administrative courts. It was reported that the first instance federal administrative courts had seen an increase in staff.

Report on the visit to Bulgaria
10-11 October 2019

Six members took part in the country visit to Bulgaria. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession on the one hand, and the Bulgarian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Freedom of association

It was reported that the legal environment for CSOs in Bulgaria in recent years had generally been functioning well. However, the accessibility of public funding was a serious issue for Bulgarian CSOs. Since 2010 a coalition of CSOs had sought a new strategy for the partnership between the authorities and civil society, as well as the establishment of a new fund for civil society initiatives. The strategy was adopted in 2012; the fund had not yet been established.

Furthermore, the small number of available funding mechanisms for CSOs in the Ministries of Labour and Justice were affected by the political environment and according the CSOs there was not sufficient public funding available for civil society initiatives in Bulgaria. The largest source of public funding for CSOs (around EUR 10 million) was earmarked for social services, 20% of which were delivered by CSOs. However, this was not regarded as civic activism as such. At the municipal level, some municipalities (15-20) in Bulgaria had good examples of established programmes supporting local municipal civic participation projects, even though these were poorly funded.

With regard to the accessibility of EU funding, two points were raised by civil society representatives: 1) the turnover of around 80% of CSOs was too small (below 50 000 leva per year) to be eligible to apply for EU funding; 2) the de minimis rule (for state aid) was applicable to all projects that supported civil society activities. From the financial point of view, civil society was not an equal partner to the state, hence EU funding was largely inaccessible to Bulgarian CSOs.

Some "fake" CSOs (with only 2-3 members) were reported to exist in Bulgaria. Their aim was to create a "fake" alternative to more established CSOs. Some of these organisations were involved in creating a climate of anti-European rhetoric, the promotion of anti-liberal, conservative values, and abetting foreign influence. Some CSOs were afraid that a "foreign agents" law might be introduced in Bulgaria.

Furthermore, attacks and smear campaigns against CSOs were reported, including against those CSOs that had supported the adoption of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Environmental CSOs that opposed large infrastructure projects which threatened the environment were denied funding from the Ministry for the Environment. In addition, calls had been made for the largest human rights CSO of the country to be closed down.

The public consultation process on new legislation in Bulgaria was seen as too narrow and insufficiently transparent. The rules on performing impact assessments and public consultations for new legislation were not always followed. According to the law, CSOs had a month following the submission of a bill to make comments or suggest changes. However, the bill might then undergo profound changes between the first and second readings, meaning that the outcome of the public consultation was no longer meaningful.

Government representatives reported that Bulgaria complied with the requirements for public consultations with stakeholders. The law set out the provisions that public consultations had to follow, and these provisions were applied to all draft bills. Furthermore, prior to the presentation of any bill, a full impact assessment was always carried out.

Freedom of association and assembly – the social partners

Social dialogue in Bulgaria was developing positively and was generally very good according to social partners; 80% of organised civil society was represented at the Bulgarian Economic and Social Council. However, the rate of unionisation was decreasing, with trade union density below 20%. Furthermore, a wide range of impediments to union membership existed in Bulgaria; for example, army and police trade unions could not join the national confederations of unions, and public-servant trade unions were not permitted to negotiate their salaries.

The Bulgarian Constitution protected freedom of association. However, Bulgarian law did not provide any specific legal or administrative guarantees enabling workers to exercise this freedom. Moreover, Bulgarian workers were not always aware of their rights and the authorities did not organise awareness-raising campaigns.

Freedom of expression and freedom of the media

Bulgaria only ranked 111th in the World Press Freedom Index 2018 (Reporters Without Borders); this was not only the lowest ranking of an EU Member State, but also one of the worst among all European countries. Media representatives saw this as the result of a gradual downhill slide that began with Bulgaria's accession to the EU; in 2006, one year before EU accession, Bulgaria ranked 36th in the same index. They felt that it was directly linked to the increase in corruption, noting that Bulgaria was one of the worst-ranked countries in the EU in terms of perception of corruption by Transparency International.

Media ownership was concentrated in the hands of a very small group of people, and it was reported that political figures (among others) exerted control over the media. Although these figures only officially owned a couple of newspapers, in practice they directly or indirectly controlled dozens of other private media outlets, as well as public media. Furthermore, it was noted that the media outlets in question generally adopted a very pro-government attitude, and were more disparaging of governmental opponents or other perceived critical voices.

The authorities also seemed to facilitate the concentration of media ownership, for example by adjusting certain legislation on media funding in favour of media oligarchs. Such legislation was generally approved virtually unanimously in parliament, while proposals for strengthening the independence of journalists were ignored, and it was the impression of the participants that politicians showed little interest in media freedom and pluralism.

Moreover, pressure and attacks on journalists were common in Bulgaria, both from public authorities and from private actors, such as media agencies. This pressure often came in the form of smear campaigns, run against independent journalists that covered sensitive topics, or termination of employment, if a writer's stance was at odds with the media agency that employed them. For example, in the past few months the pressure against independent journalists had intensified: in September 2019, for example, a top legal radio journalist was almost taken off the air for attempting to cover the nomination of the new prosecutor-general in Bulgaria. Furthermore, media representatives reported that they had also experienced harassment from public authorities such as the Prosecutors' Office, police, tax agencies and other financial investigative authorities. This pressure sometimes extended to their associates and family as well.

Regarding media funding, public radio and television were legally required to maintain a certain level of editorial independence. Nevertheless, the government provided their funding and could therefore exert editorial pressure. Local media were overwhelmingly dependent on the local authorities' budget, and therefore even more susceptible to political influence. Concerns were raised that national media agencies were being selectively funded via EU funds, and that this process was non-transparent and potentially biased.

Government representatives did not provide any views on the situation of freedom of expression and freedom of the media.

Non-discrimination

In general, anti-discrimination legislation in Bulgaria was up to standard and there was evidence of good practice; however, there were problems in terms of implementation, and some areas were still not fully covered by the legislation.

One such example was LGBTI rights, as civil society representatives reported that only one law, the Anti-discrimination Law, protected these rights. As a result, LGBTI people were denied several rights. For example, same-sex couples were not covered by domestic violence legislation, and Bulgarian law did not permit same-sex marriages or civil unions. Moreover, Bulgarian authorities and courts rarely recognised or sanctioned abuses or discrimination against LGBTI people. There had also been a strong backlash against the community in recent months, with hate speech present in the media and perpetuated by some public figures.

Although Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2012, the requirements of the Convention were not being fulfilled. In Sofia, for example, the environment was completely inadequate for people with disabilities, and the situation was worse in small towns and villages.

The Roma minority was reported as being socially excluded, as although legislation in Bulgaria was comprehensive, in practice it was ineffective due to problems with the implementation. The exclusion of Roma communities in Bulgaria was visible in the case of housing (e.g. forced evictions), and the health sector (e.g. people lacked insurance or were discriminated against by the hospitals). Some progress had been made in the field of education, as school abandonment rates had dropped, and funding allocation had improved. However, no significant progress had been made in desegregating Roma schools. Moreover, Roma were underrepresented in public administration.

Since 2013 most Roma organisations had boycotted the main governmental advisory body for consultation with civil society, the National Council for Cooperation on Ethnic and Integration Issues (NCCEII), after their demand for a change in the institution's membership had not been met.

Furthermore, hate speech against minorities by public figures and politicians was common in Bulgaria, with public authorities ignoring this phenomenon and even enabling it in some cases. For example, over the last year many hate crimes against Roma people had been reported; these complaints had been registered with the Prosecution Office, but almost none had been followed up.

The situation of women's rights in Bulgaria was strongly criticised, particularly because in 2018 the Constitutional Court declared the Istanbul Convention to be unconstitutional. Serious concerns were also expressed about domestic violence, where policy and government measures were considered to be inadequate, especially since new legislation only criminalised repeated offences (requiring at least three acts of violence). Furthermore, the state kept no statistics regarding domestic violence and had too few centres for abused women.

With regard to the above, representatives of the Bulgarian public authorities pointed out that no EU Member State was entirely free of issues relating to discrimination against certain groups, be they LGBTI, Roma or other minorities. Furthermore, discrimination was expressly prohibited by the Constitution of Bulgaria, and a law had been passed that protected people against discrimination on the basis of 19 characteristics (race, ethnic background, sexual orientation, gender etc.). They also argued that all law enforcement institutions were doing what they were supposed to do and were simply applying the law. It was stressed that Bulgaria was one of the few countries that guaranteed equality between men and women. Furthermore, the Anti-discrimination Commission, which operated in Bulgaria as an independent state authority, monitored and investigated complaints and drafted actions plans and measures to be taken.

Rule of law

Regarding the Cooperation and Verification Mechanism (CVM), CSOs noted that in the first years after its introduction many legislative efforts had been undertaken in the area of the judiciary, the fight against corruption and organised crime, border security etc. However, opinions were divided on whether the CVM had fulfilled its purpose or not. The last EC report in 2018 welcomed the fact that Bulgaria had achieved three of the six benchmarks; nevertheless,

people on the ground did not feel the benefits of any progress made, and there was no empirical way of measuring whether the changes had in fact been effective.

Furthermore, some side effects of the CVM were having a negative impact. The mechanism facilitated political manoeuvring, allowing the government to imitate reforms, as well as to create structures that were not necessarily effective; thus the prosecution of opposition leaders was not effectively prevented. CSOs suggested the need for a transition period from the CVM to the introduction of the new comprehensive rule of law mechanism covering all EU countries.

The situation in Bulgaria was getting worse as regards the rule of law and the fight against corruption and organised crime; the independence of the judiciary and the accountability of the prosecution were viewed as particularly problematic. Bulgaria had gone backwards in terms of ranking in international indices regarding freedom of the media and corruption.

In the past four years, concerted efforts had been made to reform the judiciary (including the constitutional reform in 2015); however, the situation had deteriorated rapidly since 2016, with a number of new pieces of proposed legislation that sometimes directly risked undermining the independence of the judiciary. Furthermore, it was stressed that without genuine reform of the Bulgarian prosecution system, it was not possible to talk about the independence of the judiciary in Bulgaria, pointing out that the Bulgarian Prosecution Office very much resembled the old, Soviet-style prosecution system. According to civil society representatives, the prosecutor-general was still in a position of absolute power combined with a complete lack of accountability, despite this being criticised by the CVM on a number of occasions.

The independence of the judges had become much worse over the course of the previous year. The local elections and the election of the new prosecutor-general at the end of October 2019 had influenced public, social and economic life in the country, with unprecedented attacks taking place against judges and their court decisions. This signalled a shrinking space for civil society in general and for professional organisations in particular. It was noted that a bill in parliament proposed to prohibit magistrates from forming any kind of organisation and from participating in any kind of non-governmental organisation.

A very concerning trend was a gradual reduction in access to justice. For example, CSOs working in environmental protection faced hurdles in accessing justice due to a disproportionate increase in court fees when they tried to appeal before the supreme administrative court. Moreover, individuals could not appeal against environmental impact assessments when these concerned sites of priority importance for the country. It was noted with regret that Bulgaria had failed to comply with the decisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Regarding the CVM mechanism, the government representatives noted that the government was looking forward to the upcoming report, and that all Bulgarian institutions were very committed to satisfying its requirements. They also stressed that the independence of the judiciary in Bulgaria was guaranteed by the Constitution and recalled the main principles guiding the judiciary. Regarding the fight against corruption, the government representatives noted that the Bulgarian government had been working hard on this issue over the years, tackling it at all levels. A number of positive signals in this area could be noted. Looking at the

latest GRECO report, it could be seen that most of the recommendations to Bulgaria had already been complied with. A new anti-corruption agency (Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property – KPKONPI) had been established in Bulgaria.

Another important aspect mentioned by the civil society representatives was the issue of state capture, meaning that there were important public institutions, including in the judiciary, which served not the public but rather the individual interests of different groups. This had several negative impacts; for example, the lack of predictability both on the part of the government and the judiciary discouraged foreign investment, which was visibly declining in Bulgaria.

Furthermore, civil society representatives felt that there was a certain amount of foreign influence in the country, which manifested itself through links with Bulgarian oligarchs, for example with regard to ownership of certain mainstream media and support for civil society initiatives.

The civil society representatives concluded that the situation in Bulgaria was not so different from that of Poland and Hungary as regards violations of freedom of association and independence of the judiciary, and called on the European Commission to pay more attention to rule-of-law issues. Lastly, they also noted that Bulgarian citizens felt that justice was not available in the court system, the institutions, healthcare or education.

Report on the visit to Italy
5-6 December 2019

Six members took part in the country visit to Italy. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession on the one hand, and the Italian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Freedom of association and assembly - the social partners

Trade union representatives agreed that freedom of assembly and of association was well protected under the Italian Constitution and the law. 2020 will mark the fiftieth anniversary of the Workers' Statute (Act 300/1970) which safeguards workers' freedom and dignity and provides the framework for the role of trade unions in the workplace. Hundreds of collective bargaining agreements are in place. Most of them are signed by very small trade unions, and only around a third are signed by the most representative trade unions.

Trade union representatives agreed that challenges revolved around practical issues rather than legal ones. One of the main challenges they identified is the alternation between phases when political power valued social dialogue, and phases that were qualified as "disintermediation", when political forces are tempted to establish a direct relationship between the authorities and citizens. Even when there was active social dialogue, some trade union representatives considered that the results of the interaction depended a lot on the government's and employers' interests. It was also considered that social dialogue was too often segmented, covering specific sectors rather than offering an opportunity to discuss a vision of the future of the country.

Another set of challenges that was identified concerned the questions of representativeness and the risk of fragmentation and competition between trade unions. Two inter-sectoral agreements on representation and representativeness were signed in 2011 and 2013 between the main employers' organisation and the three major trade union confederations. The agreements favour the role of a unitary union structure in the workplace, which raises the question of the pluralism of trade unions. However, a court ruling confirmed that unitary unions do not have a monopoly on calling for assemblies in the workplace. This was considered as an example of the positive role played by the judiciary in advancing labour rights. Another example which was mentioned was the possibility for members of the police to organise themselves through trade unions – a right which was recognised through a court ruling referring to the European Convention on Human Rights, rather than on the basis of a law (which in any case has yet to be established).

Freedom of association

Like the social partners, the CSO representatives confirmed that freedom of association and assembly was well protected under the Italian Constitution and Law. It was pointed out that Italy had one of the largest civil societies in Europe, with a high number of CSOs and volunteers that contributed to the economic and social wealth of the country. It was explained that in modern Italian history CSOs had played an indispensable subsidiary role in public intervention.

According to participants, this strong role of civil society was reflected in the legislative framework and notably the 2016 legislative review, which led to a single code for the third sector in 2017. An implementation Decree is still needed to make the implementation of this code effective but there also remains the question of knowing whether or not the provisions concerning co-programming and private-public partnerships will contradict EU regulations, notably on procurement.

Despite this positive assessment of the legislative framework, the CSOs all mentioned an increasingly difficult operative environment. They mentioned an emerging climate of suspicion fed by a campaign led by some politicians to stigmatise the work of CSOs. Some of them have even received threats. This climate of mistrust has led to a reduction of donations by individuals and private foundations, in a context where public funding has been cut. According to the participants, politicians had called for stricter control over CSOs' financial management, including through fiscal control, on the presumption that CSOs are mismanaged. A CSO mentioned a proposal by one political party to adopt legislation to impose stricter control on CSO funding from abroad, as already exists in some countries where the civic space has been shrinking.

This climate of mistrust is particularly linked with what CSOs described as the criminalisation of CSOs working in solidarity with migrants. CSOs shared their concerns with regards to the possible lack of political will of the current Italian government to repeal the two Security Decrees adopted by the previous government. Along with the Code of conduct of CSOs working on search and rescue at sea, CSOs considered that these Decrees significantly restricted their legitimate work, notably by entailing substantial fines and seizure of vessels used for rescue at sea. CSOs referred to the numerous statements by the United Nations calling for them to be revised. They expressed their fear that a future revision would only be minimal, for example leading to a lowering of fines for acts of solidarity with migrants rather than a repeal of these fines.

The Italian authorities indicated that a review of the 'Security Decrees' would be considered in 2020 but they did not give specifications on the scope. The Italian authorities acknowledged that there had been a degradation of the CSO climate around migration under the previous government. They indicated that the current government had changed the narrative on the question and had held a good dialogue with the United Nations on these topics. They considered that tensions had eased lately and that the general climate towards civil society was still very positive in the country, as illustrated by the good participation of CSOs in the elaboration of the code on the third sector and the regular constructive exchanges which take place between the authorities and thousands of CSOs.

A CSO gave another illustration of challenges concerning citizens' right to association and assembly by presenting the situation in the Apulia region, where protests against the Trans Adriatic Pipeline project have led to what has been described as a low key but widespread wave of intimidation against an angry population. The CSO described the filming of civil society meetings by members of the police. Questioned on this point, the Italian authorities responded that there was no policy of filming demonstrations and meetings.

Freedom of the media and freedom of expression

According to participants in this session, some of the top challenges that Italy faced in terms of freedom of expression and media freedoms included the conflicts of interest between media owners and the political sphere, impunity for attacks against journalists, and the lack of legislative reforms. Participants agreed that what was most at stake nowadays was the preservation of quality journalism, in a context of increasing threats to journalists and a changing economic and technological environment.

One CSO described its work of closely monitoring threats, intimidation, seizures and other types of abuses faced by journalists, having recorded more than 4000 cases of threats against journalists since 2016. The journalists who are particularly concerned by these acts are investigative journalists or more generally journalists reporting on sensitive developments concerning politicians, the mafia, or speculative projects. Several journalists currently have to live with permanent police protection because of threats they have received from the mafia or extremist political groups.

Participants described how the journalism industry was evolving in a direction that was affecting quality journalism. They explained how, in a context of harsh competition for the production of fast news between traditional media and online platforms, hundreds of journalists from previous generations had been encouraged to retire and were increasingly replaced by freelance journalists. Such a generation of freelance journalists do not benefit from all the legal, economic and social support needed to produce quality work. They tend to avoid difficult issues and to focus on the ones that remunerate their work, as they know that their weak status will not offer them the appropriate backing in case of a slander trial. It was also mentioned that local news publishers were particularly sensitive to political and economic pressure and tended to be particularly cautious about avoiding any focus on sensitive issues. A participant also pointed out that the last collective bargaining agreement concerning journalists was around ten years old, which meant that journalists' revenue had been decreasing.

The competition imposed by online platforms was seen as particularly harsh, especially because they benefit from a high level of self-regulation while traditional media do not. The question of outsourcing the policing of problematic content to private companies was also presented as a challenge. Concerning the question of the economic concentration of the media, a participant indicated that regulation existed to prevent a company possessing more that 20% of national newspapers. It was, however, noted that restructuring processes had still led to some media concentration within the limits of this regulation.

A participant pointed out that the UN had been calling for a revision of the law on defamation for more than ten years, but that discussions on such a reform had not yet led to a concrete

legislative change. This participant indicated that official court statistics showed that the great majority of defamation cases were unfounded and were therefore dismissed by judges. However, before reaching this stage, journalists would have lost much time and money in their defence, leading to what was described as a "tax on truth" infringing on media freedom. Another participant mentioned that there was a law on hate speech but that this was not properly enforced.

The Italian authorities indicated that they were working with the Council of Europe platform on the protection of journalists and specialised Italian CSOs to address threats against journalists. They indicated that the Inter-Ministerial Committee on Human Rights (Comitato Interministeriale per i Diritti Umani, CIDU) followed up with the Ministry of Justice after any act of violence against a journalist to ensure that investigations took place. The Ministry of Interior also has a "Coordination Centre for Monitoring, Analysis and permanent exchange of information on the phenomenon of intimidation of journalists". The Italian authorities indicated that the Italian Communications Authority (Autorità per le Garanzie nelle Comunicazioni, AGCOM) and the relevant parliamentary committee chaired by the opposition were in charge of guaranteeing the independence of the media and of providing guidance on pluralism.

Discrimination

CSOs working on the rights of women described the challenges in Italy as deeply rooted in cultural bias. It was described how the perception of violence against women was low compared to the reality, and too often approached through the prism of conflict within the couple. Access to justice for female victims of violence was considered to be insufficient. It was mentioned that the European Court of Human Rights had ruled against Italy in 2017 for having failed to protect victims of domestic violence. It was also considered that the country was lagging behind in terms of implementation of the EU Directive on Victims' Rights and that the courts were not granting adequate compensation. More generally, CSOs working on women's rights considered that the financial support in this area was insufficient, especially in support of shelters for victims of violence. It was said that some of these centres could be faced with a risk of closure, or be managed instead by local authorities.

A CSO working on LGBTI rights presented a situation in which, despite some advances in social perceptions and law, significant challenges remained. Following the adoption of the law on same sex civil union in 2016, a series of hate speeches and hate crimes illustrated that progress was still needed. It was explained that bullying of LGBTI pupils at school was still a major problem and that it came both from schoolmates and from teaching staff. Other challenges which were mentioned included the lack of media visibility for LGBTI persons and the absence of important debates, for example on the offer of solutions to transgender children. The Italian authorities indicated that they were in permanent contact with LGBTI CSOs through the consultation table devoted to the topic.

Concerning the rights of persons with disabilities, it was considered that despite Italy's ratification of the UN Convention on the Rights of Persons with Disabilities in 2009, de facto discrimination remained widespread. This was particularly the case in terms of economic and social inclusion. It was hoped that the recent adoption of a law to favour the inclusion of persons with disabilities in the education system would address the fact that only a third of persons

with disabilities finished advanced educational studies, which led to a similarly low proportion of these persons having a job. A consequence of this central problem is that very few persons with disabilities take an active role in civic, cultural and political life, which reinforces a situation of de facto marginalisation in society.

The situation of Roma, Sinti and Camminanti persons was described by several CSOs as being a humanitarian emergency. It was explained that the previous government had a clear anti-Roma narrative and policy, which included the order for local authorities to map out informal Roma, Sinti and Camminanti settlements in order to facilitate their destruction. According to these CSOs, this added to existing practices of forced evictions that did not respect procedural safeguards, and adequate relocation was not proposed. More generally, CSOs explained that Roma, Sinti and Camminanti persons suffered from strong discrimination in the area of housing and education and that their marginalisation kept them in extremely bad health, economic and social conditions. A CSO questioned the adequate use of EU funds allocated to policies on Roma, Sinti and Camminanti persons in Italy. The Italian authorities indicated that they were in permanent contact with Roma CSOs through a consultation table devoted to the topic.

The protection and perception of migrants' rights was considered as particularly problematic by several CSOs. They stressed the gap that existed between the reality of the societal challenge and the perception of the situation in the mind of a great part of the population. It was explained that a feeling of "invasion" was fuelled by some media and some politicians who always associated migrants with crime. This narrative was presented by two CSOs as encouraging a "war of the poor against the poor" instead of addressing issues through the proper use of resources. CSOs described how the two 'Security Decrees' adopted by the previous government had led to an abolition of humanitarian protection for asylum seekers. The impossibility for asylum seekers to obtain legal address was also presented as a factor keeping them on the margins of society, as such a requirement was necessary to get access to rights and to work. It was also explained that the prevalence of undeclared work amongst migrants put them in a situation of dependence on employers. A trade union representative explained how they worked together with humanitarian CSOs to help migrants become integrated. It was mentioned that while migrants could not vote in political elections, they could still get representation in the workplace as trade unions did not distinguish between workers.

The Italian authorities indicated that so far the bulk of financial allocations to address the migration challenge in Italy had come under the Italian rather than the EU budget. The Italian authorities indicated that Italy had clear channels for asylum, through resettlement, humanitarian corridors and humanitarian evacuation. In their view, an adequate response to the Italian people's frustrations with regards to the migration challenge would involve an increase in support by other EU Member States and a collective EU response to tackle these challenges. According to the Italian authorities, this would notably entail more cooperation on disembarkation of search and rescue ships, the revision of the Dublin regulation and the allocation of sufficient resources in the next Multiannual Financial Framework (MFF) for the integration of migrants in Italy.

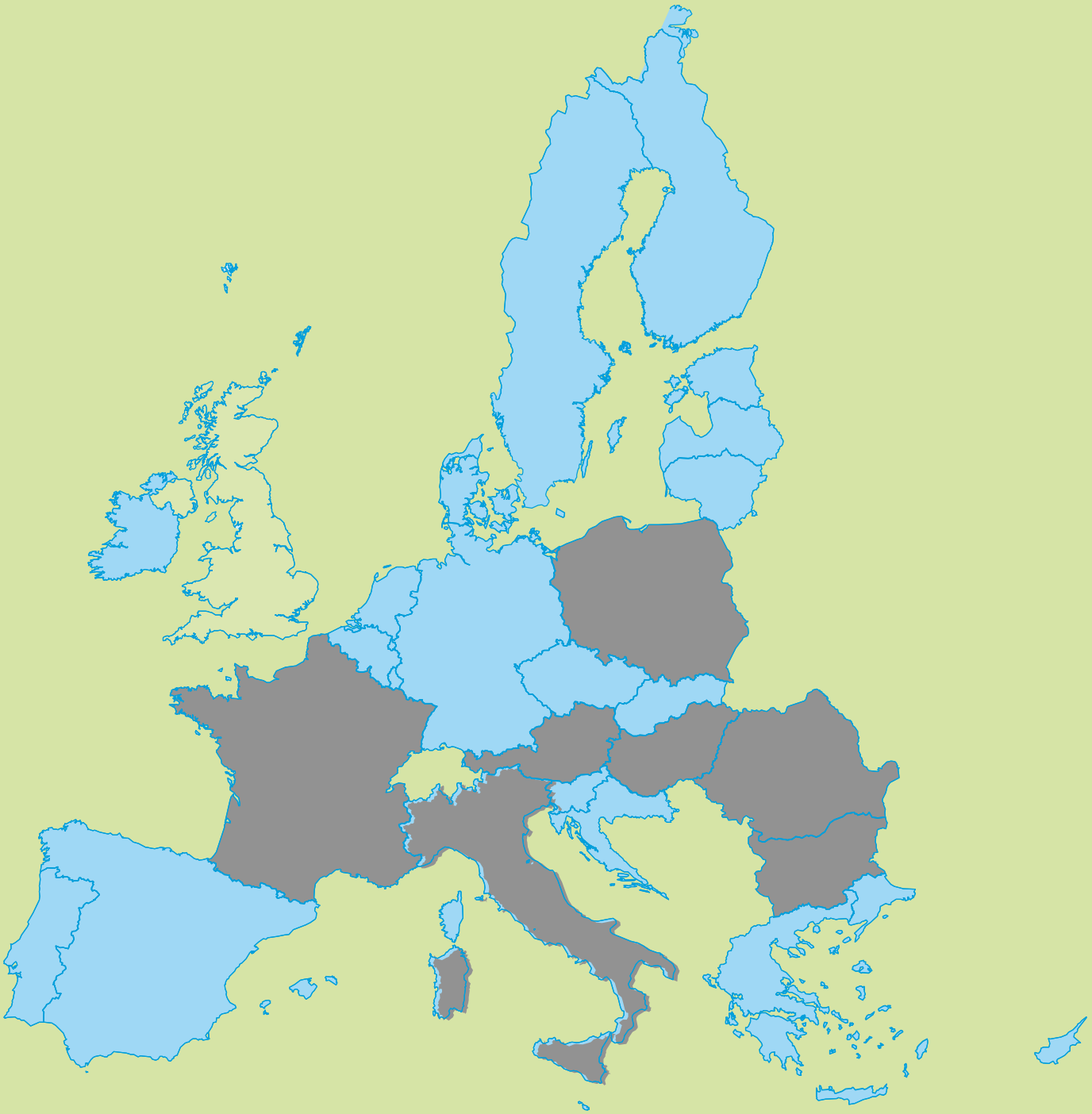
Rule of law

The CSOs and legal practitioners specialised in the rule of law who took part in this session described developments in the past years as leading to a deep institutional crisis. According to them, the rise of a political culture of mistrust, anti-establishment and anti-parliamentarism had been clashing with the longstanding constitutional tradition of the country. They explained that this trend was illustrated by the attacks on the judiciary and associations of judges and prosecutors following unpopular judgements protecting migrants' rights. Legislation restricting search and rescue activities was mentioned as an example of the possibility for a political majority to pass legislation in a formally correct way while its content would breach international and constitutional law as well as fundamental rights.

Participants considered that the last years had seen increasing impediments imposed by the political sphere on the remit of the judiciary. According to these participants, some politicians had sought to impose the public narrative that elected politicians were the only representatives that had the legitimacy to act on behalf of the people, creating a dangerous delegitimisation of the role of the judiciary in the eyes of the people. Judges were asked to implement rather than interpret the law, in a complete reversal of their traditional function. Participants explained that attacks on the judiciary were not new in Italy and they had especially been linked to the reaction of some politicians in corruption-related cases. It was explained that what was new and particularly dangerous this time was the fact that it was now a big part of the political class that portrayed the judiciary as a whole as being "against the people". In this context, the people are encouraged to think that the real challenges that the judiciary is facing, and primarily its slowness, is the fault of the judges and not the result of insufficient public policies failing to allocate the sufficient resources to the judiciary.

Participants gave other examples of current challenges concerning the rule of law in Italy. A participant explained that a bill could put at stake the feature of the Italian judicial system which meant that prosecutors belonged to the judiciary and were totally independent from the executive. The Italian authorities explained that public prosecutors were indeed only subject to the law and did not come under the executive. According to the Italian authorities, the guarantee of their independence was ensured through the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM). They indicated that a reform was under discussion concerning the composition of the CSM and its disciplinary prerogatives.

A participant mentioned plans for legal reform that would have gone or could go against the Constitution, like the plan of a major political force in the previous government to impose an imperative mandate on Members of the Parliament, or a push to stop the statute of limitation after the first instance trial which could end up lengthening appeals. This participant also gave concrete examples of unprecedented attacks on the checks and balances of power under the previous government, which had forced the persons heading the Central Bank, the Italian Companies and Exchange Commission (CONSOB), and the National Social Welfare Institute (INPS) to resign after they had warned about the impact that some public policies would have in the areas they monitored.



APPENDICES

Government observations to country reports

Romania

Poland

Hungary

France

Austria

Bulgaria

Italy

Observations from the Romanian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Romania on 19-20 November 2018

Point 2: Freedom of association and assembly - social partners

The content is debatable in the absence of any specification related to the consulted groups (members of the Economic and Social Council, trade unions, business organizations), and the speculative character of some opinions raises doubts about the usefulness of the Report in achieving the stated purpose.

Observations on specific issues:

Consultation: Legislative changes of an emergency nature generally concerned reform measures set out in advance in the Government Programme and/or measures to ensure compliance with the European jurisprudence. These were debated at the level of the line ministries and had the opinion of the Economic and Social Council or, as the case may be, of the Group for the Assessment of the Economic Impact of the Legislative Acts on small and medium enterprises (in abbreviated Romanian form GEIEAN) in which the social partners are members, while the proposals of the parties involved were taken into consideration within the limits of political commitment. The Labour Inspectorate carried out information and awareness campaigns on law matters and on the process to transfer responsibility for social security contributions, and CNSLR-Frăția (EN: The National Confederation of Free Trade Unions of Romania – Brotherhood) agreed to participate in the monitoring of the initiation of the collective negotiation for the transfer of contributions.

Discouraging the negotiation: Art. 153 of the Law on social dialogue established the criterion for mutual recognition of the parties in support of the motivation of the union affiliation and of the involvement in the committed and mutually advantageous voluntary negotiation, at all interest levels. At present, the collective agreements coverage at company level is approx. 30%, not to mention that employment relations are fully regulated by labour law.

Violation of ILO Conventions no. 87 and no. 98: freedom of association and union affiliation, the right to collective bargaining and the right to strike are guaranteed by the Constitution of Romania (art. 9, art. 40-41, art. 43), labour law and social dialogue law.

The law on social dialogue guarantees the autonomous organisation of trade unions and prohibits any intervention of the authorities and employers to limit or prevent the exercise of trade union rights (art. 7) by means of imposing dissuasive sanctions (art. 217). Lodging complaints and the available remedies and redress are done through the Labour Inspectorate, the National Council for Combating Discrimination (issues enforceable decisions) and the Court.

The right to trigger collective labour conflicts and strikes in relation to the interests of collective bargaining and respect for the principle of social peace during the collective contract are guaranteed according to the recommendations and standards of the ILO, as well as the competence given to the Court in resolving conflicts of rights triggered by the non-application of the collective contracts clauses which are assimilated to laws and are a source of law.

Economic and Social Council composition: Law 248/2013 on the organization and functioning of the Economic and Social Council, revised with the direct participation and the agreement of the social partners, establishes the exclusive competence of the Government to appoint representatives of the associative structures of civil society (art. 11 paragraph (2) letter c)).

Observations from the Polish authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Poland on 3-4 December 2018

Freedom of association

Claims concerning the governmental program for cooperation with NGOs and the regulatory provisions on granting funds to NGOs by the National Institute of Freedom – Centre for Civil Society Development

As regards the system of control over the financing of associations, the associations indicate a supervisory body and the competent minister. Each association submits an annual report to the supervisory body, but the body has no power to control it - it can only ask for missing information. Similarly, as far as public collections are concerned, they are subject to registration in the Ministry of Interior and Administration, however there are no restrictions as to their purpose (only a report is required). Any plans regarding possible introduction of control mechanisms invariably meet with protests. It is pointed out that natural persons may perform such activities legally, e.g. through dedicated websites.

Freedom of assembly

Claims concerning imbalances and discrimination in securing public gatherings /marches based on their theme, problems with obtaining permissions

The applicable provisions do not make any distinction on grounds of views of the organizers and all signals concerning possible violations are analysed on an ongoing basis. The police protects the life and health of protesters as well as of random observers of all public gatherings. It carries out these statutory tasks regardless of political views, ethnicity or religion of protesters. Depending on the number of participants in a given public assembly, its character and the nature of envisaged threats, the Police ensure an appropriate and adequate number of officers, as well as selects reasonable and proportional means of direct coercion, if needed. When protecting the life and health of participants of public gatherings, the right proportion between the priorities and the orders issued is a guarantee of safe and peaceful realisation of the freedom of assembly.

Criticism associated with the organization of the COP 20 summit in Katowice

Security and public order are constitutionally protected values in Poland, just like the freedom to organize and participate in peaceful gatherings. The rank of the climate summit and the public security considerations justified the extraordinary security measures adopted, including

the ban on public gatherings during that period. The primary objective was to protect the life and health of the participants of the event. In such situations, the forces, means and tactics used should always be adequate to the potential threats. The rules for issuing bans on public gatherings, as well as a detailed list of cases in which this type of prohibition may occur, are contained in the Act of July 24, 2015 on the Law on Assemblies (Journal of Laws of 2019, item 631, jt), as well as in the Act of 10 June 2016 on anti-terrorist activities (Journal of Laws of 2019, item 796, ct). These regulations allow for the prohibition of public gatherings in the event of the introduction of one of the two highest alert levels (the threat of a terrorist attack or an actual attack). In such a case, the decision to introduce a ban on public gatherings is taken by the Ministry of the Interior Affairs and Administration on its own initiative or at the request of the Head of the Internal Security Agency or the Police Commander in Chief.

The ban on public gatherings or mass events applies in such a case to the area or the facility covered by the alert for the time of the alert's duration (and not for the duration of the event causing the introduction of the alert), if it is necessary to protect the life and health of participants or the public safety. The alleged possibility of imposing such a ban for "*up to 15 days*" (as indicated in the FRRL report) is not reflected in the Polish law.

The issue of cyclical public gatherings (authorizations and refusals of authorization)

The rules for organizing public gatherings are governed by the Acts of July 24, 2015 on the Law on Assemblies (Journal of Laws of 2019, item 631, as amended). In accordance with applicable regulations, the voivode's consent is required to organize such gatherings. It should be noted that pursuant to art. 14 of the Act, the municipal authority may prohibit the organization of a given gathering, no later than 96 hours before its planned date, if one of the following conditions is met:

- if its purpose violates the freedom of peaceful assembly, the rules for organizing public gatherings or if the purpose of the meeting or its conduct violates the criminal law;
- if it may endanger the lives or health of people or endanger property of considerable size;
- if the meeting is to take place at the time and place where cyclical public gatherings take place.

The issue of the Independence March and controversies related to it

During public gatherings, the police are guided in its actions primarily by the need to ensure the protection of health, life and freedom of assembly. The same considerations apply when they have to interrupt illegal manifestations. On April 2, 2017, the amendment to the Act on Assemblies entered into force, introducing the rule of maintaining a 100 m distance between opposing public gatherings. It should be clarified that such a solution reduces the risk of threats to the safety of participants in public gatherings. In addition, there is an obligation to notify the intention of holding a gathering six days before it is to take place. Regrettably organizers of public gatherings usually wait until the last moment, which makes the preparation of security forces and ensuring adequate security conditions more difficult.

The tactics used by the Police in conflict situations during public gatherings do not always result in direct interventions. The police does however always strive to secure evidence and identify the persons who violate the law, in order to bring them to justice if they are suspected of committing a crime or an offence. Public gatherings often have a dynamic course and require flexible reactions from the Police. The power to make decisions in this respect, deprived of any influence of institutions, third persons or interest groups, is vested solely with the commanding officer. If threats occur during a public gathering, the Police are obliged to take adequate actions to eliminate them and prevent their escalation. It should be emphasized that police officers take action only against people who violate legal order, first of all seeking to separate them from the participants of the public gathering who demonstrate their views in a peaceful manner.

The separation of two potentially antagonized groups/participants is aimed at enabling both to exercise their constitutional right to manifest their views. In a democratic state of law, freedom is one of the supreme and fundamental values. Its basic attribute is the freedom of public, unrestricted expression of views and beliefs, as well as gathering for this purpose.

Freedom of expression and media freedom

We are glad that all participants agreed that freedom of expression is protected in Poland.

When it comes to the alleged plans for „re-polonisation" of foreign-owned media, the Government did not carry out any work aimed at reaching such an aim. Analyses of entrepreneurs operating on the media market and of concentration in its particular segments were carried out. The possibility of the introduction into the Polish legal order of regulations aimed at limiting possible excessive concentration and ensuring greater pluralism of the market was being considered.

Legal solutions sharing these aims are in force in the vast majority of EU Member States. The goal of this type of solutions is to provide the public with access to as many sources of information as possible. Such legal regulations, based on European law, are not intended to stigmatize any media or limit the possibility of participation of entrepreneurs from other EU countries in the Polish media market.

Rule of Law

First of all, the report does not always indicate whose opinions constituted the basis for the statements it contains, and the statements are mostly general in nature (e.g.: *these changes were seen as an attempt to dismantle the justice system..., according to some...., concerns were expressed...*, etc.) .

Secondly, we suggest deleting the term *"political allies"* used in the following sentence: *"Legal professionals (mainly judges) who were political allies of the current government.... "*. All judges in Poland are independent and cannot be considered politically involved.

Thirdly, the term *„slight modifications"* used to describe the legislative changes introduced by the Government in response to the voiced concerns is a general and subjective assessment, lacking an author and explanation why the amendments introduced should be considered as such.

Fourthly, the statement that the new disciplinary regime allows for institution of disciplinary proceedings against a judge for the content of their judgment has no basis in applicable law. If it is an opinion, its author should be indicated.

Regarding the disciplinary proceedings against judges on the grounds of their jurisprudence, it should be stated that there is no such legal liability in the Polish legal system, with the exception of the obvious and blatant insult of legal provisions, also in the course of settling cases. It should be emphasized that art. 107 § 1 (of the Act of 27 July 2001 - Law on the structure of common courts) on the disciplinary offense, remains unchanged since October 1, 2001 (the date of entry into force of this Act).

The rich jurisprudence of the Supreme Court illustrates the well-established interpretation of Art. 107 § 1 (e.g.: "a judge adjudicating in a case may not remain convinced that any violation of the law - even those which have at its disposal premises of an evaluative nature - will result in his disciplinary liability").

At the same time, "the insult to the law is obvious when the judge's error is easy to find, it was made in relation to a specific provision, even though the meaning of this provision should not raise doubts even for a person with average legal qualifications, and its application does not require a deeper analysis"

(The Supreme Court judgments of March 8, 2012 SNO 4/12, of December 11, 2014 SNO 61/14.).

The above clearly demonstrates that the subject matter of the disciplinary tort of the judge, which is well-established in the Polish legal order, is not only not questioned in the national jurisprudence of the Supreme Court (as potentially violating the judicial independence), but also remains limited in the scope and manner of its understanding, in particular as regards responsibility for an obvious and blatant offense against the law in connection with judicial activity.

Fifthly and finally, regarding the critical assessment of the extraordinary complaint introduced against final judgments in civil matters, it seems that the only reason for such a criticism is its supposed undermining of legal certainty. There are however strong counterarguments. The introduction of a review mechanism, the goal of which is to restore legal order by eliminating judgments violating the Constitution, grossly violating the law, and obviously contradicting the evidence collected in the case, is the sovereign's right and protects the public order.

Observations from the Hungarian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Hungary

on 29-30 April 2019

During the country visit to Hungary, the Fundamental Rights and Rule of Law (FFRL) Group and the Hungarian authorities had a constructive dialogue on important topics covered by the report. In these meetings Mr. President Moreno Díaz assured the Hungarian authorities that the aim of the mission was not to formulate a judgemental opinion on Hungary but to examine the situation concerning the rule of law and fundamental rights from the perspective of civil society in several European countries.

The Hungarian authorities regret to see that the report on Hungary to be published by FRRL is clearly not in line with the above mission statement. In fact, the report contains legally and factually unjustified, subjective statements and allegations. It merely echoes the slogans of a few Civil Society Organisations (CSOs) whose mission consists in criticizing the government. Although these CSO's represent less than 1% of all 60 000 CSOs active in several different domains of Hungarian society, the report apparently reflects their unsubstantiated arguments without the slightest attempt at verifying them or confronting them with the opinion of other actors.

We also stress that, although the representatives of the Hungarian Government presented their position extensively, the report does not even refer to most of these arguments and does not provide a balanced evaluation.

The report also contains some evident factual errors ***inter alia:***

- Contrary to point 1 of the report, the Act of LXXVI of 2017 does not contain the term „foreign agent" and does not require any civil society organisation to be registered as such.
- Also, the Hungarian legislation does not provide for a 25% tax on foreign funds but a special tax is imposed on the financial support related to illegal immigration-supporting activity itself.
- The report fails to mention that the funding based on the decision of taxpayers is an important source of independent funding for CSOs.
- Nor does the report state that the media legislation in force explicitly contains provisions for the prevention of media concentration.
- The zero tolerance policy of the Hungarian government in the case of any form of racism enshrined in Hungarian law is not referred to and the Government's numerous social inclusion, health and family measures have also been omitted.
- Contrary to point 5 of the report, the President of the National Office for the Judiciary (NOJ) is not appointed by the Government but is elected by Parliament on the recommendation of the Head of State from among the judges by a two-third majority of votes of Members of Parliament.

The errors, the non-justified statements and allegations depict a negative, unbalanced and distorted picture of the implementation of the freedom of association and assembly, the freedom of expression and the media, the equal treatment and the rule of law through the point of view of certain CSOs.

In order to set the facts correctly, the Hungarian Government has prepared a detailed reply below which contains suggestions for corrections to the EESC document entitled ***"Report on Mission to Hungary, 29-30 April 2019***" (hereinafter referred to as the Report). Corrections refer only to clear errors of fact and law and provide further information or clarifying statements based on a more thorough analysis of the normative legal environment. This in no way implies that the Hungarian

Government endorses perceptions or opinions of some CSOs not explicitly referred to in this document.

Statement in the Report *(p. 1. par 4): "Legislation to register as "foreign agents" and to pay 25% tax on foreign funds had created uncertainty."*

The truth, however, is the following: The Act LXXVI of 2017 on the Transparency of Organisations Receiving Support from Abroad does not contain the term "foreign agent" at all; therefore, it does not require any civil society organisation to be registered as such. This approach has been endorsed both by the Venice Commission[14] and the Parliamentary Assembly of the Council of Europe.[15]

The Hungarian legislation in force does not provide for a 25% tax on foreign funds. A special immigration tax of 25% is imposed on the financial support related to immigration-supporting activity. In general, it must be emphasized that in Hungary there are more than 60 000 NGOs operating without any difficulties and less than 1% of them seek to play a political role without any democratic mandate or accountability. NGOs are important in shaping public opinion and perception. This is well reflected in the Preamble of the Act on the Transparency of Organisations Receiving Support from Abroad where their role in contributing to societal self-organisation is acknowledged. There is a substantial public interest for the entire society to see what interests they represent. For this very reason the transparency of NGOs funded from abroad is an essential requirement from the aspect of rule of law. It must be highlighted that the Act does not prohibit the operation of NGOs or funding from abroad; it merely makes their funding transparent, in conformity with the established principles of democracy. Also, the Act does not render more difficult for NGOs to receive financial assistance from abroad; they simply have to inform the public of contributions over a certain threshold sum. Hence the Act on the Transparency of Organisations Receiving Support from Abroad does not adversely affect the freedom of association.

14 "the highly stigmatizing term "foreign agent" is not, and wisely so, used by the Hungarian legislator (...)" Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad; CDL- AD(2017)015-e; para 24.

15 PACE, Resolution 2162 (2017)

The aim of the introduction of the special immigration tax is to oblige non-governmental organisations conducting activities in the field of migration, to bear the costs that have arisen as a result of their associative activities, which contribute to the growth of immigration and the growth of related public tasks and expenditure. Therefore, the special immigration tax is a tool of "burden sharing", being an acknowledged principle of taxing systems in order to maintain the balance of the budget.

Statement in the Report *(p. 1. par 4): "'Although the general legal framework on freedom of association is in line with international standards, they considered that the legislation has had a chilling effect on their activities".*

The truth, however, is the following: While all consider the legal framework to be in line with international standards, CSOs usually fail to explain what the concrete examples of such a perceived chilling effect were; the current report does not contain such reference either. In Hungary, CSOs may carry out their activities freely without governmental interference.

Statement in the Report *(p. 1. par 5): "(...) the government is favouring CSOs performing service functions in health care, while on the other hand stigmatising CSOs performing advocacy and watchdog activities or granting funding. "*

The truth, however, is the following: The National Cooperation Fund (NCF) is a form of funding created by the Act on civil society organisations (Act CLXXV of 2011, hereinafter: NGO Act) to support the operation and professional activities of NGOs; in addition to having an opportunity to submit grant applications to cover their costs and fund their professional programmes, NGOs are entitled to government funding to supplement private funds they have raised.

In order to ensure the independence of the grant-funding system, 85% of NCF grants is distributed through applications under the NGO Act. Five colleges, each of which is composed of nine members in part selected by NGOs, are responsible for drafting NCF calls for grant applications, appraising incoming applications, and verifying the achievement of supported goals. The range of activities that can be supported by the five colleges covers the entire NGO sector. NCF's colleges are:

- Community Environment College
- Mobility and Adaptation College
- National Cohesion College
- Social Responsibility College
- College for the Future of New Generations

It follows from the above that the statement on favouring CSOs performing service functions in health care is an obvious mistake.

As far as the stigmatization of certain NGOs in concerned, it shall be stressed that there are no legislative acts in relation to civil society organizations that would contain any discriminatory measure or reference to NGOs which defend human rights, carry out advocacy and watchdog activities.

Statement in the Report *(p. 2. par 1): "This is particularly concerning as EU funding is the only funding which remain [sic!] available for CSOs that are not directly aligned with the government."*

The truth, however, is the following: Hungary was the first Central European country that introduced in 1996 a specific mechanism to support the activity of NGOs. Individual taxpayers - natural persons - may designate one percent of their income taxes paid to a qualified non-profit organisation and another one percent to a church. Experience shows that this is an important source of financing for many NGOs: in 2018, 8.3 billion HUF was offered to 27 000 NGOs by 1.79 million Hungarian taxpayers. The amount of the donations exceeded the sum of the previous year's 7.8 billion HUF. This funding is based on the decision of taxpayers and therefore, ensures an independent funding for CSOs.

Statement in the Report *(p. 2. par 2)***:** *"Several underlined efforts by CSOs to establish a dialogue with the government, however they regretted the absence of a formal consultation platform and of a genuine will to consult by the authorities."*

The truth, however, is the following: The Government established the Human Rights Working Group in 2012 with the main purpose of monitoring the implementation of human rights in Hungary, conducting consultations with civil society organisations, representative associations and other professional and constitutional bodies, as well as, of promoting professional communication on the implementation of human rights in Hungary. The Working Group monitors the implementation of the fully or partially accepted recommendations in relation to Hungary of the United Nations, Human Rights Council, Universal Periodic Review (UPR) Working Group. Due to the modification of the Government Resolution, the Working Group also reviews and monitors the enforcement of human rights conventions and agreements - of which Hungary is a signatory - adopted in the framework of the UN, the Council of Europe, the OSCE, and the obligations arising from Hungary's EU membership. It makes recommendations to the Government and other central administration bodies involved in legislation and application of the law, and oversees the implementation of these regulations to allow for a wider representation of a human rights perspective.

The forum for dialogue with civil society is the Human Rights Roundtable, which currently operates with 73 civil organisation members and further 40 organisations take part in the activities of the thematic working groups with consultative status. The Roundtable holds its meetings in 11 thematic working groups; each of them is intended to deal separately with legal and practical problems of and sectoral political proposals for vulnerable groups of society (such as women's rights, children's rights, integration of Roma people, national minorities, etc.).

Statement in the Report *(p. 3. par 1 and 4)*: *"The organisations met shared their concerns about the centralisation of the organisation of media outlets by the government, which particularly affects the local level. (...) [T]he influence of the government is strong because of its dominant position on the media market, both in terms of financing and in market shares. (...) The delegation was informed that those who are critical of the government face negative treatment in the media"*

The truth, however, is the following: The allegations with regard to the freedom of expression and media freedom in Hungary are completely unfounded or based on subjective perceptions. The Fundamental Law stipulates that everyone shall have the right to freedom of expression and that Hungary recognizes and protects the freedom and diversity of the press. The diversity and the balanced functioning of the media market are also safeguarded. The Hungarian Government is committed to ensure these rights.

The media legislation in force explicitly contains provisions for the prevention of media concentration, and promotes the creation of a diverse media market by preventing the emergence of information monopolies. The prevention of media concentration is also regulated on a constitutional level; it follows from Article IX of the Fundamental Law. Act CLXXXV of 2010 on Media Services and on the Mass Media contains provisions aiming at preventing market concentration and regulates media service providers with significant powers of influence as envisaged by the Audio-visual Media Services Directive and it further protects the diversity of broadcasting.

As far as media coverage is concerned, the Media Act foresees a separate body, the Public Service Board for guaranteeing the social control over the public service media. The members of this body are appointed by churches, municipalities, national and ethnic minorities to represent wide a range of social values.

The Government of Hungary is committed to ensure freedom of expression and editorial freedom. The ownership structure and managerial decisions of privately owned media outlets largely fall outside of the competences of the Hungarian Government.

Statement in the Report *(p. 4. par 1)*: *"Several organisations mentioned that the anti-Soros campaign was an anti-Semitic one, which further triggered anti-Semitic hate speech (...)"*

The truth, however, is the following: The Hungarian Government has declared a zero-tolerance policy against anti-Semitism and the Jewish community can always rely on the Government's support and protection. According to a recent report of the European Union Fundamental Rights Agency (FRA), Hungary is amongst the countries with lower risk of anti-Semitism.

The campaign responded to a growing concern among Hungarian voters, and citizens throughout Europe, that security, both internal and external, must be a top priority and a firm position must be taken against illegal migration. The campaign did not target the person of Mr Soros, rather his political objectives and methods.

Statement in the Report *(p. 4. par 2)*: *"Regarding the situation of Roma people, participants mentioned discriminations in the child protection system, in housing, work and education, and discrimination by law enforcement authorities (including ethnic profiling) and by local governments"*

The truth, however, is the following: Hungary is strongly committed to combat racism, anti-Gypsyism and any incitement to hatred. Zero tolerance against any form of racism is provided for by the Hungarian legislation and is confirmed by statements from the highest political level. Every Hungarian citizen belonging to a nationality shall have the right to freely express and preserve his or her identity. All 13 nationalities - including Roma - living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues. All nationalities can form self-governments at both local and national level.

The Hungarian Government is deeply committed to achieve the integration of Roma people. This issue was put on the political agenda of the European Union as the initiative of the Hungarian Presidency of the Council of the European Union in the first half of 2011, by the adoption of the EU Framework Strategy on Roma inclusion, which was followed by the channelling of the Framework Strategy into the EU policies (e.g. the European Semester, and the use of the cohesion funds). The initiative dealt with the issue not merely based on a human rights approach but also from the aspects of poverty and social inclusion, recognising thereby that a complex approach is required in order to find a genuine solution for the problems. In order to implement the EU Roma Framework the Government adopted the Hungarian National Social Inclusion Strategy in 2011 and then updated in 2014. Three-year action plans were prepared for its implementation by designating responsible ministers, deadlines and available funds.

Since 2010 the Government has implemented several social, social inclusion, family policy, health policy and educational measures. We have achieved a great number of positive results, all of which prove that we are on the right path: in addition to the improvement of economic indicators, almost all of our indicators related to fight against poverty and unemployment have been constantly improving since 2013.

The employment rate among the Roma minority has risen by 20% since 2013, in parallel the unemployment rate has decreased by 20%. In 2018, the employment rate in the 15-64 aged Roma population was 43.6%, which means a 10%-point increase since 2014. Another example for our outstanding results is that in Hungary 91% of Roma children attend kindergarten, which is around the participation rate of non-Roma children.

Statement in the Report *(p. 4. par 3): "Public narratives presented an image of women as mere agents of the family, they reinforce gender stereotypes and use the concept of 'familism' instead of feminism. "*

The truth, however, is the following: The Government rejects the artificial dichotomy between families and women's rights. We are implementing several programs to support employees in striking the balance between work and family life. The Government spends 4.7% of the GDP (EUR 3 billion) on financial support for families, compared to an EU average of 2.5%. In 2019 this allocation will be increased to EUR 6.2 billion. The Government has taken

a number of important and effective measures to create the proper balance between family and work in recent years. Hungarian law also provides strong protection for women against violence; the Criminal Code now punishes these actions more severely. As regards the working conditions for pregnant workers, the safety of pregnant and nursing workers, equal treatment also in the world of employment is one of the top priorities of the Hungarian Government's employment policies. For example, the Extra Child Care Allowance Programme (GYED Extra) provides a choice for women with dependent children and supports both those who decide to stay at home with their children and those who wish to work besides raising their children. As of 2016, when the child reaches the age of 6 months, the parent may seek employment while remaining eligible for benefits. The expansion of parttime employment opportunities is also of paramount importance. If a mother with a dependent child requests part-time employment then her employer shall ensure this opportunity for her up to the age of 3 of her child, or up to the age of 5 of the youngest child in case of a large family.

Statement in the Report *(p. 4. par 5)***:** *"'Many CSOs expressed serious concerns about the creation of a new parallel public administrative Court system and a new national judicial office. These changes are part of a step-by-step reform of the judiciary taking place since 2011-2012."*

The truth, however, is the following: The allegation of the "creation of a new national judicial office" is incomprehensible. The National Office for the Judiciary was established by the Fundamental Law. Its current competences - with special regard to the role of the President - have been elaborated after a long dialogue with the European Commission and the Venice Commission in the period 2012-2014. The main characteristics of this system have remained unchanged since then.

As far as the establishment of administrative courts is concerned, it shall be stressed that the administrative court system has a longstanding historical precedent in the Hungarian legal system.

International examples, especially the well-functioning systems in neighbouring countries prove us that independent administrative judiciary ensures the self-restraint of the executive power better and provides more efficient control over actions of the administration.

The outcome of the constitutional dialogue with the Venice Commission, initiated by the Government confirmed that the establishment of a new system of administrative courts was in line with European standards and practices. The bill on further guarantees of the independence of administrative courts adopted by the National Assembly amended the legislation on administrative courts taking into account all recommendations of the Venice Commission.

With the adoption of Act LXI of 2019, the entry into force of the act on Administrative Courts has been indefinitely postponed.

Statement in the Report *(p. 4. par 6)*: *"According to some CSOs, the current judiciary has a high level of independence, but the ongoing Court reform is a cause for concern as no needs assessment was done in connection with the reform."*

The truth, however, is the following: After the change of political regime, only cautious and minor steps have been taken in order to re-establish an organisationally independent administrative judiciary, although the idea of a separate system of administrative courts has been supported by broad agreement among legal scholars in the past 30 years. These efforts can be demonstrated by a number of scientific conferences and publications by internationally acknowledged scholars. By adopting the 7th Amendment to the Fundamental Law in 2018, the National Assembly established the basis for a separate system of administrative courts.

The preparation of the legislation on administrative courts was commenced in a completely transparent working process. The Acts have been elaborated after a thorough examination of international standards and national laws of the EU Member States. To assist the preparatory works, the Minister of Justice has established an expert committee with the participation of judges, delegates of the President of the Curia and of the National Office for the Judiciary, the President of the Association of Hungarian Administrative Judges, and acclaimed legal scholars, among them professors of administrative and constitutional law. Background talks have been organised with the Ambassadors of EU Member States in Hungary on two occasions, international conference took place with the participation of legal scholars and administrative court judges from several EU Member States.

In accordance with the Hungarian legal requirements, the Ministry of Justice submitted the draff laws to public consultation prior to their submission to the National Assembly. Each political party represented in Parliament has been invited to a consultation on the draft laws before their submission. Some of their proposals voiced at this meeting have been included in the draft laws submitted to the National Assembly or taken on board by the governing parties in the course of parliamentary discussions. These data demonstrate that adequate and broad consultation was carried out on all elements of the reform.

Statement in the Report *(p. 4. par 7)*: *"Participants described a politicised process whereby new administrative Courts judges could be elected without the support of peers"*

The truth, however, is the following: In the appointment procedure of administrative court judges the act on administrative courts establishes a balanced model: the court presidents, the judicial councils of the given courts (composed exclusively of judges), the National Administrative Judicial Council and the minister all have their respective roles. In line with the recommendations of the Venice Commission, the act on further guarantees of the independence of administrative courts reinforced the judicial majority of the personnel council as part of the National Administrative Judicial Council by adding two additional judge members. Therefore, the body, having the central role in the application procedure - by establishing the ranking based on the objective and subjective scores achieved by all the applicants - is composed mainly of judges. Furthermore, also in line with the recommendations

of the Venice Commission, the act outlines more detailed criteria that the minister shall take into consideration in the appointment procedures of judges and introduces a legal remedy allowing candidates to challenge the ministerial decision in front of the disciplinary court. The procedure contains all necessary safeguards required by the Venice Commission; therefore it cannot be considered as politicized.

Statement in the Report *(p. 4. par 8)*: *"'Another key issue was the lack of cooperation between the National Judicial Council of Hungary (Országos Bírósági Tanacs, OBT) and the National Office for the Judiciary (Országos Bírói Hivatal, OBH) appointed by the government."*

The truth, however, is the following: Firstly, the President of the National Office for the Judiciary (NOJ, the correct Hungarian name of the institution is: Országos Bírósági Hivatal) is not appointed by the Government, but he/she is elected by Parliament on the recommendation of the Head of State from among the judges by a two-thirds majority of votes of Members of Parliament.[16]

Secondly, the Fundamental Law stipulates that the President of the NOJ shares competences with the National Judicial Council (NJC, the correct Hungarian name of the institution is: Országos Bírói Tanács), a body of judicial self-government. The President of the NOJ and the NJC are constitutional institutions and central actors in the administration of the judiciary.

The sharing of competence between them has been established as part of the judicial reform that began in 2011. During this reform, the Hungarian Government has successfully conducted discussions with the Venice Commission and the European Commission and settled all contentious issues in a satisfactory manner. Institutional tensions between the constitutional organs responsible for the administration of courts are not a sign of crisis but of effective checks and balances, and - in accordance with the principle of separation of powers - fall outside the competence of the executive power.

16 Pursuant to Section 25 Paragraph (6) of the Fundamental Law: "The President of the National Office for the Judiciary shall be elected from among the judges by the National Assembly for nine years on the proposal of the President of the Republic. The President of the National Office for the Judiciary shall be elected with the votes of two thirds of the Members of the National Assembly. The President of the Curia shall be a member of the National Judicial Council, further members of which shall be elected by judges, as laid down in a cardinal Act."

Observations from the French authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to France

on 28-29 May 2019

Subject: Comments from the French authorities on the report by the EESC's Group on Fundamental Rights and the Rule of Law, following its mission to France on 28 and 29 May 2019.

As a preliminary remark, the French authorities note that the report has not been adopted by the EESC under its internal procedures, but is rather a compilation of comments gathered by the Group following visits to five Member States. The French authorities deduce from this that the report does not claim to be either representative — although its stated objective is to present trends throughout the European Union from the point of view of civil society — or objective — since its aim is to reflect the views of civil society organisations (CSOs). In this connection, the authorities appreciate the opportunity they have been given to draw up a more complete picture of the situation by making the comments set out below. They also wonder whether this initiative is in keeping with the brief of the group, which was set up in 2018 with the aim of promoting respect for European values, focusing on topics rather than on individual Member States.

Freedom of association

The French authorities would like to inform the EESC of the following additional points:

With regard to the financing of CSOs in society and the resources available to them:

The share of public and private funding has actually grown in recent years. Although the share of public funding has not increased as much as the funding needs of associations, the latter have however increased from EUR 30 billion to almost EUR 50 billion over the last 12 years. The voluntary sector in France is still as dynamic as ever and the exercise of freedom of association is in no way threatened by this public authority disengagement, which remains fairly relative.

A few figures demonstrate this:

In 2017, there were 1.6 million active associations and 21 million members, with a budget of EUR 113 billion (+ 1.6% per year on average between 2011 and 2017).

More than 70 400 new associations are set up each year, and 135 000 associations, representing 159 370 establishments, employ staff. There were 1.8 million employees working in associations in 2018 (+ 0.5% per year between 2011 and 2017), with a wage bill of EUR 39.95 billion. (Between 2008 and 2017, the gross wage bill of the associations increased by 2.3% per year

and the average gross annual salary by 1.6%). Employment in associations is more dynamic than in the rest of the private sector in general, and in France accounts for as many employees as the construction and banking sectors combined.

Almost one French person in four works for an association free of charge; this involves about 12.5 million people. Of these, just over one French person in ten, i.e. between 5.2 and 5.4 million people, have been doing such voluntary work every week in 2019, and they form the backbone of these associations.

The government has been developing a proactive policy to support this sector, be it in terms of funding or in terms of employment and voluntary work, since the associations, as well as being of key economic importance, are also a crucible for active citizenship promoting social ties in France. As such, civic service and, in the near future, universal national service, are schemes that promote involvement in associations from an early age.

Where CSOs provide assistance to migrants:

The French government **vehemently disputes the statements made by some associations**, in particular those which provide assistance to migrants, reporting "an increasing number of attempts to hamper or halt their activities through threats of judicial proceedings against them, and even to arrest some of their volunteers and employees".

It should be noted from the outset that the French authorities attach great importance to respect for the rule of law: action by public authorities is governed by laws and regulations, and may be the subject of numerous appeals before the courts or bodies which deal with the infringement of fundamental rights.

While it is conceivable that police action may sometimes be perceived as acts of "intimidation" by people who are not familiar with the national legal framework, this cannot be the case for associations, which are familiar with the legal framework which regulates the actions of the administrative authority of the police, which acts alongside the judicial authority, under the supervision of the courts. Moreover, although the vast majority of human rights associations carry out their tasks in a manner that is irreproachable, some players, in order to defend migrants' rights, have at times acted outside the law by encouraging people who - viewed objectively - are clearly in distress, to settle or to cross borders illegally. This is a point which the President of the Republic stressed in his speech to the security forces in Calais on 16 January 2018:

> *"I would call on all associations to be responsible here. When they encourage these women and men to settle and even to cross borders illegally, it is a huge responsibility they are taking on.*
>
> *They will never, ever have the state on their side. We will always defend those associations which, working in partnership with the state and local and regional authorities, are in contact with migrants, provide them with basic services, protect them and explain matters to them […]"*

From that point of view, detecting infringements of the law and, in particular minor offences, cannot be regarded as "intimidation", but merely as a matter of implementing the laws and rules that apply to every person in the country. It may be worth noting that detection of infringements is based on bringing together the constituent elements of a crime, as defined by the legislator and supervised by the courts, including, where appropriate, the Constitutional Council, as was recently the case with regard to '"solidarity crimes". Thus, in Decision 2018-717/718 of 6 July 2018, the Constitutional Council held that the exemption from charges stipulated in Article L. 622-4 of the Code on the entry and stay of aliens and the right to asylum(*Code de l'entrée et du séjour des étrangers et du droit d'asile* - CESEDA) should not be limited, as the legislator had initially planned, to cases of assistance in "providing illegal residence", but should also be extended to cases of assistance for "movement" where this is "accessory to the assistance" for residence provided to a foreign national (13th recital of its decision). However, this exemption from charges does not extend to illegal entry, "*including when it is given for humanitarian reasons*". The law of 10 September 2018 on controlled immigration, effective right of asylum and successful integration took this decision into account and amended Article L. 622-4 of the CESEDA.

Finally, the French authorities wish to point out that, while the objective of monitoring the legality of the entry and residence of "illegally staying foreign nationals" is a constitutional objective, the French state carries out all its activities in full compliance with EU law and the legislative framework laid down by the CESEDA, striking a balance between the reception of migrants and the preservation of national law and order, where respect for human dignity is one of the components, as well as efforts to combat lawlessness (insecurity, smuggling networks, prostitution rings and illegal immigration networks).

In conclusion, the French authorities dispute the allegations of intimidation, harassment and obstruction relating to the actions of certain parties defending migrants, reported by some of the CSOs interviewed, since police action is governed by a legal and regulatory framework. Therefore, where shortcomings have been identified, it is still possible to submit judicial appeals to refer matters to the French courts. In this connection, it is important to note that the public prosecutor's office in Douai, which covers Calais, has not been aware of any obstruction to the activities of associations or NGOs supporting migrants, and the Dunkirk public prosecutor has not been aware of violence, threats or intimidation by the police directed at volunteers.

The French authorities have, moreover, undertaken to look into each allegation of bad treatment, as pointed out by the President of the Republic in his speech of 16 January 2018 referred to above: "*I have asked the Minister of the Interior to systematically examine and establish the true facts of the case, either to defend the police, including before the courts, where they have not in fact committed such acts, or to introduce any measures and sanctions necessary*".

Freedom of assembly

Regarding the use of force, the French authorities wish to note that, at the hearing, they stated that "*the use of force was strictly necessary, gradually increased and proportionate, as the Council of State ruled on the occasion of the disputes which arose in that connection*". Moreover, the French authorities would like to inform the EESC of the following additional points:

On the lack of deterioration in legal protection of the right to demonstrate under Law No 2019-290 of 10 April 2019 aiming to strengthen and guarantee [the maintenance of] public order during demonstrations

This allegation appears to the French authorities to be questionable in several respects. **From the outset**, France wishes to point out that it attaches particular importance to the protection of human rights and fundamental freedoms. France has a long tradition of freedom of expression and peaceful assembly, which are guaranteed by the 1958 Constitution and the European Convention on Human Rights. France cultivates the established practice of demonstrations, allowing freedom of expression in public of highly diverse demands and opinions, most often in opposition to decisions taken by the executive and the legislator, and sometimes in support of them. The principle of freedom of assembly is the result of the law of 30 June 1881 on freedom of assembly and is guaranteed by the French state. A key judgment of the Council of State of 19 May 1933 (Benjamin act) requires that freedom of assembly prevail over police powers, where there is no relatively serious public disorder. Moreover, the right to demonstrate is recognised in case law.

In France, the right to demonstrate is accompanied by the obligation to give notice of any demonstrations on public roads, which ensures the safety of demonstrators. In this regard, the UN Human Rights Committee has considered that the obligation to warn the police six hours before an event starts in a public place may be part of the restrictions allowed by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) on the right to peaceful assembly (Human Rights Committee (HRC), *Kivenmaa v Finland*, 1994, Communication No 412/1190).

However, a distinction must be made between demonstrations, whether declared or not, and mobs.

While the former consists of a gathering, stationary or mobile, intended to express ideas or put forward claims, the latter, from a legal point of view, is deemed tortious and consists of a rally likely to cause public disorder within the meaning of Article 431-3 of the Penal Code. Put more simply, a mob is a demonstration that has degenerated into violence (see detailed explanations below).

Although freedom of expression and freedom of assembly, to which the freedom of demonstration contributes, are guaranteed by law - both constitutional law and treaty law - this guarantee only covers assembly and demonstrations that are peaceful (ECHR, Grand Chamber, of 15 October 2015, *Kudevicius and Others v. Lithuania*, Application No 37553/05, and of 15 November 2018, *Navanyy v Russia*, Application No 29580/12).

In view of the particular nature of and risks specific to public meetings and demonstrations, the European Court also considers that the authorities **have a duty** to take the steps needed to ensure the smooth running of any legal demonstration and the safety of everyone (see, in particular, ECHR, 20 February 2003, *Djavit An v. Turkey*, Application No 20652/92 § 56-57; ECHR, 1 December 2011, *Schwabe and M.G. v. Germany*, Application Nos 8080/08 and 8577/08, § 110-113; and ECHR, 15 November 2012, *Celik v. Turquie*, Application No 34487/07, § 88).

To this end, the legislator introduced provisions into the legal process that were validated by the Constitutional Council (Decision No 2019-780 DC of 4 April 2019), which deemed them

to be necessary, appropriate and proportionate in order to counter certain types of extreme violence during demonstrations: these provisions allow, during demonstrations, some types of checks and searches on the basis of a court order (Article 2), as well as making it a criminal offence to intentionally conceal the face (Article 6) where there is no legitimate reason for doing so, within, or in the immediate vicinity of, a demonstration on public roads, in the course of which or at the end of which there is or is likely to cause public disorder.

The aim of these provisions is, *inter alia*, to promote implementation of the right to demonstrate, by enabling the police to ensure the safety of demonstrators from possible rioters who might benefit from the context to perpetrate violence against people and property.

The legislator also wished to give the police the possibility of imposing individual bans on people participating in demonstrations whose conduct in previous public demonstrations has given rise to serious bodily harm to others, as well as to serious damage to property or to acts of violence. However, that measure has been criticised, not in terms of the need for it, but rather because the guarantees provided are not sufficient, which demonstrates the effectiveness of the supervision of the Constitutional Council.

Use of force at demonstrations carried out by the "*gilets jaunes*" (yellow vests)

Despite the violence to which they gave rise every Saturday, the demonstrations linked to the "yellow vests" movement were most often covered by a security mechanism designed to ensure the safety of demonstrators and limit disorder, rather than banned; bans were only envisaged as a last resort, when the resources at the disposal of the administrative authorities did not enable them to guarantee public order, in particular due to the fact that demonstrators gathered in many different places and because of the unpredictable nature of the demonstrations due to the systematic refusal of some demonstrators to register under the declaratory scheme. The conditions for police intervention were particularly difficult. The demonstrations were hallmarked by serious violence by some demonstrators, directed at the police, journalists and others, as well as at businesses, buildings and public facilities. It should also be stressed that some racist, anti-Semitic and homophobic statements, slogans and attacks were recorded in the course of or on the sidelines of the demonstrations.

In this context, the use of force by the police, although it sometimes resulted in spectacular images, was intended as a necessary, strictly proportionate response to such serious, unlawful violence, as provided for by law and in accordance with the international commitments entered into by France. While some cases of misuse or disproportionate use were reported, administrative inspections and criminal investigations are currently under way which will make it possible to shed light on these events and draw the appropriate disciplinary consequences, without prejudice to any criminal convictions.

On 14 October 2019, the Ministry of Justice (Directorate for Criminal Matters and Pardons) was informed that 409 complaints had been lodged against the police since the beginning of the "*gilets jaunes*" movement. For the purposes of comparison, in relation to the scale of the demonstrations, note that since the beginning of the movement in November 2018, more than 50 000 events had been organised in many cities, bringing together more than 2.3 million demonstrators. While no convictions have been handed down to date, many cases are still being processed by the judicial authorities. 291 cases have been referred to the General Inspectorate

of the National Police by the public prosecutors' offices, including 193 cases at Paris's *tribunal de grande instance* (regional court). Of these, nine have been the subject of judicial inquiries and in 28 cases the charges have been dropped. Certain matters have been submitted to other investigative departments, such as the general inspectorate of the national *gendarmerie* and the *départements'* security services.

The very fact of these cases being processed by the judicial authority, whose independence is, pursuant to Article 64 of the Constitution, guaranteed by the President of the Republic, and which is the guardian of individual freedoms, illustrates the effectiveness of the guarantees attached to the rule of law in France.

a) As regards allegations concerning law enforcement and the use of weapons:

Firstly, a distinction must be made between demonstrations, whether declared or not, and mobs.

While the former consists of a gathering, stationary or mobile, intended to express ideas or put forward demands, the latter, from a legal point of view, is deemed tortious and consists of a rally likely to cause public disorder within the meaning of Article 431-3 of the Penal Code. Put more simply, it is a demonstration that has degenerated into violence or where violence is imminent.

Pursuant to Article R.211-21 of the Internal Security Code, it is up to the civil authority, which must be at the scene, to assess the moment when a demonstration becomes a mob, in other words to label it a mob, with a view to deciding on the use of force after issuing a warning.

That article lists the civil authorities responsible for the use of force: *département* prefects or sub-prefects, mayors or one of their deputies, chief constables, *département gendarmerie* group commanders or, if authorised by the prefectural authorities, police commissioners, district police commanders or *département gendarmerie* company commanders.

When a decision has been made to use force, and if the civil authority does not itself issue the warning, it may designate any law enforcement officer responsible for public safety, or any other law enforcement officer, to do so. The latter must not belong to the law enforcement body responsible for dispersing the mob.

The instructions dated 21 April 2017 on the maintenance of law and order by national police (NOR: INTC1712157J) point out the legal framework for deploying force to re-establish law and order and specify the role of the different players in the chain of command.

Secondly, the police deployed at an event are, above all, to there to ensure the safety of demonstrators. In this connection, it should be noted that the flash ball riot control gun known as an LBD (*lanceur de balles de défense*) is not used in demonstrations, but where there are mobs, i.e. demonstrations which have degenerated into violence (in keeping with the first indent of Article 431-3 of the Penal Code: "*A mob is any assembly of people on public roads or in a public place which is likely to cause public disorder*"). At no point must the LBD be used against demonstrators, even where they are vehement, if they are not physically violent, in particular towards the police, or if they do not commit serious damage. If they do become

violent in this way, they are no longer deemed to be demonstrators, but rather participants in violent, illegal mobs.

Since the LBD is a weapon intended to react instantaneously to violence directed at, or assaults on, the police or if they cannot otherwise defend the position they are occupying, that is to say, using a weapon designed to stop a dangerous individual in the process of committing an act of aggression, and not a weapon designed to disperse a mob, the use of the LBD is at the discretion of the police officer who has the weapon and intervenes without warning, within the legislative and regulatory framework in force.

Thirdly, in a state governed by the rule of law, the use of force by the state is strictly regulated and complies with the principles of strict necessity and proportionality, as laid down in Article L. 435-1 of the Internal Security Code.

- The units responsible for the use of force shall deploy it in a gradually increasing manner, first by using physical force, possibly accompanied by equipment which is not a firearm[17], before - should the disorder persist or get worse, and after a further warning - using intermediate weapons — which include, *inter alia*, instant tear gas grenades and hand sting-ball grenades.

- The Internal Security Code stipulates, however, that if acts of violence or *de facto* assault are carried out against members of the police who have been called in to dissipate a mob, or if they cannot otherwise defend the position they occupy, force may be deployed directly, without warning, using the weapons provided for in the case referred to above, as well as the 40 calibre LBD known as "LBD 40 x 46" with non-metallic projectiles.

French legislation therefore stipulates proportionate and gradually increasing use of force, which must be adapted to the circumstances of each demonstration.

In this context, and in particular during the "*gilets jaunes*" episode, faced with a number of demonstrations that degenerated into mobs or resulted in mobs, the police had to use force, deploying intermediate weapons in compliance with this legal framework. Thus, intermediate weapons allow the police to deal with significant violence from large numbers of people in ways which entail the least risk to personnel. The number of times these weapons have been used is also to be seen in relation to the number of such mobs and the intensity of the violence involved.

Although it was reported that, for example, thousands of tear grenades were used for the demonstration on 1 December 2018, we should bear in mind the context which required the use of those weapons, such as the scenes of major urban violence caused by these mobs: the *Arc de Triomphe* was ransacked, cars set alight, shops evacuated, shop windows smashed and barricades set up and there were clashes with the police. In Paris, there was considerable damage to both people and property, including private property.

The police were attacked by very violent individuals. Cobblestones were thrown at them, as was street furniture, as well as improvised bombs made from agricultural materials, and acid

17 Such as defensive truncheons, shields, water canons, tear gas containers and certain tear gas grenades.

was sprayed at them, directly endangering the lives of some policemen. Witness statements showed that some individuals dismantled the railings of monuments and sawed off the arrows to throw them at the police. About 1 900 law enforcement officers (police and *gendarmerie*) were injured in the attacks, as were firefighters who intervened to treat those who were injured and to extinguish the fires caused by the demonstrators and the rioters, not to mention the many other collateral victims.

The use of intermediate weapons, which the police were forced to deploy in certain exceptional situations, meant it was possible to fully contain the violence and to prevent any deaths in the ranks of either the police or the rioters.

The purpose of these intermediate-level weapons was therefore to permit, in accordance with the laws and regulations in force, a gradual and proportionate response to a dangerous situation where the legitimate use of force proved necessary. This was, moreover, the thinking behind the decisions by the Council of State, which was asked to rule on the legality of the use of the LBD (Council of State, Emergency Decision, 1 February 2019, Nos 427390 and 427386; Council of State, 24 July 2019, No 427638) and of the GLI-F4 grenade during the law and order operations in question (Council of State, 24 July 2019, No 429741).

Fourthly, although cases of misuse of the LBD are, regrettably, always possible, despite reminders of the instructions being systematically given before each intervention, such misuse, which is punishable by the full, requisite disciplinary and judicial response, is not on its own sufficient to call into question regular use of the weapon in cases of extreme necessity, that is to say in cases of necessary defence or where the police are do not have other means to defend their position.

In any event, with the judicial investigations still ongoing, it has not to date been possible to determine whether the people injured by LBD shots were in a situation which justified the use of that weapon, with the unfortunate ensuing consequences, or in a situation where the use thereof was abusive, which would, of course, be punishable.

It is therefore, as things stand, difficult to infer purely from the number of alleged victims of LBD shots that the precautions for using that weapon could never be effectively observed, given that, as at 1 February 2019, more than 9 000 LBO shots had been fired throughout France since 17 November 2018.

In this respect, the use of video cameras by the police since the events of 26 January 2019 must both make it possible to better establish liability and make users of this weapon more accountable.

As regards the allegations by certain CSOs that the disproportionate use of force by the police had taken place before the "*gilets jaunes*" demonstrations and that this force had been used at authorised events that had been properly overseen by their organisers, the lack of precision with regard to the circumstances of the alleged acts makes it impossible to give a clear response and to assess whether they were justified. In any event, whatever the purpose of the demonstration, the principles governing the applicable principles of law enforcement are the same, and such force must, under the conditions laid down in the applicable laws and regulations, only be used against mobs and never against peaceful demonstrators.

b) As regards, more specifically, the use of flash ball riot control guns (LBDs):

The use of authorised weapons when dispersing a mob is explicitly and exhaustively provided for in Articles R. 211-16 *et seq.* of the Internal Security Code (CSI), where an LBD 40 is explicitly authorised by Article D. 211-19 of the CSI in the framework of law enforcement operations.

The legal conditions (and specific instructions) for the use of force and weapons are set out in the common national police/*gendarmerie* instructions of 2 August 2017 on the use of intermediate weapons (AFI) in the national police force and gendarmerie units. Annex II thereto deals specifically with the use of the LBD 40 (40x46 mm). The legal frameworks in which this AFI can be used are set out in Articles L435-1 and L211-9 of the CSI (MO - maintaining public order) and 122-5 and 122-7 of the Penal Code (necessary defence of self and others and necessity). The precautions for using the weapon are described in point 3.3 (preferred aim area, context, etc.).

Thus, in accordance with the principles laid down in L. 435-1 of the Internal Security Code governing the use of weapons by police officers and *gendarmes*, also applicable to cases of dispersing mobs provided for in Article L. 211-9 of the Code, the police have to act within a precise legal framework and be guided by the principles of absolute necessity and strict proportionality in the use of force, whether in necessary defence or to disperse a mob. The aim is to contain the most aggressive individuals and disperse them, avoiding further violence and also preserving the freedom of expression of those who wish to make their demands peacefully.

The LBD is intended to ensure gradually increasing use of force.

Applying these principles, Article R 431-3 of the Penal Code sets out the principle of gradual increase in the use of force which must guide the police in their daily work. It states that the use of force by representatives of law enforcement authorities shall be possible only where the circumstances make it absolutely necessary to maintain public order [...]. The force deployed must be proportionate to the disorder to be brought to an end and must stop when the disorder has ceased. Strictly applied, this article provides for the alignment needed between the force used and the disorder to be brought to an end.

This imperative is at the heart of the force commitment doctrines, the need to be able to carry intermediate weapons having been endorsed by the UN at its 8th Congress on the Prevention of Crime and the Treatment of Offenders, which adopted a resolution in September 1990 entitled *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, calling on national legislators to adopt legal provisions in order to equip services with *"various types of weapons and ammunition that would allow for a differentiated use of force and firearms"*.

It should be noted that Turkey has been condemned by the European Court of Human Rights (ECtHR) for failing to equip its police forces with weapons other than firearms and, consequently, for not giving police officers any option other than to shoot, during a demonstration in the course of which they were subjected to violence (ECtHR, Gülec v. Turkey, 27 July 1998, Application No 21593/93, § 71).

Thus, the conditions for use of LBDs by the police, in particular during the so-called "*gilets jaunes*" demonstrations, have been endorsed in principle by the Council of State, in particular in its decision of 1 February 2019 (EC, 1 February 2019, No 427390), which held that the

conditions governing the use of the LBD 40, which is primarily intended to safeguard public order, were strictly framed (Articles L. 435-1 and R. 211-13 of the Internal Security Code) by the principles of necessity and proportionality. Moreover, since 23 January 2019, these conditions have been accompanied by the requirement to film, as far as possible, the use of LBDs during demonstrations. The Council of State also held that, although use of this equipment could have caused injury during the demonstrations, the investigation did not show that in this case the authorities concerned had not intended to comply with the conditions of use. Last but not least, the Council of State pointed out that the huge number of demonstrations that have been taking place throughout France on a weekly basis since November 2018, without the routes taken always being clearly declared or respected, have frequently been the scene of acts of violence and de facto assault, damage to property and destruction. *The fact that it is impossible to be sure that such incidents will not occur again during forthcoming demonstrations means it is necessary to allow the police to use such weapons, which are particularly appropriate for dealing with this kind of situation, subject to strict compliance with the conditions of use which apply to their deployment*[18].

As regards the link between the use of police custody and curtailment of the right to demonstrate

The conditions for police custody are strictly laid down in Article 62-2 of the Code of Criminal Procedure:

- custody must be **decided by a law enforcement officer, overseen by the judicial authority**;
- there must be several **reasonable grounds for suspecting that the person has committed or attempted to commit an offence or a crime**;
- the offence or crime must be **punishable by imprisonment**;
- police custody must be the **only way of achieving one of the six objectives laid down by Article 62-2** (enabling investigations to be carried out requiring the presence or participation of the person; ensuring that the person appears before the public prosecutor so that the latter can assess what action should be taken with regard to the investigation; preventing the person altering material or other evidence; preventing the person putting pressure on witnesses or victims or on their family or close relatives; preventing the person consulting with others who are likely to have been co-perpetrators or accomplices; ensuring that the measures intended to put an end to the offence or crime are implemented).
- Thus, the above conditions must be clearly met in order for the police to take someone into custody, in particular as regards the existence of reasonable grounds for suspecting that the person has committed or attempted to commit an offence or a crime punishable by imprisonment. This measure cannot, therefore, be used solely for the purpose of preventing activists from taking part in demonstrations.

18 https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000038135470&fastReqId=1975368748&fastPos=2

Freedom of expression and freedom of the media

The French authorities would like to inform the EESC of the following additional points:

The President of the Republic and the French government regularly stress the role that journalists play as democracy watchdogs and regularly have to condemn acts of violence against them in France or abroad. Thus, for example, the **Minister for Culture**, Franck Riester, spoke on the subject in the very first few days after he took office, in a speech he gave at the centenary of the National Association of Journalists on 18 October 2018. He also renewed the government's unconditional support for the profession at the Journalism conference on 15 March 2019, once again condemning acts of violence against journalists, particularly in connection with the "*gilets jaunes*" demonstrations. Moreover, in the ranks of both the majority party and the opposition, **almost all politicians publicly condemn in the strongest terms any acts of violence committed against journalists,** and generally do so on a systematic basis. In general, all acts of violence against journalists spark a response from public authorities and politicians. This response, supported by numerous statements by local and national elected representatives, as well as the main political organisations, helps to put allegations of "media bashing" into perspective, despite the fact of some politicians indulging in such practices.

In addition, Law No 2018-1202 of 22 December 2018 combating the manipulation of information seeks to combat the online circulation of fake news more effectively, particularly in election periods, in the interest of freedom of the media. This came in the wake of the Cambridge Analytica scandal revealed by a whistleblower, Christopher Wylie, who brought to public awareness the risk that online disinformation campaigns financed indirectly by political movements could constitute for democracies. That law thus imposes a duty on digital platform operators to cooperate. In this way it should be possible to make the operators of these platforms accountable, to encourage good practice and to ensure that efforts by private players to combat fake news are based on transparent rules and discussed collectively. Moreover, in election periods the law also places an obligation on platform operators for greater transparency with regard to sponsored information content. Finally, the law establishes a new legal remedy enabling any stakeholder to bring a matter before the ordinary courts in election periods so as to apply for interim measures, in the event of deliberate, artificial or automated mass dissemination of information which is false and capable of altering the fairness of the poll, by means of an online public communication service. On this basis, the law thus aims to better protect the public without limiting freedom of the media.

In order to protect freedom of expression and the media before the adoption of the aforementioned law, **Article 27 of the Law of 29 July 1881 on freedom of the press** had already identified the dissemination of "fake news" and punished it with a fine of EUR 45 000. Similarly, Article L. 97 of the Electoral Code already imposed a one-year prison sentence and a fine of EUR 15 000 on those who, using fake news, slanderous rumours or other fraudulent manoeuvres, had changed or distorted the outcome of ballots, and, finally, the **Law of 21 June 2004 on confidence in the digital economy** already made it possible, including by means of an urgent application, to order internet operators to stop the damage caused by the content of an online public communication service. The Law of 22 December 2018 adds clarification of the concept of "fake news"; it defines it for the first time in internal law as *"inaccurate or misleading allegations or imputations likely to distort the outcome of an election"*.

On the other hand, the law is not intended to combat hate speech. This fight, which is necessary in a democratic world, is undertaken in the context of the **draft law combating hate content on the internet**, which is currently being discussed in the French Parliament.

Lastly, the establishment in France of an information ethics council could help to reconcile the media with their audience, which is necessary. Such a body already exists in a number of European countries. Several international organisations, such as UNESCO and the OSCE, recommend that one be set up.

In October 2018 the Minister for Culture gave Emmanuel Hoog, former chairman of the international news agency, *Agence France-Presse*, the task of drawing up an independent expert report proposing a framework for the possible establishment of such a body. In his report entitled *Towards the establishment of a self-regulation and ombudsman body* in the field of information, which he delivered on 27 March 2019, Mr Hoog called on the profession to itself organise the creation of an information self-regulation and ombudsman body backed by a membership-based structure independent of the public authorities. Following the conclusions of this report, several stakeholders in the sector met at the initiative of the Information Ethics Observatory (ODI) to do the groundwork for the creation of this body.

The French government encourages the establishment of a body of this type, provided that its independence from the public authorities is guaranteed.

<u>As regards alleged "police violence" against journalists:</u>

Firstly, it should be pointed out that the French authorities are regularly contacted via alerts from the Council of Europe's journalists' platform and that their answers can be consulted online. In particular, they responded to a number of alerts from journalists at the time of the "*gilets jaunes*" movement.

At "*gilets jaunes*" gatherings, tens of thousands of police and gendarmes, along with firefighters, have been called in several times, in Paris and across France, to secure, in often extremely difficult situations, the safety of property and people: demonstrators, shopkeepers, the general public, etc.

With regard to the press, after a meeting with trade union representatives on 30 November 2018, which was proposed in the wake of the violence perpetrated against journalists by demonstrators, the Minister for the Interior asked the police deployed during demonstrations to arrange for journalists who so wished systematically to be accommodated at the back, behind the police, so as to protect them, provided they could duly prove that they were journalists and be sufficiently identifiable in events where there was a risk of public disorder.

The police, who are frequently and throughout the year victims of sometimes extreme violence breaking out on the sidelines of some demonstrations, and in particular at several "*gilets jaunes*" events, have some experience in this area, although this does not preclude certain lapses, which should be severely punished. Where journalists have suffered from the use of force by police or *gendarmerie* units, they have the right to **file a complaint or to issue an alert on the National Police Inspectorate's online platform provided for this purpose.**

In addition, police forces systematically receive instructions to facilitate the work of journalists as much as possible.

French law does not ban the transportation, wearing or use of means of protection during demonstrations. However, the regulatory authority may issue an order banning the transportation, wearing and/or use thereof in certain circumstances and specific locations. As with any administrative police measure, this ban has to be strictly necessary and proportionate and has to be subject to full oversight by the administrative courts.

Such a ban, when imposed in accordance with the applicable legal and regulatory conditions, is explained by the fact that the use of such protective equipment makes it easier for those who have decided to commit acts of violence or cause damage during demonstrations to actually do so and enables them to resist police efforts to put an end to their violent acts.

If an object that is banned solely for the period of a demonstration and only in the places covered by the order - such as protective equipment - should be discovered, it has been stipulated that the object is to be confiscated.

Non-discrimination

The French authorities would like to inform the EESC of the following additional points:

They would point out that **combating hatred and discrimination** is a **priority of criminal policy** in France.

French legislation has gradually stepped up this fight, **punishing all discriminatory behaviour with an increasing degree of severity** and, in order to ensure the effectiveness of this legislative framework, the Ministry of Justice supports the **implementation of a firm, responsive criminal policy which is regularly assessed**. **There are a consistent number of convictions in this area each year.**

This criminal policy is based, at local level, on the **development of a specific way of organising public prosecutor's offices**, the purpose of which is to ensure the visibility of criminal policy and adopt a partnership approach to the work of the prosecution service. It is based **on the appointment of a specialist judge within each public prosecutor's office and the general prosecutor's office and on the institutionalisation of a partnership approach** (in particular with local associations combating discrimination in the form of anti-discrimination centres or monitoring units).

Similarly, the public prosecutor's offices have been asked to appoint **specialists in the field of criminal labour law**. As the main labour inspectorate partner, the specialist judge may, amongst other things, deal with proceedings initiated by the latter in the more specific field of discrimination in recruitment, trade unions or the workplace.

The issue of online hate is, at last, given priority by the Ministry of Justice, which issued a new **circular combating discrimination and hate speech and behaviour on 4 April 2019** to remind public prosecutor's offices of the need to pay particular attention to these incidents, as well as providing an appropriate criminal justice response. In addition, **the Law on 2018-2022 programming and reform for justice of 23 March 2019** extended the online

complaint system provided for in Article 15-3-1 of the Code of Criminal Procedure to all types of incidents, including hate speech and behaviour. Finally, a bill on combating online hate speech (known as the Avia bill after the member who drafted it), aimed at making internet operators accountable when they are responsible for the spread of hate content online, was also adopted by the National Assembly at first reading and will be discussed by the Senate in the autumn. It requires online platform operators to withdraw or make inaccessible, within a period of no more than 24 hours after notification, any content which clearly includes incitement to hatred or a discriminatory insult on grounds of race, religion, sex, sexual orientation or disability.

In addition, the French authorities have put in place a **National Plan for Combating Racism and Anti-Semitism for 2018-2020,** promoted by the Prime Minister and issued in March 2018, focusing in particular on online hate. In addition, a call for local projects, covering all the areas of responsibility of the **Interministerial Delegation for Combating Racism, Anti-Semitism and Anti-LGBT Hate Crime** (DILCRAH), has been being developed since last year to finance the actions of associations in many French *départements* to combat hatred and discrimination. Lastly, DILCRAH organises training courses for police officers, *gendarmes*, judges and, currently, prison officers on combating hate speech in order to improve reporting and judicial processing of hate speech.

Rule of law

The French authorities would like to inform the EESC of the following additional points:

As regards the Law of 30 October on strengthening internal security and the fight against terrorism:

Law No 2017-1510 of 30 October 2017 **strengthening internal security and the fight against terrorism** (SILT) did not in any way include in ordinary law the measures set out in the state of emergency provisions, but was based on administrative police measures for effectively pre-empting the risk of a terrorist act actually being carried out, along with significantly stronger guarantees than those provided for in the state of emergency measures.

Thus, these measures are introduced solely for the purpose of combating terrorism, whereas state of emergency measures could be used in order to put an end to any risk of disruption of public order, including where there is no link to the threat which caused a state of emergency to be declared. They are subject to regular oversight by Parliament, to which each of the measures is addressed and which is in a position to ask for clarification.

Similarly, the measures are significantly more structured in that their duration is limited and the criteria for implementing them have been made more stringent; thus, searches of premises have to be authorised by the magistrate for custody and release. In addition, the legislator limited the timeframe in which they would be effective to up to 31 December 2020, making their continuation subject to an evaluation report submitted to Parliament. With the exception of a few procedural provisions which were criticised and have since been corrected, most of these provisions have been found by the Constitutional Council to comply with the Constitution in that they clearly strike a balance between preventing terrorism and the rights and freedoms enshrined in the Constitution.

As regards reform of the judiciary pursuant to the Law of 23 March 2019 on 2018-2022 programming and reform for justice:

The government has streamlined a number of elements of criminal procedure to make the latter more effective, with due regard for fundamental rights. Almost all the criminal procedure provisions of the above law were declared by the Constitutional Council to be in accordance with the Constitution, in Decision No 2019-778 DC of 21 March 2019. Forty provisions were thus validated by the Constitutional Council, including those on the restriction on informing lawyers when people in custody are being transported; the system for custody of vulnerable adults; the possibility for magistrates (magistrates for custody and release) to authorise searches in preliminary police inquiries for crimes incurring a sentence of at least three years, instead of five years; experimenting with reading people in custody their rights orally; provisions on house arrest, making this possible in certain cases without both sides being heard and for a period of two years after the end of the instruction phase, etc. The Council thus held that these measures included guarantees and that they were necessary and proportionate.

The few provisions considered to be out of line with the Constitution were criticised and have therefore not entered into force, which confirms the effectiveness of the judicial oversight in ensuring that laws comply with the principles of the rule of law.

Observations from the Austrian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Austria on 3-4 June 2019

- The preservation of the fundamental values of the European Union, as laid down in Article 2 TEU, is central to Austria. Austria is fully committed to further developing instruments at European level to strengthen the rule of law.
- Austria would like to emphasize that the role and opinions of NGOs, social partners and the media are important in a vibrant democracy.
- However, a report representing only the content of consultations has limited added value for strengthening the rule of law and fundamental rights. From the Austrian point of view, a meaningful contribution must follow a systematic approach. For example in matters of the rule of law, we would like to point to the rule of law checklist of the Venice Commission, which contains clear parameter for a rule of law review.
- The EESC report also contains legal and factual errors.
- Overall, it is therefore difficult to draw reliable conclusions from the report.

The Austrian constitutional system guarantees the highest standards of the rule of law and human rights protection. The rule of law is a fundamental construction principle of the Austrian Federal Constitution. Laws may be reviewed for their compliance with the constitution by the Constitutional Court. All administrative acts may be reviewed by supreme courts (Constitutional Court and Supreme Administrative Court) for compliance with the constitution, laws and regulations. The entire administration is bound by laws. The Austrian Federal Constitution provides comprehensive guarantees of fundamental rights and freedoms. The most important catalogue of fundamental rights is **the European Convention on Human Rights** (including additional protocols), **which is in Austria part of the constitution since 1964**. These guarantees can be individually enforced before the Constitutional Court. The Austrian Constitutional Court largely follows the jurisprudence of the ECtHR. Austria has also acceded to all major international human rights conventions.

Comments on the individual sections of the report Freedom of association

With regard to concerns raised as to the **independence of the Federal Agency** for Supervision and Support Services (hereinafter referred to as the "Agency"), Austria wishes to point out that the **Federal Act** on the Establishment of the Federal Agency for Supervision and Support Services, of 19 June 2019, **provides for a variety of safeguards that guarantee the independence of the legal counsellors** working at the Agency in accordance with both European Union law and International Human Rights Law:

- The Federal Act expressly stipulates that legal counsellors working at the Agency shall be independent as regards the provision of legal counselling services to asylum-seekers and certain other categories of foreigners. They must not be issued any instructions, either from the Agency's management board or from the Federal Ministry of the Interior, pertaining to how they are to provide their services in individual cases. Moreover, it is foreseen that legal

- 1counsellors shall render their services objectively and to the best of their knowledge, which assures that they are able to act free from any external influence.

- An asylum-seeker must not receive legal counselling and return assistance from one and the same employee of the Agency. This requirement assures that they will not be affected by conflicts of interest that may arise within the Agency regarding the different tasks it was established to fulfil.

- The independence of the legal counsellors is further strengthened through the Agency's organisational structure, since the head of the department responsible for the provision of legal counselling services to asylum-seekers will not be selected and appointed by the Federal Minister of the Interior, but by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice.

- As regards an alleged marginalisation of civil society it must be stressed that the Federal Ministry of the Interior and the Agency will not be granted a monopoly in this area since the Agency will only cover legal counselling and representation services that are indispensably required under European Union law (in particular, Arts. 1 *etseq*. of Directive 2013/32/EU of 26 June 2013). Therefore, asylum-seekers will remain free to procure legal advice and/or representation from outside the Agency, in particular from attorneys licensed to practise in Austria.

- According to Art. 21 para. 1 of Directive 2013/32/EU EU Member States are expressly authorized to provide legal services to asylum-seekers through state authorities or from specialized services of the state. Several other EU Member States have already established such agencies (including, among others, Finland, France, and Ireland).

Regarding the funding of projects, Austria would like to underline that the budget of the Directorate for **Women's Affairs and Equality** (i.e. "the Ministry") amounts to **10,150,000 € per year** and remained unchanged since 2011. Against this background, Austria cannot understand the mentioned figure of cuts amounting 200 million €. **All financial resources are used for women ('s rights)/ equality/ prevention of violence.** A budgetary focus was put on violence prevention and protection. Some co-financed projects could no longer be funded or received less funding than previously. This has not affected the Austrian-wide counselling services or shelters for women and girls.

Freedom of expression and media freedom

Some statements in this section are very non-specific. For example it remains unclear, on which facts the statement *„mass media were very concentrated and politicised"* would be based as it seems to refer to all forms and services of mass media (TV, TV On Demand, Radio, Print, Websites etc) available in Austria. Concerning the phrase *„access to some printed media in rural areas was limited",* a specification on the concerned printed media and areas is missing. Austria also rejects the generalized reproach that one special newspaper would contain *„daily articles with content that bordered on racism".* Furthermore, it is not possible to retrace what the wording about funding and sponsoring *„by players with a regressive agenda"* might be directed at.

Regarding the **appointment of „Board of Trustees" of the ORF** it has to be pointed out that there is a **clear legal basis**. The appointment of the Board of Trustees is regulated in §20 of the ORF-Act (see also the incompatibility rules in §20 (3)).

Regarding the independence of the ORF, the report is lacking a reference to the legal fact, that the independence of broadcasting in Austria (apart from Art. 10 ECHR, which is part of the constitution in Austria as a explained in the beginning) is guaranteed in a special constitutional provision in the Federal Constitutional Act of 10 July 1974 on **Guaranteeing the Independence of Broadcasting**.

Austria contradicts the statement about *a „lack of right to information in Austria".* It gives the impression that there is no regulation at all, which is wrong: The statement does not take into account the constitutional provision in Art. 20 para 4 of the Austrian Federal Constitution.[19] It is also lacking a reference to the „Duty to grant Information Act". Furthermore, the Supreme Administrative Court ruled recently[20] that exemptions to the basic obligation to provide information (especially with regard to media) have to be interpreted narrowly.

Discrimination

Regarding the criticism on the "*law adopted in May 2019 by the Austrian Parliament which banned "ideologically or religiously influenced clothing (...) associated with the covering of the head" in primary schools"* Austria would like to underline that this initiative was discussed thoroughly in parliament. There was also a hearing with experts on this matter. Basically this provision it is not about religious freedom but about **integration into Austrian society**. The purpose of the provision in §43a SchUG is to ensure the best possible development of all students. The amendment is based on an assessment of the relevant fundamental rights: the

19 Art. 20 para 4 "All organs entrusted with Federation, provinces and municipal administrative duties as well as the executive officers of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain confidentiality; [...]The detailed regulations are, as regards the federal authorities and the self-administration to be settled by federal law in respect of legislation and execution, the business of the Federation; as regards the provinces and municipal authorities and the self-administration to be settled by provincial legislation in respect of framework legislation, they are the business of the Federation while the implemental legislation and execution are provincial business."

20 See Judgement 29. Mai 2018, Zl. Ra 2017/03/0083

aim is to protect the rights of the individual child in the implementation of the Convention on the Rights of the Child (UN Convention on the Rights of the Child). Articles 28 and 29 of the UN Convention on the Rights of the Child guarantee the rights to education and personal development. Furthermore, fundamental values of educational institutions are defined in the Federal Constitution[21].

The aim of the **Anti-Face-Covering Act** is to promote integration by strengthening participation and social coexistence of people of different origins and religions in a pluralistic society. One of the essential preconditions for peaceful coexistence in a democratic constitutional state is the facilitation of interpersonal communication, which necessitates the recognition of others and their faces. In this context, the ECtHR ruled that the French ban on face covering did not violate the ECHR provisions of the right to privacy or freedom of religion. One of the key findings of the Court was that "in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected".

Asylum seekers who are admitted to the asylum procedure and who have a high probability of being granted international protection have access to **German courses** (see §68 Asylum Act).

Regarding **employment** the **Equal Treatment Act** ("Gleichbehandlungsgesetz") prohibits inter alia any discrimination on grounds of religion or belief. In case of violation of the prohibition of discrimination, the Equal Treatment Act provides for a claim on the establishment of the non-discriminatory status or compensation for damages. The affected person can also - exclusively or additionally - contact the Equal Treatment Commission at the Federal Chancellery. The Commission can prepare expert opinions. The procedure is easily accessible and free of charge. Persons who wish to receive advice and support on the subject of equal treatment can also contact the Ombudsman of Equal Treatment at the Federal Chancellery. This service is free and - if desired - also anonymous. The bodies representing employees (Chambers of Labor, Unions) also provide legal advice to their members.

Regarding the exploitation of **undocumented workers**, Austria would like to point out that persons who are employed without a work permit have the same entitlements as legally employed persons. According to the Federal Act on the Employment of Foreigners (Ausländerbeschäftigungsgesetz §28), such workers have the possibility to claim their entitlements.

Rule of Law

In the second paragraph it is stated that " the independence of judges in administrative courts was different from that of judges in civil courts and criminal courts ". This has to be refuted as the independence of judges is equal in all areas of law and also protected by exactly the same constitutional safeguards. While the issue of funding is an important one for all courts, be them civil, criminal or administrative, this is not to be confounded with the independence of the judiciary as such.

21 Art. 14 (5a) B-VG: Democracy, humanity, solidarity, peace and justice as well as openness and tolerance towards the people.

As for **numbers mentioned** in the last paragraph, the assumption that by the end of 2019 50 000 asylum cases could be seen pending has **no solid base**. By the end of June 2019 (according to public statistics of the Federal Ministry of the Interior) about 27 000 asylum-cases were pending at all relevant courts (i.e. the Federal Administrative Court, the Supreme Administrative Court and the Constitutional Court) and numbers are gradually decreasing further at the moment. Also the projection made in the text of procedures taking up to 5 to 10 years in the future is not realistic[22].

Furthermore, the various levels of administrative jurisdiction are not correctly described[23].

22 More information can be found in the Tätigkeitsbericht (activity report) 2018 of the Federal Administrative Court, also available in the public domain.

23 Instances in Asylum Affairs are tripartite. In the first Instance, an administrative authority decides. Against this decision, a full appeal to the Federal Administrative Court is possible. Finally, a restricted legal remedy (for illegality and / or procedural errors) may be brought before the Supreme Administrative Court.

Observations from the Bulgarian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Bulgaria

on 10-11 October 2019

GENERAL COMMENTS

Bulgaria attaches high importance to the voice of civil society and reiterates its active commitment to ensuring a safe and enabling environment for all civil society actors. The civil society organizations contribute daily to the promotion and protection of human rights, peaceful dialogue and in building pluralistic democracies – all of which are core values of Bulgaria as a member of the European Union (EU). Their expertise is also taken into account in the decision-making processes.

The Bulgarian authorities, therefore, welcome the country visit of the EESC delegation and the meetings conducted with representatives of civil society organisations. The delegation's view on the outcome of the visit are summarized in the document "Interim Report on Mission to Bulgaria, 10-11 October 2019". We appreciate that the draft report was sent to us for comments prior to its publication.

In general, an attempt is made in the document to present both affirmative and critical elements in the different sections. However, while the positive observations (which in the text are only 5 altogether) are limited, at most, to one or two short undetailed phrases, the critical claims of civil society organizations are reflected copiously as a matter of priority. Those claims are objectively unverifiable as they are devoid of specificity (time, place, persons, concrete actions and/inactions of public authorities/prosecution services), Therefore, it is not possible on their basis to draw conclusions and form recommendations (such as, for instance, those addressed to the European Commission (EC) on its role in the framework of the rule of law mechanisms at the very end of the document).

At the same time, although meeting representatives of the Bulgarian authorities was also part of the visit, the declared aim of the report is only "to faithfully reflect and reproduce the views of civil society". Consequently, the government representatives' comments are summarized in one, rather short paragraph per section and do not fully reflect the information provided by the institutions.

In our view, the information presented in the report reflects only a limited range of perceptions; it lacks factual justification and does not provide a truthful and accurate outlook of the situation in Bulgaria and the efforts of the institutions.

We are disappointed by the approach applied and strongly disagree with the following allegations of the interim report, on the grounds and with the arguments provided below.

COMMENTS ON SPECIFIC TOPICS

Freedom of association

> *"…However, the accessibility of public funding was a serious issue for Bulgarian CSOs. Since 2010 a coalition of CSOs had sought a new strategy for the partnership between the authorities and civil society, as well as the establishment of a new fund for civil society initiatives. The strategy was adopted in 2012; the fund had not yet been established. "*

An election procedure for the first Council for Support of the Civil Society has started and should be finalized in May 2020. The Council will evaluate and select civil society projects to be financed by the state budget. The respective fund amounts to 1 million BGN (around EUR 500 000).

> *"Furthermore, the small number of available funding mechanisms for CSOs in the Ministries of Labour and Justice were affected by the political environment and, according to the CSOs, there was not sufficient public funding available for civil society initiatives in Bulgaria. The largest source of public funding for CSOs (around EUR 10 million) was earmarked for social services, 20% of which were delivered by CSOs. However, this was not regarded as civic activism as such. At the municipal level, some municipalities (15-20) in Bulgaria had good examples of established programmes supporting local municipal civic participation projects, even though these were poorly funded.*
>
> *With regard to the accessibility of EU funding, two points were raised by civil society representatives: 1) the turnover of around 80% of CSOs was too small (below 50 000 leva per year) to be eligible to apply for EU funding; 2) the de minimis rule (for state aid) was applicable to all projects that supported civil society activities. From the financial point of view, civil society was not an equal partner to the state, hence EU funding was largely inaccessible to Bulgarian CSOs."*

It should be noted that financing from the European Structural and Investment Funds (ESIF) has been provided for NGOs since 2015 under Operational Programme Good Governance. As a result, almost BGN 13 million (around EUR 6,5 million) have been contracted so far with 150 civil society organizations supported and the contracting is still ongoing. Additionally, the civil society sector is involved in the decision-making processes through participation in the Monitoring Committees of the operational programmes and their subcommittees.

This and additional information is public and available at the Information Portal for ESIF: https://www.eufunds.bg, as well as at the Information System for Management and Monitoring of EU Funds in Bulgaria 2020 website: http://2020.eufunds.bg/bg/1/0/Project/Search?Prior=KYYSCJXMSbE%3D&Proc=o2ZO%2BWMMUtQ%3D&ShowRes=True&IsProgrammeSelected=False&IsRegionSelected=False

http://2020.eufunds.bg/bg/1/0/Project/Search?Prior=vGQrB3cQBmk%3D&Proc=3mpkxQe64OQ%3D&ShowRes=True&IsProgrammeSelected=False&IsRegionSelected=False

Support to CSOs is also provided within the framework of the Financial Mechanism of the European Economic Area and the Norwegian Financial Mechanism:

- Active Citizens Fund, with a budget of EUR 15,5 million (https://www.activecitizensfund.bg/public/portfolios/view.cfm?id=1), in the following priority areas: Democracy, active citizenship, good governance and transparency; Human rights and equal treatment through combating any discrimination on the grounds of racial or ethnic origin, religion or belief, gender, disability, age, sexual orientation or gender identity; Social justice and inclusion of vulnerable groups; Gender equality and gender-based violence; Environment and climate change;

- Cultural Entrepreneurship, Heritage and Cooperation Programme (https://www.eeagrants.bg/programi/kultura);

- Under the other programmes - Local Development, Poverty Reduction and Improved Inclusion of Vulnerable Groups, Environmental Protection, Energy Efficiency, Justice and Home Affairs separate procedures/ small grant schemes for NGOs are also envisaged.

A large EU funding procedure was carried out in 2019 resulting in 118 civil society projects being financed. The total sum of the support is around 10 million BGN (around EUR 5 million). For more information: https://www.eufunds.bg/bg/opgg/node/741.

> *"…Environmental CSOs that opposed large infrastructure projects, which threatened the environment, were denied funding from the Ministry for the Environment. In addition, calls had been made for a CSO, the Bulgarian Helsinki Committee, to be closed down."*

The Ministry of Environment and Water (MOEW) has always made efforts to cooperate with CSOs, including supporting their initiatives by all available financial instruments.

Throughout the implementation of the EU's LIFE Program, the MOEW assists in the preparation of projects and issues letters of support to CSOs. As a result, almost all projects funded by LIFE Program in Bulgaria are with CSOs beneficiaries. The Ministry also provided access to and financed CSO projects under programs BG02 and BG03 of the Financial Mechanism of the European Economic Area 2009-2014 in Bulgaria. The MOEW invited CSOs and they did participate in the planning of the new Environment and Climate Change Program of the Financial Mechanism of European Economic Area 2014-2021, and all future activities and mechanisms for participation in the program were jointly formulated. Under this program calls for projects were made, targeted specifically at activities that can be implemented by CSOs. Due to the lack of any specific information and the fact that MOEW operates with several financial resources, there is no reason to perceive this allegation as concerning „Operational Programme Environment 2014-2020" as well.

With regard to one particular case mentioned in the report, it should be noted that the Bulgarian Helsinki Committee is one of the oldest and most respected non-governmental organization in Bulgaria in the area of protection and promotion of human rights. The protection of human rights and civil society more generally has been a fundamental pillar in the political programme of several consecutive Bulgarian governments. The expressed opinion of certain political group in relation to the work of the Bulgarian Helsinki Committee does not represent an official

position of the government. The prime minister has made a statement of support to the work of the Bulgarian Helsinki Committee, as well as to the protection of the freedom of expression.

In addition, by order of 08.10.2019, the Prosecutor General of the Republic of Bulgaria refused to exercise the powers under art. 13, para. 1, item 3, b). "a" - b) "d" of the Law on Non-Profit Corporate Bodies (LNPCB) to refer the case to the court with a request for termination of the Association "Bulgarian Helsinki Committee". He accepted that: "Forced termination of a legal entity is the most severe penalty possible and therefore the hypotheses provided for in Art. 13 of the LNRCB should be applied restrictively.", "… the activities carried out in the form of organized free training seminars for magistrates and the provision of procedural protection to certain persons, as part of the legitimate objectives stated for the registration of the association, do not point to an activity prohibited by the Constitution and laws that are subject to verification…".

> *"The public consultation process on new legislation in Bulgaria was seen as too narrow and insufficiently transparent. The rules on performing impact assessments and public consultations for new legislation were not always followed. According to the law, CSOs had a month following the submission of a bill to make comments or suggest changes. However, the bill might then undergo profound changes between the first and second readings, meaning that the outcome of the public consultation was no longer meaningful."*

In support of the comments, made by the government representatives at the meeting, we reiterate that according to the Law on Normative Acts all draft legislative acts initiated by the executive power are subject to mandatory public consultation, published on the internet sites of the respective institution, as well as on a single governmental Portal for Public Consultations (http://www.strategy.bg/). All stakeholders are free to submit their comments on the Portal. The comments are visible to the public. The rules for the consultations are, indeed, strictly followed.

Moreover, as regards the public consultation process, in 2019 the Council for Administrative Reform adopted a new comprehensive methodological instrument: Standards for holding public consultation (English version of the document: http://www.strategy.bg/FileHandler.ashx?fileId=19079).

Secondary legislation adopted by the Government and draft laws submitted by the Government to the Parliament are accompanied by impact assessments The quality of impact assessments is improving based on the methodological support provided by a central unit. In addition, a new Manual for ex ante impact assessments was adopted by the Government in 2019 and is compulsory for all institutions within the executive power. In 2019, the Government carried out 328 ex ante impact assessments.

The Rules of Procedure of the National Assembly (Chapter Six "Interaction with Non-governmental Organizations") provide a broad set of public participation tools. With regard to the amendments to a draft law between the first and second reading, the Rules (Art. 84) stipulate that: "Proposals that contradict the principles and the scope of the bill passed at the first vote shall not be considered and voted." This provision serves as a safeguard against any substantive contradictory amendment that could undermine the public participation procedure. Full transparency of the legislative procedure is ensured at all its phases. (For more details: https://www.parliament.bg/en/rulesoftheorganisations).

Freedom of association and assembly – social partners

> *"…However, the rate of unionisation was decreasing, with trade union density below 20%. Furthermore, a wide range of impediments to union membership existed in Bulgaria; for example, army and police trade unions could not join the national confederations of unions, and public-servant trade unions were not permitted to negotiate their salaries.*
>
> *…However, Bulgarian law did not provide any specific legal or administrative guarantees enabling workers to exercise this freedom. Moreover, Bulgarian workers were not always aware of their rights and the authorities did not organise awareness-raising campaigns."*

Contrary to what is stated in the report, we affirm that there are specific legal and administrative guarantees in the system of labour law for the exercise their freedom of association. Pursuant to Art. 4, para. 1 of the Labour Code, employees have the right, without prior permission, to freely form, by their own choice, trade union organisations, and to voluntarily join and leave them, subject only to their statutes. Trade union organisations have the right, within the framework of the law, to draw up and adopt their own statutes and rules of procedure, to elect freely their bodies and representatives, to organize their management, and to adopt programmes of activity (art. 33, para. 1 of the Labour Code).

The duties of public authorities, local authorities and employers to create conditions and assist trade union organisations in carrying out their activities are also a guarantee for ensuring the activity of trade union organisations. They provide them, free of charge, with movable and immovable property, buildings, premises and other material conditions necessary for the performance of their functions (art. 46, para. 1 of the Labour Code). The obligation of the employer to assist the employees' representatives in the performance of their functions and to create conditions for the performance of their activities (art. 46, para. 2 of the Labour Code) is also regulated. In addition, the Labour Code grants the right to paid leave to trade unionists, thus enabling them to carry out trade union activities (art. 159 of the Labour Code). The guarantee of free association and the option for active representation of employees is also the protection provided in case of dismissal for the members of the electoral trade union body and the trade union management in the undertaking, provided for in Art. 333, para. 3 of the Labour Code. Protection against dismissal shall be maintained for the duration of the relevant trade union position and up to 6 months after its dismissal.

Civil servants are not deprived of the right of association. According to Art. 44 of the Civil Servant Act, civil servants have the right to form freely trade union organisations, to join and leave them solely in conformity with their statutes. Trade union organisations represent and protect the interests of civil servants before public authorities in matters of employment and social security relationships by means of proposals, requests and participation in the preparation of draft internal regulations and ordinances relating to business relationships.

The right of association in the system of the Ministry of Interior (Art. 242, para. 1 of the Ministry of Interior Act) and in the system of defence and armed forces (Art. 186, para. 1 of the Law on Defence and Armed Forces of the Republic of Bulgaria) is also provided for by explicit legal provisions. In this regard, the right of employees in the system of internal affairs and the armed forces to conclude agreements with the relevant management is also guaranteed. Police and

army staff organisations cannot be members of the general confederations of trade union organisations in the country, but that does not mean that there is a restriction on their right to freedom of association. The official activities of these persons have specific features and the issues related to ensuring the internal order and defence of the country, can be discussed in their organisations, which implies the preservation of relative autonomy of their associations and therefore, no other employees can participate in them. However, there are also employed persons in the police and armed forces who do not perform specific official duties. They may, by common procedure, form and join trade union organisations, which in turn may also be members of the confederations concerned. Thus, the trade union rights of the Ministry of the Interior employees, for instance, are guaranteed and regulated in a separate chapter of the Ministry of Interior Act, incl. the right to additional leave and guarantees against dismissal of officials in senior elective positions in the relevant organizations, social partnership and social dialogue.

The state institutions inform and consult all interested parties on the rights and obligations arising from labour legislation. Special call centres have been set up at the Ministry of Labour and Social Policy and the General Labour Inspectorate Executive Agency where anyone interested can receive an answer to a specific question. Up-to-date information is also kept available on the website of the institutions concerned, providing the opportunity to ask questions through special forms. Targeted information campaigns are also conducted on certain topics (for instance, the "Envelope Wages" Campaign, organised to provide information on workers' potential losses from their undeclared incomes and on the mechanisms by which they can claim their rights).

Human Resources Development Operational Programme 2014-2020 funded numerous social partner projects aimed at raising awareness and ensuring compliance with labour legislation.

So far, 61 union protection proceedings have been instituted in the Commission for Protection against Discrimination (CPD) on trade union affiliation, as part of the CPD's practice on this basis is reflected in the CPD's Annual Reports published on the Commission's website.

At the same time, the CPD has signed a Memorandum of Cooperation with one of the most widely represented trade unions in the country, the Confederation of Independent Trade Unions in Bulgaria, for cooperation in the area of non-discrimination. Through different courses and information campaigns, the Commission also provides awareness raising.

Freedom of expression and freedom of the media

> *"Media ownership was concentrated in the hands of a very small group of people, and it was reported that political figures (among others) exerted control over the media. Although these figures only officially owned a couple of newspapers, in practice they directly or indirectly controlled dozens of other private media outlets, as well as public media. Furthermore, it was noted that the media outlets in question generally adopted a very pro-government attitude, and were more disparaging of governmental opponents or other perceived critical voices.*

The authorities also seemed to facilitate the concentration of media ownership, for example by adjusting certain legislation on media funding in favour of media oligarchs. Such legislation was generally approved virtually unanimously in parliament, while proposals for strengthening the independence of journalists were ignored, and it was the impression of the participants that politicians showed little interest in media freedom and pluralism.

Moreover, pressure and attacks on journalists were common in Bulgaria, both from public authorities and from private actors, such as media agencies. This pressure often came in the form of smear campaigns, run against independent journalists that covered sensitive topics, or termination of employment, if a writer's stance was at odds with the media agency that employed them. For example, in the past few months the pressure against independent journalists had intensified: in September 2019, for example, a top legal radio journalist was almost taken off the air for attempting to cover the nomination of the new prosecutor-general in Bulgaria. Furthermore, media representatives reported that they had also experienced harassment from public authorities such as the Prosecutors' Office, police, tax agencies and other financial investigative authorities. This pressure sometimes extended to their associates and family as well.

Regarding media funding, public radio and television were legally required to maintain a certain level of editorial independence. Nevertheless, the government provided their funding and could therefore exert editorial pressure. Local media were overwhelmingly dependent on the local authorities' budget, and therefore even more susceptible to political influence. Concerns were raised that national media agencies were being selectively funded via EU funds, and that this process was non-transparent and potentially biased.

Government representatives did not provide any views on the situation of freedom of expression and freedom of the media."

During the meeting on 11 October, the government officials pointed out that questions on regulation and freedom of the media should be directed at the Council for Electronic Media (CEM), which is competent to comment on them. This fact should be reflected in the text. We take this opportunity to provide the following views on the subject:

The Republic of Bulgaria, as a state party to the main United Nations (UN) human rights conventions, the Council of Europe (CoE) and the EU, has committed itself to respect and apply the highest standards of protection and promotion of human rights and fundamental freedoms, including freedom of the media and security of journalists.

The competent Bulgarian authorities have carried out rapid and unbiased investigations in all cases involving attacks on journalists, with some of them already in court. The political will to bring to justice the perpetrators and masterminds of crimes remains strong.

CEM, as an independent specialized body, regulates the media services in Bulgaria in accordance with the Radio and Television Act (RTA). The RTA guarantees the independence of media service providers and their activities from political and economic interference, and does not allow censorship of media services in any form (Art. 5, para. 1 and para. 2).

With respect to journalists and creative workers contracted by the media service providers, the law provides that they shall not receive instructions and orders for the exercise of their activities by persons and/or groups outside the media service providers' management bodies. Journalists who have contracts with media service providers have the right to refuse to perform a task assigned if it is not related to the implementation of the provisions of the RTA or the relevant contracts and is contrary to their personal beliefs; technical and editorial processing of program material and news may not be refused.

CEM held numerous meetings in relation to the case with the legal radio journalist referred to in the report – with the editorial board of the Bulgarian National Radio (BNR) Horizon program, with the media leadership and with representatives of trade union organizations. CEM registered with the Prosecutor's office the cases of threats against journalists. The cases are the subject of clarification in pre-trial proceedings initiated under the direction of a prosecutor from the Sofia Regional Prosecutor's Office.

The Prosecutor General has been heard and has provided information on the actions taken within the competence of the Prosecutor's Office and before the Interim Committee to examine the facts and circumstances related to the interruption of the broadcasting of BNR's Horizon programme, as well as the allegations of political pressure on management and journalists from BNR at the National Assembly.

Insofar as the Horizon program signal was discontinued during this case, CEM imposed two pecuniary sanctions in the maximum amount stipulated by law - for violation of the individual license for radio service provision and for violation of a basic principle of the RTA - guarantee of the right to information. On October 17 2019, the CEM terminated the mandate and the contract of the then Director-General of the BNR.

Concerning the concentration of media ownership in the country, CEM maintains a public register, which contains five separate sections with detailed information on all radio and television programs broadcasted on the territory of Bulgaria by cable, satellite or via terrestrial analogue or digital broadcasting networks, as well as non-linear media services. The data can be found on the European Audiovisual Observatory's database - MAVISE: http://mavise.obs.coe.int/. CEM maintains and regularly updates the "Register of Ownership in Electronic Media", which traces ownership to a real owner - an individual person (available on: https://www.cem.bg/infobg/33). Since February 2020, an additional opportunity has been created to track the ownership of media service providers by providing in the public register a link for each provider in the Commercial Register and the Register for Non-Profit Legal Entities maintained by the Registry Agency.

The RTA also prohibits the issuance of a license for radio or television activity on the territory of Bulgaria to a person or related persons, who hold licenses of the same kind for radio and television broadcasting with regional or local coverage, unless they opt-out (except for the programs of the Bulgarian National Radio and the Bulgarian National Television), or in the case of terrestrial digital broadcasting.

By law, upon registration or licensing all media service providers are obliged to provide evidence of the financial capacity to perform the activity and documents proving the origin of the capital over the last three years, including a certified financial statement. National public providers are funded on a dual basis – through subsidies from the state budget and through income from various forms of commercial communications. A working group at the Ministry of Culture is currently set up for the optimisation of the financing of public radio and television broadcasting and the implementation of European standards in the field of state aid to public radio and television. A second working group is preparing the introduction of the revision of the Audiovisual Media Services Directive into Bulgarian law.

In view of the amendment of the Law on the Mandatory Deposit of Printed and Other Works and on the Announcement of Distributors and Media Service Providers the Ministry of Culture adopted Ordinance No. 1 of 8 May 2019 on the Procedure for Announcing and Publishing the Information under Art. 7a, para. 3, 4 and 7 and under Art. 7b, para. 1 and 2 of the Law on the Mandatory Deposit of Printed and Other Works and on the Announcement of Distributors and Media Service Providers.

Spending of EU funds for information and communication activities is subject to the requirements of Regulation (EU) N 1303/2013, the provisions of the Act on Management of the European Structural and Investment Funds and is based on a Methodology for allocating the financial resources for information and communication of operational programs and financial instruments co-financed by European Structural and Investment Funds (ESIF). (https://www.eufunds.bg/sites/default/files/uploads/eip/docs/2018-12/Methodology.pdf).

Each Managing Authority (MA) determines the type of media to work with in view of the specific objectives of the respective operational program and the targeted audience. The selection of media is made either by announcing public procurement procedure in accordance with Art. 13, para. 1, item 5 of the Public Procurement Act (PPA), or through a procedure, previously developed and approved by the Head of the MA, for selecting media to buy program time or provide broadcasts. According to the Methodology, the allocated contracting resources without a public procurement procedure cannot exceed 30% of the annual budget for communications of the respective operational program, of which 80% for national and 20% for regional electronic media.

The implementation of all information and communication activities performed by the MAs of the programs are public and are available every month on the Single Information Portal: https://www.eufunds.bg/en/node/456

Non-discrimination

> *"…however, there were problems in terms of implementation (of anti-discrimination legislation – n.a), and some areas were still not fully covered by the legislation.*
>
> *One such example was LGBTI rights, as civil society representatives reported that only one law, the Anti-discrimination Law, protected these rights. As a result, LGBTI people were denied several rights. For example, same-sex couples*

were not covered by domestic violence legislation, and Bulgarian law did not permit same-sex marriages or civil unions. Moreover, Bulgarian authorities and courts rarely recognised or sanctioned abuses or discrimination against LGBTI people. There had also been a strong backlash against the community in recent months, with hate speech present in the media and perpetuated by some public figures".

The Bulgarian authorities consistently combat stereotypes and prejudices, if and when such are manifested against persons belonging to any ethnic, religious, linguistic or sexual minority group.

Compliance with the principle of non-discrimination and protection of human rights is vested in the CPD. Within it competences, the CPD has reviewed and ruled on a number of LGBTI complaints and alerts over the years, in accordance with the legislation in force (one example of such case is decision 501 of 2016 Fifth Panel of the CPD).

The CPD holds regular meetings with representatives of LGBTI organizations, such as the Youth LGBT Organization "Action", which address issues facing organizations and their representatives. Opportunities for joint participation in various projects and initiatives are discussed.

In 2019, the MFA appointed a focal point as part of the European Governmental LGBTI Focal Points Network.

Every case of abuse or discrimination reported to the police is registered and verified.

Special attention is paid to the protection of human rights, the lawful exercise of police powers and the prohibition of discrimination in the programs of the Academy of the Ministry of the Interior.

Various projects are launched to increase the capacity to effectively combat discrimination and to detect, investigate and prosecute hate crimes, such as the Justice Response to Hate Crime (2018) project, including pilot training, the issuance of a guide, etc.

In order to deepen the knowledge on the subject and to exchange good practices, numerous information events, seminars, etc. are held, such as the training in 2019 of police and other law enforcement officers on the issues related to homophobia and transphobic hate crimes. Often, trainings have a practical focus that enhances the practical skills of detecting and investigating crimes committed through homophobic (but also racist, anti-Semitic, etc.) incitement and improving employees' ability to recognize and differentiate crimes by discriminatory motive from other similar crimes.

Various guidance and manuals are available to the Ministry of the Interior's employees in their daily activities.

With regard to the responsibility of media and journalists in cases of hate speech in the media, according to the RTA, it is the responsibility of the media, and journalists are required to do what is necessary to protect those affected. CEM has adopted a Declaration in which it appeals to the journalist guild for a decisive distancing from statements that could qualify as hate speech and for compliance with the principles laid down in Art. 10 of the RTA, which prohibit incitement to national, political, ethnic, religious or racial intolerance.

Although the Criminal Code does not provide aggravated circumstances in cases where the crimes were committed on homophobic or transphobic motives, there is no obstacle to considering the relevant motives as aggravating circumstances in determining the sentence.

According to established case law, racist motivation is regarded as an aggravating circumstance.

> *"Although Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2012, the requirements of the Convention were not being fulfilled. In Sofia, for example, the environment was completely inadequate for people with disabilities, and the situation was worse in small towns and villages."*

It is under the responsibility of the respective municipalities to ensure accessibility for people with disabilities in cities and villages. As per its legal competences (according to the Disabled Persons Act (DPA) and the Spatial Planning Act (SPA)) the Minister of Regional Development and Public Works (MRDPW) issued the current Ordinance No. 4 of 2009 on the design, implementation and maintenance of construction works in accordance with the requirements for accessible environment of the population, incl. for persons with disabilities (promulgated, SG No. 54/2009). It defines both the minimum specific requirements for the elements of the accessible environment in urban areas (urban environment), as well as the requirements for the accessibility of the environment in buildings, facilities and their elements, as well as with regard to the elements for the adaptation of existing public buildings.

At the beginning of 2019, in connection with the entry into force of the new Disabled Persons Act as of 1January 2019, the MRDPW initiated a review of the implementation of the requirements of Ordinance No. 4 of 2009 so that it is in compliance with the provisions of the UN Convention on the Rights of Persons with Disabilities, DPA, current European and International standards and good practices. In the process of developing the update of the regulation and formally agreeing it, all interested parties in its implementation were involved, incl. organizations of and for people with disabilities. The draft ordinance prepared is published for public consultation on the web site of the MRDPW and the Public Consultation Portal.

The provisions of the Spatial Planning Act, as well as the regulatory requirements for ensuring accessible architectural environment shall be respected by all participants in the design and construction process according to Art. 160, para. 1 of the law.

It is the responsibility of the MRDPW to ensure the implementation of the above mentioned legal provisions and normative acts in approving development plans, coordinating and approving investment projects and in issuing building permits for sites with more than one region, sites with national importance and/or national sites and national roads, railway highways and railway lines (respectively in compliance with the provisions of Article 129, Paragraph 3, Item 2, Article 141, Paragraph 6, Item 2, Article 145, para 1, item 3 and Article 148, paragraph 3, item 2 of the Spatial Planning Act).

All grant procedures under Operational Programme "Regions in Growth" (OPRG) 2014-2020 require accessible environment for disabled people. Moreover, for the fulfilment of the requirements the beneficiaries sign declarations stating that they will implement all necessary measures for an accessible environment. The Managing Authority (MA) of OPRG carries out on the spot checks for implementations of the projects and pays particular attention to accessibility

measures. In case the MA finds out that the applicable accessibility measures are not been fulfilled, it makes the relevant recommendations to the beneficiary and does not verify the reported costs until the provision of accessible architectural environment.

A new support measure for people with disabilities is in place, which allows for public funding of activities to build an accessible environment for people with disabilities under the National Program for Affordable Housing and Personal Mobility. It is implemented on a project basis within the approved budget resources for the respective year, on the territory of all municipalities in the Republic of Bulgaria.

The CPD co-operates with the Ombudsman of the Republic of Bulgaria in the capacity of a Monitoring Authority under the DPA in monitoring the full implementation of the UN Convention on People with Disabilities and policies to protect the rights of this vulnerable group of society in Bulgaria.

In fulfilment of one of its powers (Art. 42 of the DPA), at the end of 2017, on the International Day of Persons with Disabilities - December 3, the CPD launched its open-ended "Accessible Bulgaria" initiative. Two of its top priorities are to: 1) Show good examples of accessible environments and search for public figures to join the campaign to promote it, and 2) The CPD conducts an independent assessment of the accessible environment, initiates proceedings and imposes sanctions and coercive administrative measures provided for by law in order to ensure the creation and maintenance of a public accessible environment for people with disabilities. As a result of these inspections in 2018, more than 1200 ascertaining protocols for accessibility of sites in the capital and the country have been prepared.

Since the beginning of the work on the initiative in 2018 the CPD has formed 980 anti-discrimination proceedings and has ruled on 352 solutions. The other files are at different stages of production.

In cases where an architectural environment is built and maintained in a public site, it is certified by the CPD with the appropriate campaign-specific certificate.

In accordance with its powers, the CPD issues competent opinions on draft laws concerning persons with disabilities in order to prevent discriminatory norms.

> *"The Roma minority was reported as being socially excluded, as although legislation in Bulgaria was comprehensive, in practice it was ineffective due to problems with the implementation. The exclusion of Roma communities in Bulgaria was visible in the case of housing (e.g. forced evictions), and the health sector (e.g. people lacked insurance or were discriminated against by the hospitals)…, no significant progress had been made in desegregating Roma schools. Moreover, Roma were underrepresented in public administration."*

Social housing projects implemented under OPRG 2014-2020 are not targeted exclusively to Roma communities, but to all identified vulnerable population groups. The rules for social housing accommodation of vulnerable groups are laid down in Municipal regulations according to which a non-discriminative approach should be applied in the process of selection of persons for accommodation in social housing, respecting the principle of equal integration

of all citizens in vulnerable situations without discrimination based on sex, race, belonging to a national minority or any other sign.

The competent administrative authorities, when initiating proceedings for the removal of illegal constructions, do not seek to identify the origin and ethnicity of the perpetrators of the illegal constructions, but aim solely at complying with the statutory provisions in the interest of the public and the State. All legal orders for removal of illegal constructions, which have entered into force, were implemented on the fact of the unlawfulness of the constructions, irrespective of their location and ethnicity of the occupants.

At the initiative of the MRDPW, a working group has been set up to propose changes to the Spatial Planning Act, the Law on State Property and the Municipal Property Act, which would introduce an obligation for proportionality assessment of the administrative procedures and of the circumstances of occupation of the illegal dwellings, namely, whether the dwelling is not dangerous to the health and life of its occupants, whether it is occupied by minors, by persons with permanent disabilities, as well as what are the possibilities for providing suitable alternative accommodation. The proposed amendments foresee the deferral of the removal order in cases where the dwelling is the only accommodation and there is no danger to the health and life of the occupants.

In Bulgaria all healthcare services are provided to all Bulgarian citizens, regardless of their gender, age, ethnic and social background, with a special focus on improving the health care of disadvantaged groups.

The state provides access to health care to both, the health insured and the health uninsured persons.

In addition, there are health measures targeted specifically at the Roma community. For instance, the Ministry of Health annually allocates funds for conducting prophylactic examinations and researches in settlements and neighbourhoods inhabited by uninsured Bulgarian citizens of Roma origin using the PHARE 21 mobile cabinets (4 cabinets for general preventive examinations, 2 fluorographs, 2 mammographs, 3 cabinets for ultrasound examinations, 3 cabinets for laboratory tests, 3 cabinets for paediatric examinations and 4 cabinets for gynaecological examinations. Within the period 2013-2017 using the mobile cabinets contributed to a total of 83 740 examinations and studies, including 7 200 immunizations of children with incomplete immunization status with a mobile general practice cabinet, 6 800 fluorographic examinations, 15 200 gynaecological examinations, 22 140 paediatric examinations, 7 200 mammographic examinations, 8 100 ultrasound examinations and 24,300 laboratory tests. In 2019, the following examinations were carried out: 1 962 fluorographic examinations; 2 261 gynaecological examinations; 1 541 paediatric examinations; 1008 mammographic examinations; 1772 ultrasound examinations; 1853 laboratory tests.

All medical services are provided in accordance with medical standards, including on access and patients' rights, and all medical establishments are obliged to comply with them. The legislation regulates the procedure for exercising control over the activity of medical establishments by the relevant competent authorities, and regulates the procedure for access and information on cases in which patients' rights are violated, as well as for imposing sanctions in case of

an stablished violation. In 2019, the Medical Supervision Executive Agency (successor to the Medical Audit Executive Agency) was established. It controls the quality and effectiveness of medical care and patient safety in Bulgaria.

The demographic structure of the population across Bulgaria pre-defines the enrolment of children and pupils from a certain ethnic group, in particular, in the education institutions of the given administrative region, however, segregation by classes or buildings, is strictly forbidden by law (Art. 99, Para. 4 of the Pre-School and School Education Law, enacted as of 1 August 2016);

The Ministry of Education and Science (MoES) ensures the implementation of actions under national programs and projects, aimed at providing support to municipalities to carry out local policies of educational desegregation. Concrete examples of tools applied to that effect are:

1)MoES Regulation № 10 as of 01.09.2016 concerning the organization of school education activities, and in particular Art. 43, Para. 1 therein, is aimed at distributing the children, whose mother tongue is other than Bulgarian, so they could be integrated in an environment supporting adaptation, socialization and the equal start, as well to prevent secondary segregation.

2)The established National Program on Support to Municipalities to implement activities for educational desegregation, administered by the Center for Educational Integration of Children and Pupils from Ethnic Groups, allocates earmarked funding to municipalities for the implementation of actions, such as:

- carrying out desegregation activities in order to improve the access to quality education for children and pupils from ethic groups, who attend education mainstreaming institutions (with high participation of pupils and children of Bulgarian and other origin);

- securing free transportation for children in compulsory pre-school education, as well as for those of them who attend segregated educational institutions (However, the right of the parents, including of those from the Roma ethnic group, to choose by preference the school of their children should be taken into account: the parents sometimes are not willing to have their children far away from them, even for attending school in another residential area in proximity);

- education, training and socialization in non-segregated reception educational institutions;

- providing free learning resources and materials for children in compulsory pre-school education and pupils involved in the process of educational desegregation, as well as institutionalizing the work of the education mediators.

3)An overarching aim of the Program on Local Development, Poverty Reduction and Enhanced Social Inclusion of Vulnerable Groups under the EEA Grants Financial Mechanism is, also, to provide timely and necessary support to all municipalities in unprivileged conditions so that social inclusion of children and youth, including those from Roma ethnic groups, could be enhanced for the better.

Concerning the affirmation that Roma are under-represented in the public administration, we would like to point that that the administration does employ persons who identify themselves

as representatives of different ethnicities. Just one example: the Chair and Vice chair of the CPD identify themselves as representatives of the Roma ethnic group.

> *"Since 2013 most Roma organisations had boycotted the main governmental advisory body for consultation with civil society, the National Council for Cooperation on Ethnic and Integration Issues (NCCEII), after their demand for a change in the institution's membership had not been met".*

In 2018-2019 the National Council for Cooperation on Ethnic and Integration Issues (NCCEII) resumed fully its activity. Relevant information was provided about the possibility to apply for membership in the NCCEII. The organizations that left the Council in 2013 did not submit documents for membership.

The NCCEII, its leadership and the Secretariat have not ceased to cooperate with all organizations working in the field of integration policy for the ethnic minorities, with an emphasis on the Roma communities, whether they are members of the Council or not. Such organizations, individually or in interaction with the NCCEII Secretariat, are implementing a number of projects, including those funded by the EU or the CoE.

Following the end of the COVID-19 state of emergency, activities with respect to vulnerable communities will be analysed with a view to update the regulatory and conceptual framework (laws, regulations, strategies, action plans). On this basis, proposals will be elaborated for improvements of the institutional organization of the implementation of integration policies.

> *"Furthermore, hate speech against minorities by public figures and politicians was common in Bulgaria, with public authorities ignoring this phenomenon and even enabling it in some cases. For example, over the last year many hate crimes against Roma people had been reported; these complaints had been registered with the Prosecution Office, but almost none had been followed up".*

Here again, these claims are objectively unverifiable as they are devoid of specificity (time, place, persons, concrete actions and/inactions of public authorities/prosecution services).

In 2019 and 2020, a number of actions were taken to limit and deter hate speech and, in certain cases, to prosecute it. In 2020, for the first time, the so called "Lukov march" was prevented from taking place. The efforts of central and local authorities, as well as of a number of non-governmental organizations, should be acknowledged and welcomed.

The specialization of proceedings before the CPD does not take account of the ethnicity of the applicants, which makes it difficult to produce and process statistics for a particular ethnic group. In case the anti-discrimination legislation is violated, the CPD rules and sanctions both individuals and legal entities. Practice in this direction has been uploaded on the CPD's website https://www.kzd-nondiscrimination.com.

The CPD cooperates actively, in accordance with its powers, with non-governmental organizations, with the participation of representatives of the Roma ethnic group working in the field of human rights.

"The situation of women's rights in Bulgaria was strongly criticised, particularly because in 2018 the Constitutional Court declared the Istanbul Convention to be unconstitutional. Serious concerns were also expressed about domestic violence, where policy and government measures were considered to be inadequate, especially since new legislation only criminalised repeated offences (requiring at least three acts of violence). Furthermore, the state kept no statistics regarding domestic violence and had too few centres for abused women."

The rights of women and men in Bulgaria are guaranteed in the current legislation – the Constitution, the Law on Protection against Discrimination, the Law on Equality of Women and Men (LEWM), etc.

Persons who consider that they have been discriminated against may apply to the court or to the CPD. One of the principles that underpin the state policy on equality between women and men is equal treatment of women and men and prevention of gender-based discrimination and violence (Art. 2 of the LEWM).

Since 2014, CPD has opened 146 proceedings for protection against discrimination based on gender.

Prevention and combating violence against women and domestic violence, in all of its forms, is an important long-term priority for Bulgaria.

The report does not reflect that at the meeting with government representatives on 11 October last year detailed information was provided by them on the numerous actions taken to counter domestic violence and on the listed future initiatives in this area.

The amendments to the Criminal Code (SG, No. 16 of 22.02.2019), together with the introduction of a legal definition of a crime committed "in the context of domestic violence" (Art. 93, item 31), provided for a significantly developed and improved legal framework on domestic violence. All forms of domestic violence, including psychological and economic violence, were incriminated. More serious criminal liability is envisaged for the following crimes committed "in the context of domestic violence": murder, bodily injury, abduction, unlawful imprisonment, coercion and threat. (Art. 116, para. 1, item 6a of the CC, Art. 131, para. 1, item 5a of the CC, Art. 142, para. 2, item 5a of the CC, Art. 142a, para. 4 of the CC, Art. 143, para. 3 of the CC, Art.144, para. 3 of the CC, Art. 296, para. 4 of the CC, Art. 177, para. 1 – 5 of the CC, Art. 190, para. 1 - 5 of the CC). Systematic stalking was as well criminalized in the new provision under Art. 144a of the Criminal Code.

All reports of domestic violence, murder threats and violation of issued domestic or European protection orders (to which now applies criminal liability) under the Law on Domestic Violence are handled with priority, in accordance with the methodological guidelines of the Prosecutor General (Order No. РД-02-09/30.04.2018), clarifying the rights of victims and ensuring the possibility of effective implementation of their respective necessary protection (Order of the Prosecutor General No. РД-04-436/2016).

Amendments to the Domestic Violence Protection Act are being prepared to propose the creation of a national coordinating body and other measures to improve the system of

assistance centres for victims of domestic violence, social services and training of competent authorities in consultations with non-governmental organizations and international partners.

The National Strategy for Promoting Equality between Women and Men 2016-2020, identifies "Combating gender-based violence and victim protection and support" as one of its five priority areas. National action plans for implementation of the strategy contains different measures under this priority area.

Methodological guidelines for actions of police authorities in cases of domestic violence were developed and approved.

The introduction of a unified statistical reporting mechanism for domestic violence cases is pending. According to the statistics of the Ministry of the Interior (on the basis of the restraining orders issued by the court, copies of which are sent to the Regional Office of the Ministry of the Interior at the present address of the victim and the perpetrator), in the last six years there has been a trend of a sustainable increase in the number of victims of domestic violence who sought assistance and received restraining orders from courts in the country, from 1,895 orders in 2014 to 3 240 in 2019.

A number of different projects aiming to raise awareness on issues of domestic and gender-based violence, equal opportunities and non-discrimination practices are implemented by the authorities individually or in cooperation with other authorities or/and CSOs (for instance, the "Together Against Violence" project under HRD OP 2014-2020, "Improving the efficiency of policing in the field of domestic and gender-based violence", "Combating Labour Market Discrimination" initiative launched in the middle of 2018 or "Parents of Work", to name a few).

Rule of law

> *"…The mechanism facilitated political manoeuvring, allowing the government to imitate reforms, as well as to create structures that were not necessarily effective; thus the prosecution of opposition leaders was not effectively prevented. CSOs suggested the need for a transition period from the CVM to the introduction of the new comprehensive rule of law mechanism covering all EU countries.*
>
> *The situation in Bulgaria was getting worse as regards the rule of law and the fight against corruption and organised crime; the independence of the judiciary and the accountability of the prosecution were viewed as particularly problematic. Bulgaria had gone backwards in terms of ranking in international indices regarding freedom of the media and corruption.*
>
> *In the past four years, concerted efforts had been made to reform the judiciary (including the constitutional reform in 2015); however, the situation had deteriorated rapidly since 2016, with a number of new pieces of proposed legislation that sometimes directly undermined the independence of the judiciary. Furthermore, it was stressed that without genuine reform of the Bulgarian prosecution system, it was not possible to talk about the independence of the judiciary in Bulgaria, pointing out that the Bulgarian*

Prosecution Office very much resembled the old, Soviet-style prosecution system. According to civil society representatives, the prosecutor-general was still in a position of absolute power combined with a complete lack of accountability, despite this being criticised by the CVM on a number of occasions.

The independence of the judges had become much worse over the course of the previous year. The local elections and the election of the new prosecutor-general at the end of October 2019 had influenced public, social and economic life in the country, with unprecedented attacks taking place against judges and their court decisions. This signalled a shrinking space for civil society in general and for professional organisations in particular. It was noted that a bill in parliament proposed to prohibit magistrates from forming any kind of organisation and from participating in any kind of non-governmental organisation.

We are not aware of any public opinion polls that made it possible to draw the conclusion for a deterioration of the situation; nothing in our data suggests it either. To the contrary: the European Commission, in its latest report on Bulgaria's progress on the benchmarks of the Cooperation and Verification Mechanism (CVM), published on 22 October 2019, concluded that Bulgaria has met all six benchmarks under the Mechanism. The Commission noted that "the progress made by Bulgaria on the CVM is sufficient to fulfil the country's commitments made at the time of its accession to the EU."

In drawing up the CVM reports, the European Commission uses a wide range of sources and its assessment "is the result of a careful analysis by the Commission, based on close cooperation with the Bulgarian authorities, as well as information provided by civil society and other stakeholders and observers."

After a discussion in the LIBE Committee, EP also expressed support to the closure of the CVM for Bulgaria which is one more important acknowledgement of the significant results achieved in the reform of the judiciary and the fight against corruption and organized crime since 2007, when the Mechanism was established. The reforms are visible and irreversible.

In the last 10 years, in cooperation with the European Commission and with the input of experts from the Member States, Bulgaria has twice amended its Constitution, improved the work of the Supreme Judicial Council (SJC) and established an Inspectorate to the SJC to support good governance of the judiciary and strengthen ethical standards for magistrates.

Fundamental changes to key pieces of legislation were initiated. Broad amendments to the Judiciary Act were adopted in 2016 to ensure the full implementation of the Updated Judicial Reform Strategy, endorsed by the National Assembly in 2015. These changes, made in close cooperation with stakeholders and representatives of the professional community have contributed to the improvement of legislation in a number of areas, from the career development of magistrates to the internal management of the judiciary.

Over the years, significant improvements have been made in areas such as the random distribution of cases in the courts, e-justice, and the analysis of the workload of the judiciary and magistrates, training of magistrates and more.

Significant institutional changes were made in Bulgaria during this period, including the establishment of specialized courts and prosecutors' offices to combat organized crime and the Anti-Corruption Commission. In recent years, the prosecution has been reorganized several times to improve efficiency. The possibilities for accountability and transparency in the work of the Prosecutor General and the Prosecutor's Office have been expanded and effective implementation is ensured. Alongside the annual reports on the application of the law and on the activities of the Prosecutor's Office and investigative bodies under Art. 138 and Art. 138a of the Judiciary Act, which the Prosecutor General submits to the SJC and the National Assembly, on a three-month basis at the invitation of the Committee on Legal Affairs, the Prosecutor General is heard in connection with the exercise of the functions of the judiciary and the results of combating crime (Art. 27 of the Rules of Organization and Procedure of the National Assembly). Invitations to hear from the Prosecutor General have also been issued by other permanent and interim committees at the National Assembly. Information on the operation of the Prosecutor's Office and investigative bodies is also provided under the Access to Public Information Act.

Today, as a result of various measures that have been taken during the application of the CVM (comprehensive legal framework, stable economic and institutional environment, specialized, well-structured and functioning judicial and police authorities to combat crime and corruption, etc.) the impact and scope of organized crime is significantly limited, its levels are comparable to those in other EU Member States. Bulgaria is a reliable partner of the law enforcement international community.

The fight against corruption is also beginning to deliver positive results, including on the high levels of power.

Bulgaria continued to implement the remaining few recommendations of the Commission that were formulated outside the scope of the benchmarks:

Based on the opinion and recommendations of the Venice Commission, on 6 December 2019 the Government adopted new draft amendments (to the Criminal Procedure Code and the Law on Judiciary) with regard to the accountability of the Prosecutor General. The draft was submitted to the National Assembly. We are awaiting the interpretation by the Constitutional Court of the provisions (of Art. 126, para. 2) of the Constitution in relation to this matter.

The Parliament repealed those provisions relating to the automatic temporary suspension of magistrates under investigation, as well as those requiring that magistrates declare their belonging to professional organizations (Law on Judiciary).

In September 2019 the Government initiated the process of forming a national post-monitoring Council for Cooperation and Coordination (Decree No 240, 24 September 2019) which will include representatives of all three branches of power and of civil society. It will report to the public about its deliberations and measures taken. After an amendment (Decree No 21, 18 February 2020) the Decree now allows for the setting up, before the operationalization of the

mechanism, of the Civic Council comprising representatives of non-governmental organizations with experience in the prevention and combating of corruption, judicial reform and employers recognized at national level.

The cooperation with GRECO is regardless of CVM. Within the four evaluation rounds up until now the Group has always found that Bulgaria is in sufficient compliance with its recommendations.

Bulgaria remains committed to continue working to ensure the irreversibility of the progress made, to maintain the independence of the judiciary and to counter organized crime and corruption.

> *"A very concerning trend was a gradual reduction in access to justice. For example, CSOs working in environmental protection faced hurdles in accessing justice due to a disproportionate increase in court fees when they tried to appeal before the supreme administrative court. Moreover, individuals could not appeal against environmental impact assessments when these concerned sites of priority importance for the country. It was noted with regret that Bulgaria had failed to comply with the decisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)".*

Legislative amendment in force introduced a reasonable increase in the amount of fees and the introduction of a proportional fee with specifiable material claim of the case and only in cassation proceedings. A maximum threshold has been introduced for determining the proportional fee in order to achieve balance between the principle of access to justice and the introduction of justified court fees. The amount of fees collected in the judicial administrative proceedings has remained unchanged since 1998 until now, while the minimum wage has grown over 10 times. Hence, the fees are justified, consistent with the economic conditions in the country and provide more effective and fast administration of justice and the implementation of the constitutional role of the Supreme courts for uniformity of jurisprudence. The low amount of fees in first-instance proceedings was retained (10 BGN (around EUR 5) and 50 BGN (around EUR 25) for citizens and organisations, respectively), which ensures access to court as a tool for protection against unlawful acts or lack of acts of the administration. The fees in cassation proceedings also remain low (70 BGN (around EUR 35) and 370 BGN (around EUR 185), respectively, if there is no material interest in the case, and – if there is material interest - 0,8 % of the material interest, but not more than 1700 BGN (around EUR 850), and 4 500 BGN (around EUR 2 250) when the material interest exceeds 10 million BGN (around EUR 5 million).

National environmental legislation provides the possibility for members of the public to challenge in courts the opinions/decisions on the environmental assessment of plans and programmes (EA)/environmental impact assessment (EIA), issued in accordance with the Law on Environmental Protection (LEP) (Art. 88, para. 3; Art. 93, para. 10 and Art. 99 para. 8 of the LEP).

The removal of cassation control when appealing in courts decisions of competent authorities on the EIA/EA, respectively of investment proposals/plans and programmes relating to sites of national significance (defined as such by an act of the Council of Ministers and which are sites of strategic importance) is limited to a minimum number of cases and at the same time justifies the particular public interest. Access to justice is always guaranteed if an administrative act can be the subject of judicial review by a judicial authority that has full jurisdiction over matters of law and fact.

With respect to the allegations in relation to the Aarhus Convention, it should be stressed that the public is also given access to justice with respect to certain categories of administrative acts under the SDA. They incorporate the acts under EPA. Art. 125, para. 7 of SDA explicitly states that the environmental assessment is part of the development plan. The environmental assessment (EA) decision and the EA statement contain mandatory conditions, measures and restrictions (Art. 82, para. 4 of EPA) with regard to spatial development, which in practice constitute the environmental component of the development plan.

The access to justice with respect to the acts under SDA is guaranteed by the possibility of contesting the EIA decision or the decision not to carry out an EIA, respectively the EA decision or EA statement, which are an integral part of the respective act under SDA. The environmental component of the acts under SDA is completed with the acts under EPA, which by virtue of the law are an integrated whole with the acts under SDA.

The allegations about a tendency to a gradual restriction of the access to justice are unfounded also in view of:

the provision of Art. 131 of the APC which explicitly lays down the possibility that certain court proceedings are one-instance. Such is contesting decisions of the Minister of Environment and Water in connection with investment proposals, their extensions or amendments, which are designated as sites of national importance by an act of the Council of Ministers and are sites of strategic importance (Art. 93, para. 10 and Art. 99, para. 7 of the EPA);

the case law of the Constitutional Court of the Republic of Bulgaria and the European Court of Human Rights - The Constitutional Court of the Republic of Bulgaria, after a thorough analysis in Decision № 5 / 19.04.2019 on constitutional case № 12 of 2018, accepted that the rule of law standards for access to a court and the provision of citizens and organizations with the right to defend their rights and legitimate interests are guaranteed with access to only one court instance.

> *"Lastly, they also noted that Bulgarian citizens felt that justice was not available in the court system, the institutions, healthcare or education."*

Bulgaria has established a network of health mediators, which is expanding every year. Health mediators support both the population in the compact Roma neighbourhoods and the medical specialists serving this population. The funding of the network is provided annually by the state budget. In 2019 there are already 247 in 28 regions. It is expected their number to expand in 2020 to 260 in 137 municipalities in all 28 regions.

According to the official evaluation of health mediators, the number of health insured among hard-to-reach communities is increased by over 1000 people annually through the work of health mediators. Main achievements and results for 2019 are: over 3500 health information meetings and trainings were conducted with over 12 000 participants; assistance was provided for carrying out prophylactic examinations of children: 6109, adults: 5355, for immunizations according to the immunization calendar of Republic of Bulgaria for children: 8475, adults: 1059 - outside emergency immunization campaigns. 64 municipalities and 95 health mediators participate in the hygiene campaign.

In order to take measures for persons with the highest level of health vulnerability in 2019, the Ministry of Health introduced in the national legislation a regulation for the status of the health mediator, by amending the Health Act. Currently, a Regulation on Mediators is being drafted to regulate the activities of the health mediator, thus creating legal opportunities for effective prevention and increasing access to prevention of persons with the highest degree of health vulnerability - illiterate; homeless; people from minority groups in social exclusion.

Observations from the Italian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Italy

on 5-6 December 2019

The military police (Carabinieri and Guardia di Finanza) and armed forces have COCER (Central Council for Representation), referred to as "military representation". This is a legal arrangement for the Italian armed forces (including the Carabinieri and the Guardia di Finanza), provided for in Law No 382 of 11 July 1978 which aims to protect armed forces personnel in some limited areas permitted by law.

The situation is quite different for members of the civilian police force, for whom the right of trade union association has already been regulated, namely under Article 82 of Reform Law No 121 of 1 April 1981 establishing the right of state police officers to form trade unions. Prison officers are covered by an equivalent law, Reform Law No 395 of 15 December 1990.

Comments on the Coordination Centre for monitoring, analysis and constant information exchange on the intimidation of journalists

The Centre is the contact point for representatives of journalists and the Ministry of the Interior, which takes immediate action in cases where threats have been made, assessing individual incidents and providing the necessary safeguards. The Centre has a permanent support body at the Department of Public Security (DPS) which seeks to prevent and combat acts of intimidation against journalists and promotes cooperation between the media and police headquarters and the exchange of information between police officers and journalists on issues of mutual interest.

The Coordination Centre was established within the Ministry of the Interior by the ministerial decree of 21 November 2017.

The Centre is chaired by the Minister of the Interior and has a "political" role with strategic planning functions. The participation of media representatives is considered to be an important form of liaison and consultation, something that is useful for deciding on targeted action to protect the freedom of the press.

It was recognised from the outset that the Centre needed the support of a technical body performing operational tasks in the DPS, the main forum for exchange between the various services in the DPS and bodies representing journalists.

The permanent support body was established in 2018 within the Central Criminal Police Directorate, in line with DPS directives covering:

- the participation of the relevant DPS services, the composition of the body representing the various police forces and the presence of media representatives;
- the meetings schedule (at least once every quarter);
- responsibility for:
  - monitoring and qualitative and quantitative analysis of the issue, including the forms of intimidation, the reasons for the incidents and the geographical spread;
  - prevention and intervention, including through the promotion of cooperation between media outlets and provincial police headquarters (Questure) and the exchange of information between police officers and journalists on aspects of mutual interest.

The activities of the permanent support body include sending monthly reports to the Central Criminal Police Directorate (Department for Criminal Analysis) on acts of intimidation reported by provincial police headquarters and in response to alerts issued by the Council of Europe's Platform for the Protection of Journalists.

In November 2018, the DPS also instructed the provincial governors [24] to raise the issue in the provincial committees on public security, if possible with the participation of local trade union representatives. It has also recommended consolidating cooperation between the local press and police forces so as to promote productive interaction in the provinces and a continuous and timely flow of information.

As stated in the Declaration by Italy[25] of the Permanent Representation to the OSCE at the 2019 Human Dimension Implementation Meeting – HDIM, Working Session 2, Fundamental freedoms I:

> *"In 2017 the Italian government set up the Coordination Centre for monitoring, analysis and constant information exchange on the intimidation of journalists. The Centre is the first of its kind in Europe and acts as a contact point for representatives of journalists and the Ministry of the Interior, which takes immediate action in cases where threats have been made, assessing individual incidents and providing the necessary safeguards.*
>
> *The Ministry of the Interior has also activated the provincial public security authorities with the aim of replicating the work of the Centre at local level, involving local journalists and media in order to take immediate decisions on the most appropriate measures.*
>
> *To date, police forces have arranged for surveillance in 176 cases and protection for 19 journalists."*

24 In a circular issued by the Chief of Police/Director-General for Public Security, No MI-123-U-1-3-2018-68 of 21 November 2018, on the permanent support body for the Coordination Centre for monitoring, analysis and constant information exchange on intimidation against journalists – Monitoring.

25 Document HDIM.DEL/0653/19/IT 4 October 2019.

Finally, it may be useful to add that the Ministry of the Interior has published its "social media policy" on its website (https://www.interno.gov.it/it/social-media-policy), stating among other things that:

> *"content which is offensive, misleading, alarmist or illegal, or which incites unlawful activities, insults, bad language, threats or attitudes that undermine personal dignity, the dignity of the institutions, the rights of minorities and children and the principles of freedom and equality will not be tolerated;*
>
> *content which is discriminatory on the grounds of gender, race, ethnicity, language, religious belief, political opinions, sexual orientation, age and personal and social conditions will not be permitted."*

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