

# RIGHT TO PROTEST IN EUROPE

Comparative Study

Germany

France

Hungary

Poland

Spain



International Institute  
for Nonviolent Action

Irīdia\_

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TO  
PROTEST  
IN EUROPE

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## ACRONYMS

(in order of appearance)

**SCO** Civil Society Organization

**AfD** Alternative for Germany (Alternative für Deutschland)

**PEGIDA** Patriotic Europeans Against Islamization of the Occident (Patriotische Europäer gegen die Islamisierung des Abendlandes)

**NetzDG** Network Enforcement Act (Netzwerkdurchsetzungsgesetz)

**NSA** National Security Agency

**BND** Federal Intelligence Service (Bundesnachrichtendienst)

**ATTAC** Association for the Valuation of Financial Transactions and for Citizen Action (Asociación por la Tasación de las Transacciones Financieras y por la Acción Ciudadana)

**EU** European Union

**OSCE** Organization for Security and Co-operation in Europe

**BBC** British Broadcasting Corporation

**RWB** Reporters Without Borders

**MDR** Central German Broadcasting (Mitteldeutscher Rundfunk)

**ARD** Association of Public Broadcasting Corporation in the Federal Republic of Germany (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland)

**BKA** Federal Criminal Police Office (Bundeskriminalamt)

**LGBTI** Lesbians, Gays, Bisexuals, Transsexuals and Intersexuals

**PAG** Police Task Act (Polizeiaufgabengesetz)

**UNESCO**: United Nations Educational, Scientific and Cultural Organization

**LDH** Human Rights League (Ligue des Droits de l'Homme)

**NGO** Non-Governmental Organization

**DGSI** General Directorate of Internal Security (France)

**KESMA** Central European Press and Media Foundation (Közép Európai Sajtó és Média Alapítvány)

**CEU** Central European University

**PiS** Law and Justice (Prawo i Sprawiedliwość)

**PKW** National Electoral Commission (Państwowa Komisja Wyborcza)

**CJEU** Court of Justice of the European Union

**KRRiT** National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji)

**PAH** Platform for People Affected by Mortgages (Plataforma de Afectados por la Hipoteca)

**LOSC** Organic Law on the Protection of Citizen Security (Ley Orgánica de Seguridad Ciudadana)

**PDLI** Platform in Defence of the Freedom of Information (Plataforma en Defensa de la Libertad de Información)

**ETA** Euskadi Ta Askatasuna

**GRAPO** First of October Anti-Fascist Resistance Groups (Grupos de Resistencia Antifascista Primero de Octubre)

**ARCO** Madrid's International Contemporary Art Fair (Feria internacional de arte contemporáneo de Madrid)

**OHCHR** Office of the High Commissioner for Human Rights



1

# PRESENTATION

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## About the Project

Protest is one of the most important rights as it brings together the right to assembly, expression, demonstration, information and association. Without the right to protest many other rights would not have been gained. Therefore, defending it is also defending all the rights achieved so far and those we must keep fighting for. This has been expressed on numerous occasions by the Professor of Constitutional Law and Doctor of Law, Roberto Gargarella when he speaks of the right to protest: “The right to protest is not just any right, but one of special relevance within any constitutional order: it is a right that helps us to keep the remaining rights alive. Without a robust right to protest, all other rights are under threat, put at risk. It is therefore sensible to name the right to protest the first right.”

Regression in the protection of human rights is not solely a Spanish phenomenon: logics of securization in the management of social and political problems have extended all over Europe. For this reason, the present study represents one of the core actions of RIGHT2PROTEST, as it analyzes the situation in Europe through five countries that, in recent years, have lived (and continue to live) a worrying regression of the rights protected under the umbrella of the right to protest. Specifically, this study analyzes the evolution of the right to protest in France, Germany, Hungary, Poland and Spain.

We believe that, one way to defend the right to protest is to address the violations of rights that occur in its context. This is the aim between RIGHT2PROTEST: a project initiated by Novact – International Institute for Nonviolent Action and Irídia Centre that focuses on protection, advocacy and training in the area of civil and political rights, with the support of the Barcelona Provincial Council (Diputació de Barcelona).

Four years ago the Congress of Deputies of Spain approved a reform of the Criminal Code, the new Law on the Protection of Citizen Security (better known as the Gag Law) and the Anti-Terrorist Law against the vast majority of parliamentary groups and civil society organizations. This process has evolved towards understanding popular action as an “enemy” to political power and not as the citizens’ right to political participation.

“Citizen protests have shown evidence of authoritarianism at all levels of the state. Above all, in its response to the challenges and demands raised around the need for a different, more participatory and more social justice policy, and against the trend towards inequality and the dismantling of the welfare state. The attitude of the authorities related with social movements has been confrontation, delegitimization and ultimately criminalization. Thus, citizens, social movements and their demands, which are often expressed in the streets due to the lack of channels for participation and accountability in the Spanish political system, are deemed to be elements disturbing the order. Instead of being considered legitimate actors and proposals to be considered and responded to, they are considered a threat to society as a whole, to which prevention and containment measures must be applied, under a security logic” This is how we explained it in 2015 in the collective book *Gag Law and Criminalization of the Protest in the Spanish State*, prepared by the platform Defender a quien Defiende, in which both Novact and Irídia are part.

In a very similar manner, European countries have enforced specific security and public order laws that violate basic rights such as freedom of expression and freedom of assembly or association, and have limited civil society space and criminalized social action. This has happened despite the fact that freedom of association, demonstration, expression, opinion, and the right to access information are protected at international and European levels, including by the Universal Declaration of Human Rights (1948), several United Nations conventions, the Charter of Fundamental Rights of the European Union (2000), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

Hungary passed a new legislative package, popularly known as Anti-Civil Society Organizations Laws or Stop-Soros Law. It limits access to foreign financing of human rights organisations, and criminalizes with up to one year imprisonment those people or groups that help irregular migrants, even if that help consists in giving advice and informing migrants on how to apply for asylum. Moreover, changes have been made to the country's Constitution in order to limit freedom of expression: “freedom of expression should not be exercised with the intention of violating the dignity of the Hungarian nation.”

An important debate about the weakening of the rule of law is starting in Poland. Since the Surveillance Law was passed in 2016, whereby the police and secret services were given expanded capabilities of action and investigation. In 2017, information was leaked according to which the police were investigating

certain social leaders in order to obtain information on their actions. Surveillance methods included following people on foot and by car, video and audio recordings, and phone tapping without judicial authorization. Moreover, in recent years police have increased surveillance, intimidation and use of force in the context of demonstration.

In Germany, the rise of the far right and migration management has opened a gap that threatens to violate basic rights. Additionally, this has led to an increase in communications surveillance laws and a reduction of citizens' right to privacy.

In France, anti-terrorism legislative actions maintained the state of emergency for several months, which limited the right to protest and, according to alternative media such as Tarannis News, were used to facilitate arbitrary arrests of recognized activists in the country. On top of this, there is the management of the latest social mobilizations in the country. The journalist David Dufresne published in Mediapart an exhaustive report in which he recounts the repression in Paris of the Yellow Vests Movement (*Mouvement des Gilets Jaunes*). The report claims that more than 202 people have been injured in the head, 21 people have lost an eye and 5 a hand. On top of that, in April 2019, Law 2019-209 on the Reinforcement of Public Order in Demonstrations, popularly known as the *anti-casseur* law (anti-vandal law), was approved establishing extremely restrictive measures to the right to peaceful assembly and demonstration.

These actions and contexts represent a direct attack on the exercise of human rights and fundamental freedoms that define the rule of law and democracy. Only by analyzing these trends and developing joint strategies we can, as human rights defenders, face current challenges.

This study has been prepared by Clàudia Nadal<sup>1</sup> with the indispensable help of Tomás Rojas and Paula Boet; and under the supervision and coordination of Laura Medina and Thais Bonilla.

The English version is a translation of the original in Spanish. In case of discrepancy the Spanish original will prevail.

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<sup>1</sup> Clàudia Nadal is a consultant in International Law and Human Rights, with solid experience in International Organizations, such as the International Labour Organization, and has collaborated in various cases on freedom of association, freedom of expression and trade union rights.

# Methodology

To carry out the study, an in-depth analysis of various primary and secondary sources has been performed. A core element to faithfully represent the legal and political context has been the reading of legal instruments in force and of the official declarations of governments. Additionally, information collected from the media of the countries under study, as well as from official sources of the states – including publications, press releases and official speeches- has been compared and analysed.

This report also reflects the information collected by organizations, initiatives and platforms that periodically and tirelessly document violations of the right to protest. We want to highlight Red Malla, Civic Space Watch, Civicus Monitor and Reporters Without Borders. Finally, the direct experience of various organizations working in the field has been invaluable, since it has allowed us to know first-hand the experiences of organizations working in the countries under study. In this regard, we especially appreciate the collaboration of the European Civic Forum, Vox Public and European Centre for Non-Profit Law, Helsinki Foundation for Human Rights and Hungarian Civil Liberties Union, whom we have had the honour of interviewing.

The research for this report was carried out in the first half of 2019, and reflects the most relevant events that have occurred in the last two decades. We understand that temporary dimensioning is always a difficult task in a Europe that evolves at a frantic pace. We have chosen to rely on key events that, due to their importance, have marked a before and after in the right to protest in each country. We wanted to capture the notorious events that have happened in recent years, paying special attention to those which were in the public eye and occupied an important space in the public debate. In this regard, the information provided by the organizations interviewed was invaluable, allowing us to identify the turning points in the development of national and local public policies. The reasons for concern, however, extend in a more generic way to other manifestations and acts of protest not mentioned in this study, since situations of repression are rarely isolated events.



2

CONTEXT

AND

INTERNATIONAL

FRAMEWORK

# Conceptualization

The *right to protest* does not exist in a codified form in the main treaties on human rights; rather it is a concept which comprises a group of fundamental rights, individually recognized, whose objective is to safeguard plurality in the political participation of society. Specifically, we are talking of the right to peaceful assembly, freedom of expression and freedom of information as instruments to voice the diverse opinions existing in the society, and to channel dissent and disagreement. These rights are intertwined at such a level in the exercise of the right to protest that it is difficult to distinguish them from one another. For example, by participating in a peaceful protest, the right to freedom of assembly, association, expression and participation in public affairs can be exercised simultaneously.<sup>2</sup>

Looking back in history, the possibility to show disagreement with the state administration and other centres of power has been essential to achieve and maintain other human rights. In this sense, the right to protest is a right that holds special relevance because it is one of the pillars of the current system of guarantees, since it allows for the protection of human rights and the pursuit of new ones..

It is important to highlight its close relationship with the freedom of association. Although protest does not necessarily happen in an organized and collective way, it often does. Freedom of association, however, encompasses another dimension: the right to organization and to collective action. Thus freedom of association also protects the creation of political and social action entities, such as trade unions and political parties, and all the elements that ensure the independence and the capacity to act of these institutions. Freedom of association in a broad sense is beyond the scope of this study, which focuses on the right to protest at all levels, both individually and collectively.

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<sup>2</sup> United Nations, General Assembly; Human Rights Council (2013). The promotion and protection of human rights in the context of peaceful demonstrations. A/HRC/RES/22/10, 2xa12<sup>nd</sup> session (9 April 2013). [Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/128/43/PDF/G1312843.pdf?OpenElement>]

# Legislative and political trends in Europe in relation to the right to protest

Civil society, both organized and non-organized, plays a crucial role in promoting human rights, contributing to the functioning of the democratic system. The forms of civil society participation are diverse in all the territories of the European Union due to their different historical evolution, although they influence one another. On the one hand, the types of organizations that exist in each country vary considerably, both at the organizational level, and in their shape and size. Large international entities and small volunteer-based grass-root organisations coexist in diverse proportions. While challenges exist in all EU Member States, their exact nature and extent vary across countries.<sup>3</sup>

Generally speaking, these challenges include: (a) disadvantageous changes in legislation or (b) inadequate implementation of laws, even in an strategic way; (c) hurdles to accessing financial resources and ensuring sustainability; (d) difficulties in accessing decision-makers and feeding into law and policy-making; (e) attacks on and harassment of human rights defenders; including negative discourse aimed at delegitimizing and stigmatizing CSOs.<sup>4</sup>

Focusing on the countries that are the object of this comparative study, we have observed two regulatory trends in relation to the right to protest.

On the one hand, some countries have focused their energies on regulating access to information and eliminating dissenting opinions from the public debate. Political parties in power have managed to put government-aligned officials in charge of all public institutions and entities, and boycott – through the funding opportunities – the independent media. In Poland and Hungary we have seen how the parliamentary majority has helped the partisan cause, approving reforms of the judicial system that call into question the

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3 European Union Agency for Fundamental Rights. (2018). "Difficulties faced by civil society organizations working in the field of human rights in the European Union (Summary)." [Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society-summary\\_es.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society-summary_es.pdf)]

4 Ibid.

independence of the Supreme Court and Constitutional Tribunal, as well as laws governing broadcast media content.

On the other hand, other countries have created a police state, closely supervising citizens. The concern for national security has justified the approval of new laws restricting the use and enjoyment of public space. In France and Spain internal security law have emerged, further empowering the police to control spaces and people. These measures have not been paired with judicial controls or clear limits to these new powers. In Germany, in turn, we have seen an increase in communications surveillance laws and a reduction in the right to privacy of citizens.

In all states, we have observed the following challenges for civil society:

Firstly, use of legal machinery to repress civil society. For example, the creation of obstacles to the recognition or registration of organizations; or statutory limiting the exercise of the right to peaceful assembly. Several states have criminal laws that prohibit defamation or insulting of state institutions or national symbols, thereby restricting freedom of expression disproportionately. In particular, in Poland and Hungary, criminal legislation is used to defend the “honour” and “good image” of the nation.

Secondly, disproportionate use of force. In recent year, police authorities have had their powers expanded, through vague laws that still have not been judicially explored. The use of detention, sanctions and warnings as intimidation techniques is increasingly common. On top of that there is also the use of non-lethal weapons to control demonstrations (including rubber bullets and tear gas). This can be seen as yet another police strategy aimed at unnecessarily causing tension with protesters. In many countries, such as Spain and Germany, there are no impartial accountability mechanisms to investigate of police officers behind a violation.<sup>5</sup>

Thirdly, limitations of access to economic resources and public funding. There is no doubt that regulations and policies related to access to economic resources have a significant impact on the freedom of association and the ability of civil society to work effectively. According to the European Union Agency for Fundamental Rights, some of the most common problems for organiza-

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5 Ibid.

tions are shrinking budgets aafter the economic crisis; funding cuts for some specific activities and causes; and bureaucratic obstacles to access funds. In Hungary, we have observed the implementation of smear campaigns in the public media against organizations that receive foreign funding. In France and Poland, organizations that work with migrants and victims of gender-based violence, respectively, have seen the flows of funds cut when local authorities frontally opposed their ideological position.

Fourth, the right to participation has been constrained by a limited access to information. We have noted significant criticisms regarding limitations in access to information on political or legislative proposals. All five countries suffer from lack of protection of investigative journalism, in favour of political or business interests. In some cases, the disclosure of confidential information is being severely sanctioned, even if it is clearly in the public interest. On the other hand, throughout the European Union there is a lack of political will to carry out consultations prior to the adoption of laws.<sup>6</sup> Rules are approved through accelerated procedures, or participation processes are established with strict and unrealistic deadlines to send comments and observations.

Finally, protest has been prosecuted. The range of activities that can be sanctioned and subject to the imposition of penalties has increased. Procedures are long and expensive, exhausting civil society and creating a climate of self-censorship. In Spain, a strict interpretation by the public prosecutor's office of crimes of exalting terrorism and humiliating victims of terrorism has brought numerous artists and comedians to trial. In France, some companies are waging a real war in court against journalists who uncover activities of suspicious legality.

As a result, we are witnessing a transformation of civil society, as they seek to adapt and find new ways to make their voices heard. We have observed the emergence of numerous movements that are created and organized through social networks, as well as new methods of organization, more assemblies and no defined leaders. The Maecenata Foundation, a research centre that monitors the activity of civil society in Europe, observes a transformation of civil

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6 Ibid.

society organizations towards smaller, more ephemeral and more politicized entities.<sup>7</sup>

We also see a great deal of attention from governments and the business community, which sometimes yield to the pressures of protests, and at other times invest a lot of effort and resources in suppressing critical voices. However, the Maecenata Foundation also points out the apparent contradiction in the space occupied by civil society. While the governments of Western Europe seem to be encouraging citizen participation, this does not translate into an increase in the space for civil society. Instead they often create bureaucratic obstacles through overregulation.<sup>8</sup>

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7 European Civic Forum. (2019). "Activizanship, Democracy under stress / rebuilding trust / rights for all". Chapter "What lies behind the concept of civil society?", pp. 46-50. [Available at: <http://civic-forum.eu/publication/view/activizanship-3>]

8 Ibid.

3

COMPARATIVE

STUDY

# Germany

## Legal and political context

**Introduction.** Germany is a representative democracy with a political culture and a vibrant civil society. Civic freedoms, including freedom of association, peaceful assembly and expression, are widely respected both in law and in practice. However, in recent years, social tension has increased markedly in the country and has tested the democratic system.<sup>9</sup> Authorities have tackled terrorist threats and other security concerns through greater surveillance of private communications.

The political debate has hardened, among other reasons, after the large influx of asylum seekers in the country in 2015 and the increase in far-right movements. With the aim of eliminating hate speech, German institutions intervened to regulate public debate spaces, especially in social networks. Many civil society organizations (CSOs) criticized the fact that the new legislation posed a risk to the exercise of freedom of expression.

**Polarization of the migration debate.** In 2015, Germany witnessed the highest level of immigration since 1992, with a migration surplus of 1.14 million people and a historical record of asylum seekers (890,000 arrivals documented in the System of Quotas of Initial Distribution of Asylum Seekers).<sup>10</sup> In the same period, large protest movements and far-right groups that opposed immigration in Germany emerged. Amongst them there is Alternative for Germa-

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9 The results of the Freedom House indicator for 2018 classify Germany as a country of “Free” status and give it a score of 94 out of 100 on the freedom scale. [Available at: <https://freedomhouse.org/report/freedom-world/2018/germany>]. See also: Civic Spaces Tracking platform managed by Civicus Monitor. [Available at: <https://monitor.civicus.org/news-feed/2016/09/01/germany-overview/>]

10 Federal Office for Migration and Refugees (BAMF), Ministry of Interior of Germany. (2015). “Migration Report 2015”. [Available at: <http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Migrationsberichte/migrationsbericht-2015.html>]

ny (AfD), which in 2017 became the largest opposition bloc in the country, and the Islamophobic movement of the Patriotic Europeans Against the Islamization of the Occident (PEGIDA).

This led to a polarization of political discourse, including hate speech and violence, leading German authorities to close online portals considered extremists.<sup>11</sup> In October 2017, the German Parliament (*Bundestag*) passed the Network Enforcement Act (NetzDG), which requires social network managers to take measures to filter the content disseminated in these networks. While the law aims to address the spread of “criminal and unconstitutional” publications, civil society in Germany expressed concern about the risk of also censoring appropriate content and the fact limitation of freedom of expression is left in the hands of private entities.<sup>12</sup>

**Private communications surveillance.** In 2013, documents leaked by Edward Snowden, a former contractor of the United States National Security Agency (NSA), revealed that the NSA, in collaboration with the German Federal Intelligence Service (BND), had secretly collected data on private communications in Germany. A parliamentary investigation into the nature of the cooperation between the NSA and the BND was closed in 2017 without conclusive results. The report raised strong criticism from opposition parties, especially the Left Party and the Greens, who refused to sign the final version of the document. These same parties had included recommendations in the aforementioned report, among others, the need to submit the German Intelligence Service to more external and parliamentary oversight and to end what they called “a secret war in, from and with Germany.”<sup>13</sup>

After the scandal, in June 2017 the *Bundestag* passed a law to reform the BND. The new legislation strengthened government monitoring of intelligence activities, but was widely condemned by civil society for explicitly allowing certain

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11 On 31 August 2017, Reporters Without Borders criticized the closure of a far-left website against globalization that, according to the authorities, had disseminated “criminal and unconstitutional” content. [Available at: <https://rsf.org/en/news/rsf-criticizes-germanys-ban-leftist-website-constitutionally-questionable>]

12 Reporters Without Borders, Germany. [Available at: <https://rsf.org/en/germany>]

13 For more information see the Deutsche Welle programme “NSA spying scandal committee presents controversial final report” of 28 June 2017. [Available at: <https://www.dw.com/en/nsa-spying-scandal-committee-presents-controversial-final-report/a-39453668>]

types of surveillance activities towards foreign journalists, as will be explained later.

## Space for civil society and freedom of association

**Situation of freedom of association.** German civil society remains relatively free to set its own agendas and participate in a wide variety of activities, representing a plurality of ideological options. Since the 19<sup>th</sup> century, various civil society organizations have cooperated closely with local and national governments, thanks to a legal system that facilitates the creation of associations and entities.

**CSOs working with migrants.** Although the state does not interfere in the work of associations, since 2015 several attacks by non-state actors have been documented, especially against associations and people working with migrants and refugees.

**Attacks against refugees and their homes reached a maximum of 3,500 in 2016. In the first half of 2018 alone, around 700 attacks were reported.**<sup>14</sup>

**In 2016, the German Institute for Human Rights reported: “With the new situation and assistance to refugees in Germany, those who actively work with refugees have become a target for hatred and violence. According to estimates of civil society organizations, this threat is not sufficiently recognized by government agencies.”**<sup>15</sup>

**CSOs in politics.** Non-profit associations, foundations and corporate organizations (NPOs) have the right to receive tax-free donations if they “pursue public, charitable or church-related purposes.”

Tax legislation lists 25 activities likely to receive such tax benefits. Although this list includes “the general promotion of the democratic state” and “the promo-

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14 Freedom House, Report on Germany, 2018. [Available at: <https://freedomhouse.org/report/freedom-world/2019/germany>]

15 Monitor Tracking Civic Spaces, Civicus Monitor: Germany. [Available at: <https://monitor.civicus.org/country/germany/>]

tion of citizen participation for charitable, benevolent and ecclesial purposes”, the tax code does not include the promotion of public policies (advocacy), such as the promotion of human rights or the environment. CSOs that participate in advocacy activities fall into a legal loophole and have to register their activities for a different purpose, for example, “promoting democratic education.” As a result, cases have been documented in which the authorities have denied financial aid to the aforementioned organizations.<sup>16</sup>

In 2014, the international network of activists ATTAC was deprived of its tax benefits, for carrying out, according to the authorities, “activities of a political nature beyond the prescribed purposes of public benefit.” This decision was appealed at the local court and again before the Federal Tax Court. In its ruling of February 2019, the Supreme Court ruled that “influencing political decision making and shaping public opinion [...] does not fulfil a charitable purpose.”

This ruling could affect the survival of a large number of organizations currently participating in the promotion of human rights at political and parliamentary level.<sup>17</sup>

## Right to information and freedom of the press

Situation of freedom of information. Media act freely and represent a plurality of ideological options.<sup>18</sup> In recent years, the *Bundestag* has approved numerous legislative reforms that aim to control and monitor telecommunications, as well as criminalize the use of illegitimately obtained information.<sup>19</sup>

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16 Civic Space Watch, “GERMANY: The case of ATTAC in light of globally closing civic spaces”, 17 July 2017. [Available at: <http://civicspacewatch.eu/germany-the-case-of-attac-in-light-of-globally-closing-civic-spaces/>]

17 Civic Space Watch, “GERMANY: ATTAC ruling could affect a thousand organisations – Interview with Coalition for Legal certainty for political advocacy”, 29 April 2019. [Available at: <http://civicspacewatch.eu/germany-attac-ruling-could-affect-a-thousand-organisations-interview-with-coalition-for-legal-certainty-for-political-advocacy/>]

18 Freedom House, Press Freedom Report: Germany, 2016. [Available at: <https://freedom-house.org/report/freedom-press/2016/germany>]

19 Reporters Without Borders, data and information about Germany. [Available at: <https://rsf.org/en/germany>]

Press covering demonstrations has suffered numerous intimidations, including physical violence. Particularly concerning is the fact that official press identification cards are only available to those who work as full-time journalists or journalism is their main job, leaving other professionals without the same level of protection.<sup>20</sup>

**Protection of investigative journalism.** Journalistic activities have traditionally been excluded from restrictions on access to confidential information and have enjoyed certain concessions. For example, Law G10 exempts journalism from the restrictions that may be imposed on the confidentiality of email and telecommunications. This special regime has not been maintained in the new regulations, which led media associations to protest against what they considered “a series of monitoring laws that pose a threat to media freedom.”<sup>21</sup>

For example, the GeschGehG law on the protection of Confidential Business Secrets provided for absolute protection of business secrets, without providing a good definition of this concept or leaving room for reporting fraud and illegal activities. After a great mobilization of the press community, the law was amended, and in its new wording it includes exemptions intended to protect whistle-blowers, journalists and employees. The sanctions stated in the GeschGehG law do not apply when the acquisition, use or disclosure of information is adequate to protect the general public interest.<sup>22</sup>

**Oliver Schröm, editor in chief of the research centre Correctiv, is being prosecuted for allegedly betraying trade secrets. Schröm and his team had investigated the so-called “cum-cum” and “cum-ex” bank transactions, a fraud of at least 55 billion euros made by an international network of investors,**

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20 Civic Space Watch, “GERMANY: Journalists facing conflict with emergency responders over filming”, 9 August 2018. [Available at: <https://civicspacewatch.eu/germany-journalists-facing-conflict-with-emergency-responders-over-filming/> ] See also Freedom House, Report on Germany, 2018. [Available at: <https://freedomhouse.org/report/freedom-world/2018/germany>]

21 Netzpolitik.Org, “Saturday in Berlin: demonstration against surveillance, celebration for fundamental rights”, 6 September 2017. [Available at: <https://netzpolitik.org/2017/samstag-in-berlin-demonstrieren-gegen-ueberwachung-feiern-fuer-grundrechte/>]

22 For more information see: Mayer & Brown, “Germany Introduces New Trade Secrets Act Which Imposes Extensive Preventive Measures on Companies”, 11 April 2019. [Available at: <https://www.mayerbrown.com/en/perspectives-events/blogs/2019/04/germany-introduces-new-trade-secrets-act-which-imposes-extensive-preventive-measures-on-companies>]

bankers, accountants and lawyers. In March 2018, the Zurich prosecutor formally requested the Hamburg prosecutor to open an investigation of Schröm and accuse him of “instigating the betrayal of trade secrets.”<sup>23</sup>

**The informant’s law.** In December 2015, a criminal provision came into force that punishes the handling of data obtained by illegal means with up to three years in prison.<sup>24</sup> This legislation is enforced without distinction to investigative journalism. Apart from this lack of protection for journalistic activities, there is also a supplement to be added to the Criminal Procedure Code, allowing searches in editorial offices and the seizure of evidence and other materials found.<sup>25</sup>

In an exceptional case, the federal prosecutor indicted two journalists of the NetzpPolitik.org newspaper for treason, for allegedly having revealed a state secret. According to the media, the two journalists were indicted for political reasons, to curb the public debate about online surveillance after the Snowden case.<sup>26</sup> The case was finally closed without conviction.<sup>27</sup>

**Surveillance of private communications and espionage of foreign journalists.** In 2016,<sup>28</sup> the Foreign Intelligence Reform Act expanded the ability of the Federal Intelligence Service (BND) to collect information from online messaging services, such as WhatsApp. The new law establishes various levels of protection according to the nationality of the person. The BND cannot spy on German nationals, but, on the other hand, can perform limited espionage when the person is a national of another EU country and without any restriction when the person comes from a third country, as long as it is based on the

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23 For more information see: Columbia Journalism Review, “He helped expose one of the biggest scams in history. Now he’s being prosecuted”, 20 February 2019. [Available at: <https://www.cjr.org/analysis/oliver-schrom.php>]

24 Article 202d of the German Criminal Code

25 Section 97 of the Criminal Procedure Code

26 For more information see: <https://netzpPolitik.org/2015/suspicion-of-treason-federal-attorney-general-announces-investigation-against-us-in-addition-to-our-sources/>

27 Freedom House, Report on Freedom of the Press: Germany, 2016. [Available at: <https://freedomhouse.org/report/freedom-press/2016/germany>]

28 In force since January 2017.

need to protect the country.<sup>29</sup> Additionally, the law allows the BND to share this information with foreign agencies.<sup>30</sup>

German civil society has expressed concern about the fact that journalistic activities are not exempt from these measures. According to Spiegel, this type of espionage has already happened in the past, when the BND investigated foreign journalists from the British BBC in Afghanistan and London, from the New York Times in Afghanistan and mobile and satellite phones from the Reuters news agency in Afghanistan, Pakistan and Nigeria.<sup>31</sup>

The draft law was received with widespread criticism from media associations and human rights defenders, and was condemned by three United Nations Special Rapporteurs.<sup>32</sup> Moreover, they criticized the differences in treatment to the detriment of non-German citizens, considering it discriminatory.<sup>33</sup> The OSCE Representative for Freedom of the Media argued that the draft law creates “extreme conditions for data collection and processing” and offers “insufficient guarantees for the rights of foreign journalists and lawyers.”<sup>34</sup>

**Attacks on journalists.** Since 2015, there has been an increase in attacks against journalists, mostly while they were covering demonstrations. Reporters Without Borders and the German Ministry of Interior documented an increase in attacks against members of the press across the country. The victims of these attacks are, for the most part, photographers, camera teams or reporters who covered demonstrations of the Islamophobic Pegida movement and its regional branches, or concentrations or counter-demonstrations of the

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29 For more information see: <https://www.lawfareblog.com/new-rules-sigint-collection-germany-look-recent-reform>

30 See also: <https://monitor.civicus.org/newsfeed/2016/08/23/proposed-intelligence-law-threatens-media-freedoms/>

31 For more information see: <https://rsf.org/en/news/spiegel-report-german-foreign-intelligence-agency-bnd-spied-foreign-journalists>

32 UN Special Rapporteurs, David Kaye (Freedom of Opinion and Expression), Michel Frost (Situation of Human Rights Defenders) and Mónica Pinto (Independence of Judges and Lawyers) expressed their concern about the planned reform and the threat it poses to the exercise of the right to freedom of expression. [Available at: <https://rsf.org/en/news/three-un-special-rapporteurs-criticize-german-foreign-intelligence-reform-bill>]

33 Ibid.

34 OSCE, Press release, “Surveillance amendments in new law in Germany pose a threat to media freedom, OSCE Representative says, asks Bundestag to reconsider bill”, 8 July 2016.

far right. According to Reporters Without Borders, the media have been stigmatized as “lying press” by the speakers of these movements, which makes media professionals a target of insults and collective harassment.<sup>35</sup>

In early May 2019, the German city of Chemnitz was the epicentre of fierce clashes between groups for and against immigration. The media MDR, Der Spiegel, Watson online, Buzzfeed Germany, ARD and Funke reported a high level of hostility and attacks against their journalists.

“The atmosphere in the protests in Chemnitz was more hostile to the media than we have experienced since the Islamophobic movement PEGIDA began in 2015. It is unacceptable that in Germany journalism professionals fear for their own safety simply because they cover major public events,” said Michael Rediske, executive member of the board of directors of Reporters Without Borders Germany.<sup>36</sup>

**Police inactivity.** For 25 years, there has been a code of conduct for cooperation between the police and the media, and police forces receive training on media law. However, in its 2016 “*Nahaufnahme*” report on Germany, Reporters Without Borders Germany criticized the fact that police officers took a passive attitude when journalists were prevented from doing their job, and several incidents were documented in this regard.<sup>37</sup>

In 2017, several attacks on journalists were also documented in Hamburg, before and during the G20 summit in July 2017. Media were attacked by protesters and sprayed with pepper spray and water cannons by the police, even when they were clearly identifiable as media. Before the G20 summit in Hamburg, the federal police (BKA) withdrew the accreditation to 32 media outlets, at short notice and claiming vague “security reasons.” At the

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35 According to Reporters Without Borders, there was an increase in attacks against journalists in Germany in 2018 compared to the previous two years. Many of these cases are linked to riots in Chemnitz. [Available at: <https://rsf.org/en/news/clear-increase-violence-against-journalists-germany-2018>]

36 Reporters Without Borders, “Clear increase in violence against journalists in Germany in 2018”, 10 September 2018. [Available at: <https://rsf.org/en/news/clear-increase-violence-against-journalists-germany-2018>]

37 Civic Space Watch, “GERMANY: Journalists facing conflict with emergency responders over filming”, 9 August 2018. [Available at: <https://civicspacewatch.eu/germany-journalists-facing-conflict-with-emergency-responders-over-filming/> ]

end of August 2017, the German Ministry of Interior admitted that the decision to blacklist some journalists was not always based on well-founded facts, and that in at least four cases the decision to withdraw accreditation had been incorrect.<sup>38</sup>

## Freedom of expression and thought

**Situation of freedom of expression and thought.** Freedom of expression is protected in the constitution, with the exception of hate speech, the defence of Nazism and the denial or trivialization of the Holocaust. Insulting heads of state of other countries is also considered a crime. Even so, civil society has documented an increase in hate speech through social networks, mostly aimed at foreigners, refugees and people from the LGBTI community.<sup>39</sup>

In April 2016, the German authorities agreed to a request from Turkish president Erdoğan to initiate investigations against a German satirical critic, Jan Böhmermann, which raised concerns about the Government's commitment to freedom of expression. In October 2016, the prosecutors announced that no charges would be filed against Böhmermann.

**Prevention of hate speech in social networks: the Network Enforcement Act.** Trying to address the spread of hate speech and incitement to violence on the Internet, German authorities repeatedly criticized the lack of Facebook's initiative to eliminate prohibited content from its platform.<sup>40</sup> In October 2017, the *Bundestag* passed the Network Enforcement Act (NetzDG), which requires online platform providers to remove "clearly illegal" content within 24 hours from the date of notification, and content that "may consist in

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38 RWB. (2017). UN Human Rights Council Universal Periodic Review. [Available at: [https://www.reporter-ohne-grenzen.de/uploads/tx\\_ifnews/media/UPR30\\_Germany\\_en\\_final.pdf](https://www.reporter-ohne-grenzen.de/uploads/tx_ifnews/media/UPR30_Germany_en_final.pdf)]

39 Monitor Tracking Civic Spaces, Civicus Monitor: Germany. [Available at: <https://monitor.civicus.org/country/germany/#newspost-658>]

40 The German Interior Minister, Thomas de Maiziere, on a visit to the US company, called for further actions to control racist content or incitement to violence. [Available at: <https://www.reuters.com/article/us-germany-facebook-idUSKCN1141S6>]

hate speech" in seven days. If they do not act, they can be punished with fines of up to 50 million euros.<sup>41</sup>

Critical voices expressed concern about the transfer of responsibility from the state to private companies, as it is technology companies the ones who determine what should be allowed online.<sup>42</sup> Specifically, they highlighted the lack of official supervision of the elimination procedure to detect overblocking, since there are no legal mechanisms to appeal against these decisions.<sup>43</sup>

In the first half of 2018 alone, Google claimed to have received around 215,000 complaints against videos on its YouTube platform. According to the company, this led to the withdrawal of 27 percent of the content reported in this period.<sup>44</sup>

Trung Khoa Le, an exiled Vietnamese journalist in Germany, saw his Facebook account blocked after being added, without his consent, as an administrator of a page containing serious violations of Facebook's terms of use. Reporters Without Borders documented up to 23 similar cases, which were related to attempts by the Vietnamese government to suppress critical voices outside the country. Reporters Without Borders highlighted the lack of effective mechanisms to appeal against the decision to block Le's account, and called for democratic oversight of this type of company decisions.<sup>45</sup>

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41 Freedom House, Freedom on the Net 2018: Germany, 1 November 2018. [Available at: <https://www.refworld.org/docid/5be16b164.html>]

42 Freedom House, Report on Germany, 2018. [Available at: <https://freedomhouse.org/report/freedom-world/2019/germany>]

43 Reporters Without Borders, "The Network Enforcement Act apparently leads to excessive blocking of content," 3 August 2018. [Available at <https://rsf.org/en/news/network-enforcement-act-apparently-leads-excessive-blocking-content>]

44 Ibid.

45 More information available at: <https://rsf.org/en/news/vietnam-how-facebook-being-abused-silence-critics-germany>

## Right to peaceful assembly and demonstration

### Situation of the right to a peaceful assembly and demonstration.

Demonstrations are common and the exercise of law is respected in practice, with legal exceptions for groups that defend Nazism or oppose the democratic order. In recent years, a series of very tense mass demonstrations have occurred on a variety of issues, including the political situation in Turkey, free trade agreements, anti-globalization and immigration. Far-right demonstrations and counterdemonstrations organized by groups in favour of receiving refugees often ended in clashes and episodes of violence.<sup>46</sup>

In July 2017, the G20 summit was held in Hamburg. More than 100,000 people, national and international activists gathered in the city to demonstrate, with some episodes of violence caused by a minority of protesters.

On the eve of the summit, on 6 July, violent clashes occurred between protesters and police during the “Welcome to Hell” march. According to *Der Spiegel Online*, police acted disproportionately and used water cannons, tear gas and batons to disperse the demonstrators. The report also describes how the police “repeatedly and violently” pulled people away from the crowd. Some media outlets estimated that 400 arrests were made, while 500 police officers were injured by bottles, stones and fireworks.<sup>47</sup>

Security measures prior to the G20 were also highly criticized. The local and federal police exchanged data with foreign official interlocutors to obtain information for both border controls and controls of individuals. Moreover, police requested people and media who attended the demonstrations to provide videos and photos with potentially incriminating material to identify those who demonstrated violently.

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46 Monitor Tracking Civic Spaces, Civicus Monitor, “Tensions rise in Germany over growing xenophobia and hate speech”, 9 January 2017. [Available at: <https://monitor.civicus.org/news-feed/2017/01/09/tensions-rise-germany-over-growing-xenophobia-and-hate-speech/>]

47 Monitor Tracking Civic Spaces, Civicus Monitor, “Excessive force, protest violence mar G20 demonstrations”, 7 August 2017. [Available at: <https://monitor.civicus.org/news-feed/2017/08/07/excessive-force-protest-violence-marr-g20-demonstrations/>]

According to *Netzpolitik.org*, state actions during the G20 Summit are being investigated to assess the extent to which German security authorities interfered with the right to freedom of assembly.<sup>48</sup>

**Lack of control over police.** The German police force is not obliged to wear its identification number in demonstrations. Although the European Court of Human Rights recommended that police force carry individual identification,<sup>49</sup> the main police union has consistently and vehemently opposed the introduction of any type of identification. The union argued that the use of identification numbers places all agents under a “general suspicion” and represents a risk to the inviolability of the private and family life of its members.<sup>50</sup>

Amnesty International has criticized the lack of an independent investigative body in German police forces.<sup>51</sup>

*Hambach Forest* is a forest near Cologne, the logging of which was planned in order to expand an open pit coal mine. The fight to prevent this has become a symbol of resistance among the German environmental movement, which for decades has attempted to stop the destruction of the forest. Since 2012, the forest has been occupied with tree houses.<sup>52</sup> Throughout 2018, there were numerous clashes with police that tried to evict hundreds of activists who had moved in the area to prevent the logging. The activists claimed to be victims of police violence and shared abundant videos and

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48 Monitor Tracking Civic Spaces, Civicus Monitor, “State under scrutiny for surveillance during G20 summit”, 27 de septiembre de 2017. [Available at: <https://monitor.civicus.org/newsfeed/2017/09/27/state-under-scrutiny-surveillance-G20-summit/>]

49 ECHR judgement *Hentschel and Stark v. Germany* of 9 November 2017, application no. 47274/15

50 Monitor Tracking Civic Spaces, Civicus Monitor, “Netzdg law enacted to combat hate speech but raises fears of censorship”, 6 December 2017. [Available at: <https://monitor.civicus.org/newsfeed/2017/12/06/NetzDG-law-combat-hate-speech-fears-censorship/>]

51 Civic Space Watch, “GERMANY: Journalists facing conflict with emergency responders over filming”, 9 August 2018. [Available at: <https://civicspacewatch.eu/germany-journalists-facing-conflict-with-emergency-responders-over-filming/>]

52 El País, “Alemania detiene la tala del bosque de Hambach, que iba a ser arrasado por la ampliación de una mina” (Germany stops logging of the Hambach forest, which was to be razed due to extension of a mine), 5 October 2018. [Available at: [https://elpais.com/sociedad/2018/10/05/actualidad/1538753800\\_181990.html](https://elpais.com/sociedad/2018/10/05/actualidad/1538753800_181990.html)]

photographs of attacks during evictions.<sup>53</sup> Currently, logging has stopped pending a court decision.

**State laws.** German federal laws do not provide for preventive measures to restrict the exercise of freedom of peaceful assembly. However, on 15 May 2018, the Bavarian parliament (regional parliament) approved the controversial Law on Police Actions (PAG). This law grants new powers to law enforcement authorities, including preventive detention for up to three months in the event of a risk of public disorder, without the need for a prior judicial ruling. Moreover, the law reduces the necessary threshold to establish online surveillance measures and DNA analysis, reducing it from “concrete suspicion” to “imminent danger.”<sup>54</sup> This means that police could take measures based on an indefinite threat and only perceived by police officers, without the need for a specific identifiable danger.

## Strategies and responses of civil society

**New forms of protest.** During the so-called refugee crisis of 2015-2016, many people volunteered to support newcomers and there were spontaneous welcome demonstrations throughout the country, without becoming a formal and solid organization. This strong solidarity response effectively counteracted the political agenda of the far-right parties, which called for stricter border control.

**Success of German civil society.** In several cases, German civil society managed to influence the parliamentary debate and modify legislative proposals. Two pressure mechanisms were particularly effective. First, the alliances of national and international actors for joint pressure campaigns. Second, the initiation of legal proceedings against laws or administrative practices that violate fundamental rights.

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<sup>53</sup> For more information see: <https://bosque.hambachforest.org/>

<sup>54</sup> Civic Space Watch, “GERMANY: Bavaria passes bill expanding police powers despite civil society opposition”, 17 May 2018. [Available at: <https://civicspacewatch.eu/germany-bavaria-passes-bill-expanding-police-powers-despite-civil-society-opposition/>]

**Alliance of national and international human rights actors.** German civil society actors showed a high degree of cooperation, as they were effectively mobilized through national and international coalitions.

The Alliance for Freedom of Expression was created in April 2017 to address criticism of the Network Enforcement Act. It is a coalition of associations of journalists and diverse organizations of civil society that seeks to pressure political parties to change legislation.

A large international coalition consisting of 17 media and human rights organizations urged an amendment to the BND reform law to increase the protection of the community of journalists against espionage. The coalition also raised the case to the OSCE Representative for Freedom of the Media, as well as to different United Nations Special Rapporteurs.<sup>55</sup>

**Legal challenges.** Organizations have successfully used legal procedures in federal courts to end restrictive practices regarding freedom of the press and freedom of expression.

Between 2015 and 2017, Reporters Without Borders successfully contested the use of data collected by the BND and denounced the repeated cases of journalists who were subject to surveillance by intelligence agencies without being notified. The Federal Administrative Court of Leibniz considered this practice illegal and demanded that the BND delete the information of the plaintiffs from the database.

Reporters Without Borders then developed an online tool, by which anyone could invoke the ruling of the Federal Administrative Court. In a few days, the BND received more than 2000 removal requests, which forced the agency to publicly announce the end of this practice.<sup>56</sup>

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55 Special Rapporteurs on Freedom of Opinion and Expression, on the Situation of Human Rights Defenders and on the Independence of Judges and Lawyers.

56 Reporters Without Borders, "Germany: Landmark ruling against the BND", 27 December 2017. [Available at: <https://rsf.org/en/news/germany-landmark-ruling-against-bnd>]

# France

## Legal and political context

**Introduction.** The French democratic system generally protects and guarantees civil and political freedoms. However, in the last decade, new laws that reduce the space of action of social movements have been passed regularly. Many of these laws were passed under generic titles, not necessarily related to organized civil society, and were then used to suppress demonstrations and other forms of protest. For example, laws that reinforce the fight against terrorism.<sup>57</sup>

**Anti-terrorism measures.** Following the terrorist attacks that France suffered in January and November 2015, the Government decreed the state of emergency, which was successively extended by Parliament until 2017. The repeal of the state of emergency coincided with the adoption of a new security law, Law 2017-1510 of Internal Security and Measures for the Fight against Terrorism. The United Nations Special Rapporteur, Fionnuala Ní Aoláin, expressed her concern about the adoption of this legislation and stated that the measures it contained meant “in practice a qualified state of emergency.”<sup>58</sup> Along the same lines, civil society expressed concerns about the fact that measures that should be exceptional in nature, such as preventive justice, were included in ordinary legislation.<sup>59</sup> However, the Constitutional Council<sup>60</sup> accepted the

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57 Civic Space Watch, “FRANCE: Civic space under pressure – a roundup of the latest developments”, 12 January 2018. [Available at: <http://civicspacewatch.eu/france-civic-space-under-pressure-a-roundup-of-the-latest-developments/>]

58 Preliminary conclusions of the visit to France of Fionnuala Ní Aoláin, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism, at the end of her visit to the Republic of France (14 to 23 May 2018). [Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E>]

59 Freedom House, Report on France, 2018. [Available at: <https://freedomhouse.org/report/freedom-world/2018/france>]

60 It should be noted that the Constitutional Council is not a court or a judicial mechanism, but a political body whose members are appointed by the Senate, Congress and the President of the Republic.

vast majority of the articles of the law and limited itself to mentioning the risk they might entail.<sup>61</sup>

**The Gilets Jaunes movement.** The movement popularly known as *Gilets Jaunes* or “Yellow Vests” was born in France in October 2018. It underwent a remarkable evolution during the months of maximum activity: it began as a social movement that opposed the new fuel taxes, but ended up developing in a more global movement against the French political class and the country’s deep socioeconomic inequality. Starting from 17 November 2018, and for months, protest actions took place every Saturday: demonstrations, road-blocks and blockages of access to oil deposits, among others. The number of participants in the protests fluctuated, with around 288,000 people at the peak (according to the Ministry of Interior) and 32,000 at times of low participation (68,000 according to “*Le nombre jaune*”).<sup>62</sup> The protests were often of a conflict nature, clashes took place between protesters and the police and there were scenes of remarkable violence. The number of injured is high: 4,000 people injured, counting both sides, and 12 dead.<sup>63</sup>

**Anti-casseur law.** The Law 2019-209 on the Reinforcement of Public Order in Demonstrations, popularly known as the “*anti-casseur*” law, which could be translated as “anti-vandal law”, was approved in April 2019. This law has been interpreted by civil society as a response from the Government to the massive mobilizations of the Yellow Vests. It establishes particularly harsh measures for the exercise of the right to peaceful assembly. For example, it allows imprisonment for perpetrators of acts of vandalism carried out in the context of a demonstration, as well as for their companions.<sup>64</sup> The Constitutional Council ruled on the law on 4 April 2019, on the initiative of President Emmanuel Macron himself. The Constitutional Council considered all the proposed articles

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61 Decision of the *Conseil Constitutionnel*, 2017-695 QPC, 29 March 2018. [Available at: <https://www.conseil-constitutionnel.fr/decision/2018/2017695QPC.htm>]

62 More information available at: <http://www.lefigaro.fr/politique/2019/01/12/01002-20190112ARTFIG00126-de-l-acte-i-a-l-acte-ix-la-mobilisation-des-gilets-jaunes-en-chiffres.php>

63 Details of the information available at: <https://ans.wiki/q/combien-de-morts-y-a-t-il-eu-pendant-le-mouvement-des-gilets-jaunes/>

64 For more information see: [https://www.lemonde.fr/politique/article/2019/04/04/l-article-phare-de-la-loi-anticasseurs-censure-par-le-conseil-constitutionnel\\_5445806\\_823448.html](https://www.lemonde.fr/politique/article/2019/04/04/l-article-phare-de-la-loi-anticasseurs-censure-par-le-conseil-constitutionnel_5445806_823448.html).

valid except article 3, which allowed the prefects to prohibit a person from participating in a demonstration for a month if it represented a “threat of particular gravity”, without having to go to a judge.

## Space for civil society and freedom of association

**Situation of freedom of association.** In general, the associative system is simple and allows the representation of a large plurality of opinions, as long as the association has a legitimate objective. The political, social and economic context, however, complicates the functioning of the social structure. The following types of obstacles were noted by the Vox Public association: (i) the stigmatization of divergent voices and, specifically, the delegitimization of personal qualities of public voices; (ii) the criminalization of citizen mobilization and the increase of judicial cases related to “solidarity crimes”<sup>65</sup>; (iii) the division of civil society by increasing competitiveness to access public funds; and (iv) financial pressure.

**In April 2019, Interior Minister Christophe Castaner accused NGOs working with migrants of collaborating with human traffickers, without any evidence.**<sup>66</sup>

**CSOs working with migrants.** While most organizations in France can operate freely, organizations that work with migrants or refugees have seen their conditions of action hardened. Many of these organizations are highly dependent on public subsidies, so they are vulnerable to coercion and intimidation by local authorities.

Several CSOs denounced in summer 2018 the complexity of carrying out their activities in northern France and on the border with Italy. According to the joint report published by Help Refugees, l’Auberge des Migrants, Utopia 56 and

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65 The crime of solidarity does not exist as defined in the French Criminal Code, but it is an expression used to denounce legal proceedings against individuals who try to help foreigners to enter or stay in France. For more information see: <https://www.vie-publique.fr/focus/de-crypter-actualite/delit-solidarite.html>

66 For more information see: [https://www.francetvinfo.fr/monde/europe/naufrage-a-lampedusa/des-ong-sont-elles-complices-des-passeurs-de-migrants-en-mediterranee-comme-l-assure-christophe-castaner\\_3271135.html](https://www.francetvinfo.fr/monde/europe/naufrage-a-lampedusa/des-ong-sont-elles-complices-des-passeurs-de-migrants-en-mediterranee-comme-l-assure-christophe-castaner_3271135.html)

Refugee InfoBus, police control and harass volunteers working in Calais, by taking photographs, systematically using identity checks at check-points and blocking access to the fields. According to the report, there were 37 incidents of physical violence and 104 of verbal violence last year, including insults and threats of detention or fines. The report denounces that 87% of cases of frisking concerned women, even though only 57.2% of people working in the area belonged to this demographic group. Moreover, the action of CSOs was constantly obstructed by the unjustified use of traffic fines and blocking of access to refugee sites, for example, blocking roads with stones or preventing the distribution of goods in other indirect ways. According to Amnesty International, these numbers could actually be much higher.<sup>67</sup>

Amnesty International activist Martine Landry was tried in February 2018 for helping two undocumented underage immigrants found on the border with Italy. The prosecution asked for five years in jail and 30,000 euros. The case is on appeal after the Nice court ruled in favour of the activist.<sup>68</sup>

The mayor of the city of Hayange, member of the National Front, obstructed the activities of the Secours Populaire organization, after accusing it of being politicized due to its pro-migrant propaganda. The City Council cut off the gas and electricity supply of the organization's premises and initiated an eviction procedure. Secours Populaire won in court on 19 December 2017.<sup>69</sup> According to Anne Duflot-Allieue, the president of Secours Populaire in Hayange, there is a climate of widespread tension in the cities led by the National Front.<sup>70</sup>

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67 Amnesty International, « Les actions de solidarité prises pour cible par la police » (Solidarity actions targeted by the police), 5 June 2019. [Available at: [https://www.amnesty.fr/liberte-d-expression/actualites/la-solidarite-prise-pour-cible?utm\\_medium=reseaux-sociaux&utm\\_source=twitter](https://www.amnesty.fr/liberte-d-expression/actualites/la-solidarite-prise-pour-cible?utm_medium=reseaux-sociaux&utm_source=twitter)]

68 For more information see: [https://www.lemonde.fr/police-justice/article/2018/07/14/relaxe-pour-martine-landry-la-benevole-d-amnesty-poursuivie-pour-delit-de-solidarite\\_5331246\\_1653578.html](https://www.lemonde.fr/police-justice/article/2018/07/14/relaxe-pour-martine-landry-la-benevole-d-amnesty-poursuivie-pour-delit-de-solidarite_5331246_1653578.html)

69 Civic Space Watch, "FRANCE: Civic space under pressure – a roundup of the latest developments", 12 January 2018. [Available at: <http://civicspacewatch.eu/france-civic-space-under-pressure-a-roundup-of-the-latest-developments/>]

70 Civic Space Watch, "FRANCE: criminalisation of solidarity in Hayange – interview with the local Secours Populaire", 7 March 2018. [Available at: <http://civicspacewatch.eu/france-criminalisation-of-solidarity-in-hayange-interview-to-the-local-secours-populaire/>]

**Legal actions against public participation (SLAPP Lawsuits).** Strategic litigation against human rights defenders is occasionally used by corporations and companies against those who criticize or investigate their actions. The paradigmatic case is that of the Bolloré corporate group, a company that is mainly engaged in logistics and transport activities. Bolloré has consistently filed lawsuits against those who critically report their business and activities in Africa. In just two years, the Bolloré group initiated 16 defamation proceedings<sup>71</sup> and sued more than 50 journalists, lawyers and NGOs.<sup>72</sup> Journalists and civil society have organized around the group *On ne se taira pas* (We will not shut up) to face and collectively manage the lawsuits filed by Bolloré.

Only since the beginning of 2019 the Bolloré group has been convicted three times for abuse of procedure, all three times after bringing journalists to trial for defamation.<sup>73</sup> However, the proceedings are long and too expensive for journalists and activists, since Bolloré often takes the case to the highest judicial instances. This has a clear discouraging and intimidating effect.

## Right to information and freedom of the press

**Situation of the media.** The media operate freely and represent a wide range of political opinions although, as in so many other countries, the media landscape is increasingly polarized and politicized. However, the concentration of ownership of the media is considered a risk.<sup>74</sup> The French media system is primarily owned by five families: Arnault, Bolloré, Bouygues, Dassault and Lagardère.<sup>75</sup> Civil society has denounced that the editorial lines are marked

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71 For more information see: <https://onnesetairapas.org/Semaine-de-la-Saint-Valentin-Bollore-toujours-fou-amoureux-des-poursuites>

72 For more information see: <http://corporatejustice.org/news/3900-sherpa-and-other-french-civil-society-organisations-face-libel-claim-for-exposing-alleged-land-grabbing-by-bollore-group>

73 More information available at: <https://onnesetairapas.org/Condamne-par-trois-fois-pour-procedures-abusives-Bollore-ne-lache-rien>

74 Freedom House, Report on France, 2018. [Available at: <https://freedomhouse.org/report/freedom-world/2018/france>]

75 Reporters Without Borders, "France's deceptive rise in the Press Freedom Index", 26 April 2017. [Available at: <https://rsf.org/en/news/frances-deceptive-rise-press-freedom-index>]. For more information see also: Le Monde Diplomatique, "Médias français, qui possède quoi?"

by the economic and ideological interests of these magnates, conditioning the coverage of topics such as the arms business, pharmaceutical companies or social justice.<sup>76</sup>

The journalists of the Canal + group, owned by Vincent Bolloré, held a multi-week strike in 2016 to protest against the editorial pressure. The conflict with the management of the channel had intensified after the Special Investigation programme was cancelled, on the *iTélé* channel, for having issued a critical report on Bolloré's businesses. Likewise, the channel censored a report on *Crédit Mutuel*, a bank run by a friend of his.<sup>77</sup>

**Attacks on the media.** Although President Macron has been vocal in favour of freedom of the press and media, the publishing business has shown its nervousness about the government's actions. Government representatives have questioned the independence of the media and journalism professionals in public, and numerous legal proceedings against investigative journalists have been initiated.<sup>78</sup>

Law 2016-1524 of 14 November 2016, popularly known as *Loi Bloche*, states that journalists should only reveal their sources in case of serious crimes and when it is necessary to complete an official investigation.<sup>79</sup> However, it criminalizes the receipt of leaked information and allows the state to initiate legal proceedings against unknown individuals for having stolen or leaked information, or used filtered information. According to civil society, this legal mechanism was originally designed to protect journalistic activities, but its practical application has made it an obstacle to investigative journalism, since it also affects information of undoubtedly public interest.<sup>80</sup>

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(French media: who owns what), December 2018. [Available at: <https://www.monde-diplomatique.fr/cartes/PPA>]

76 Op. cit. 75. See also: <http://www.sciencespo.fr/liepp/fr/content/qui-possede-les-medias-une-analyse-de-lactionnariat-des-medias>

77 Op. cit. 76.

78 Op. cit. 75.

79 This law has been applauded by various international organizations such as UNESCO. See: UPR compilation of UN reports, France. [Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/FRIndex.aspx>]

80 Civic Space Watch, "FRANCE: Civic space under pressure – a roundup of the latest developments", 12 January 2018. [Available at: <http://civicspacewatch.eu/france-civic-space-un->

In 2017, the Minister of Labour, Muriel Pénicaud, filed a criminal lawsuit based on the *Loi Bloche* after the newspaper *Libération* published information on a planned labour reform.

According to Reporters Without Borders, the 2017 election campaign was especially intense for the media. Three publishers – *Mediapart*, *Le Canard Enchaîné* and *Le Journal du Dimanche* – reported that they had received death threats for having published information considered as negative for the campaign.<sup>81</sup>

On 14 May 2019, two journalists from the *Disclose* investigative portal were called before the General Directorate of Interior Security (DGSI) to testify, accused of having exposed national defence secrets.<sup>82</sup> The journalists had published information demonstrating the use of French weapons in the Yemen war, including documents classified as confidential. The use of weapons manufactured in France for the aforementioned conflict had been repeatedly denied by the Government before such information came to light.<sup>83</sup> In total, eight journalists were summoned by the DGSI in May 2019, which led the National Union of Journalists to protest against such interference.<sup>84</sup>

**Violence against journalists.** According to Reporters Without Borders, the actions of intimidation and violence against journalists, both verbal and physical, increased in 2018, reaching an unprecedented level during the mobilizations of the *Gilets Jaunes*.<sup>85</sup>

During the demonstrations of the Yellow Vests movement, the group of journalists lamented attacks by both police and protesters. On one hand, they

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der-pressure-a-roundup-of-the-latest-developments/]

81 Reporters Without Borders, "France's deceptive rise in the Press Freedom Index", 26 April 2017. [Available at: <https://rsf.org/en/news/frances-deceptive-rise-press-freedom-index>]

82 A third journalist from *Radio France* was summoned for the same topic, for a diverse report.

83 More information available at: [https://www.lemonde.fr/actualite-medias/article/2019/05/15/armes-francaises-au-yemen-disclose-evoque-une-tentative-d-intimidation\\_5462323\\_3236.html](https://www.lemonde.fr/actualite-medias/article/2019/05/15/armes-francaises-au-yemen-disclose-evoque-une-tentative-d-intimidation_5462323_3236.html)

84 For more information see: <https://www.france24.com/fr/20190523-france-protestations-multipliant-apres-convocation-huit-journalistes-dglsi>

85 Reporters Without Borders, Review France, 2019. [Available at: <https://rsf.org/en/france>]

reported that they had been attacked by riot police, including with rubber bullets, even though they had been clearly identified. Journalists' unions reported to the authorities that personal protective equipment (helmets, glasses, gas masks) had been confiscated from a large number of photographers, thus preventing them from doing their job. The Interior Ministry denied that police had been instructed to limit the work of the press teams and promised to investigate the facts. Reporters Without Borders also reported occasional violence used by protesters, who had beaten and threatened journalists, especially from media outlets that did not support the movement.<sup>86</sup>

## Freedom of expression and thought

**Situation of freedom of expression and thought.** In general, freedom of expression is protected in France and people can criticize the government in public or in private without fear of reprisals. However, authorities have broad powers to prevent hate speech or the incitement to terrorism, and may even deport nationals of other countries if this type of speech is used in public.<sup>87</sup> Without disregarding the need to criminalize behaviours that “encourage terrorism” or “extremist activities”, the Commissioner for Human Rights of the Council of Europe has expressed concern about the vague or unclear definition of these rules, which may lead to the restriction of freedom of expression or the silencing of criticism.<sup>88</sup>

Since 1990, penalties intended to eliminate racism, xenophobia or revisionism were included in the Criminal Code. Offences against state symbols, such as the flag, are punishable by criminal law. Defamation is also criminalized.

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86 Reporters Without Borders, “More anti-media hostility and violence at France’s ‘Gilets Jaunes’ protests”, 3 January 2019. [Available at: <https://rsf.org/en/news/more-anti-media-hostility-and-violence-frances-gilets-jaunes-protests>]

87 Department of State, United States of America. (2018) Country Reports on Human Rights Practices 2018. [Available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/>]

88 Council of Europe, Human Rights Comment: “Misuse of anti-terror legislation threatens freedom of expression”, 12 April 2018. [Available at: <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>]

**Misuse of terrorism prevention legislation.** According to the Ministry of Justice, the number of people sentenced for incitement to terrorism has risen markedly, from 3 people in 2014, to 230 in 2015 and 306 in 2016, with an average of one year in prison as a sentence. This provision has been used to condemn very varied actions, from an ISIS follower calling for more terrorist attacks to a vegan activist who celebrated on Facebook the death of a butcher in a terrorist attack.<sup>89</sup>

This highlights the danger of this legislation: the creation of a generic label that does not differentiate between cases of incitement to terrorism and other verbal manifestations that do not contain the element of causing terror amongst civilian population.

## Right to peaceful assembly and demonstration

**Situation of the right to peaceful assembly and demonstration.** France has a deep culture of protest and traditionally citizens have occupied the streets to express their disagreement. However, recently approved administrative and police measures have been used against cultural minorities and social activists, and protest has been criminalized. Moreover, preventive justice has become a common way to avoid any type of demonstration, based on the risk of public disorders.

**Law on internal security and fight against terrorism.** The Law on Internal Security and Fight against Terrorism passed in 2017 extends the powers of prefects (*préfets*), high-ranking public officials, appointed by the Council of Ministers, who have administrative police powers. The prefects can now ban a demonstration for security reasons, on suspicion that violent acts are being prepared. It also allows the prefect to create “protection areas”, delimited areas in which these local authorities can frisk individuals, search their cars and personal items.<sup>90</sup> Limitations to this power are very vague, since the law only

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89 Ibid.

90 Bastamag, ‘Loi « anti-casseurs » : un point de non-retour dans la restriction des libertés pourrait être franchi’(*Anti-casseurs law: a point of no return in the restriction of freedoms might have been passed*), 12 March 2019. [Available at: <https://www.bastamag.net/Loi-anti-casseurs-un-point-de-non-retour-dans-la-restriction-des-libertes>]

mentions that they must be “adapted and proportionate to the needs of the context.”<sup>91</sup> If the person does not want to undergo these checks, access to the area is denied.<sup>92</sup> This power was attributed to local authorities for the first time under the state of emergency and was incorporated into ordinary legislation in 2017.

Florent Compain, president of Friends of the Earth France, and Denys Crolotte, a member of the Non-violent Alternative Movement, spent 21 hours in police custody for organizing a peaceful march in favour of the climate that brought together 1,500 people.

The march was banned on 7 December 2018 by the prefect of Meurthe-et-Moselle. The prefect alleged the risk of altercations with a simultaneous manifestation of the *Gilets Jaunes*, assuming that the difference of opinions on the fuel tax could lead to clashes. The demonstration took place anyway, without any incident. However, Florent Compain and Denys Crolotte were sentenced to 6 months in prison and a fine of 7,500 euros for not respecting the ban.<sup>93</sup>

**Anti-casseurs law.** The Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, has also expressed concern about the limitations added in the reform of the legislation, and has asked the French authorities for a greater respect for human rights in their actions.<sup>94</sup> The new law on demonstrations allows a judge to prohibit a person from participating in demonstrations

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91 Article 1, Law 2017-1510 of 30 October: Strengthening internal security and the fight against terrorism. [Available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000035932811&categorieLien=id>]

92 More information available at: <https://www.gouvernement.fr/en/reinforcing-internal-security-and-the-fight-against-terrorism>

93 Civic Space Watch, “FRANCE: Friends of the Earth activists arrested for organising peaceful climate march in Nancy”, 9 December 2018. [Available at: <http://civicspacewatch.eu/france-friends-of-the-earth-activists-arrested-for-organising-peaceful-climate-march-in-nancy/>]

94 Council of Europe, Memorandum: “Maintaining public order and freedom of assembly in the context of the ‘yellow vest’ movement: recommendations by the Council of Europe Commissioner for Human Rights”, 26 February 2019. [Available at: <https://www.coe.int/en/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for->]

on public roads. It also allows law enforcement authorities to carry out searches of luggage and cars before a demonstration.

The *anti-casseurs* law classifies hiding the face with scarves, masks or hoods, both entirely or partially, as a criminal offence. The penalty for hiding the face without a legitimate reason is up to 15,000 euros or a year in prison.<sup>95</sup> The aim, admitted by the promoters of the law, is to facilitate facial recognition and bring “troublemakers” to jail.

**Disproportionate use of force**. France is a source of concern due to the type of weapons police can use to control demonstrations. France is the only country in Europe where GLI-F4 grenades are used to regulate demonstrations.<sup>96</sup> An explosive that also contains tear gas. The detonation of this type of grenades is also deafening, reaching 165 decibels at a radius of five meters. This noise is superior to the take-off of an airplane, which produces about 140 decibels.<sup>97</sup> In 2014, the Inspector General of the Police and Gendarmerie admitted that these devices are capable of mutilating or fatally injuring a person and that they are the last resort before using firearms.<sup>98</sup> In fact, several people have been mutilated by this type of weaponry. For example, in 2018 a protester from Notre-Dame-des-Landes lost his hand trying to pick one up.<sup>99</sup> In May 2018, the Interior Ministry announced that it would not place more orders for GLI-F4 grenades and that it would replace them with the GM2L, with less explosive charge. However, he explained that they would continue using the existing stocks until they were finished.<sup>100</sup>

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95 Article 6, law 2017-1510, 30 October 2017.

96 Civic Space Watch, “FRANCE: Police must end use of excessive force against protesters and high school children”, 14 December 2018. [Available at: <https://civicspacewatch.eu/france-police-must-end-use-of-excessive-force-against-protesters-and-high-school-children/>]

97 More details available at: [https://paris-luttes.info/home/chroot\\_ml/ml-paris/ml-paris/public\\_html/IMG/pdf/glif4\\_fr.pdf](https://paris-luttes.info/home/chroot_ml/ml-paris/ml-paris/public_html/IMG/pdf/glif4_fr.pdf)

98 Civic Space Watch, “FRANCE: Yes, this is the only country in Europe to use explosive grenades against demonstrators”, 14 December 2018. [Available at: <https://civicspacewatch.eu/france-yes-this-is-the-only-country-in-europe-to-use-explosive-grenades-against-demonstrators/>]

99 More information about the case available at: [https://www.liberation.fr/france/2019/01/25/grenade-gli-f4-revelations-sur-une-arme-qui-mutile\\_1705396](https://www.liberation.fr/france/2019/01/25/grenade-gli-f4-revelations-sur-une-arme-qui-mutile_1705396)

100 Ibid.

Moreover, the National Human Rights Advisory Commission expressed concern about the fact that the use of firearms by law enforcement authorities is limited in a vague way, using expressions such as “in defence of occupied spaces.”

On the other hand, the use of rubber bullet launchers (former “flash-ball”) is also highly controversial in France. Since its use was approved, human rights organizations and CSOs have been concerned about the lack of clarity of the rules of use, the lack of specific training for police forces and the potential to cause serious injuries.<sup>101</sup> During the *Gilets Jaunes* movement, the controversy was reactivated with force, since only until 12 January 2019, 82 seriously injured were counted, 60 of whom because of these weapons.<sup>102</sup>

During the months of the greatest activity of the Yellow Vests, there were numerous reports of police violence and the use of disproportionate and indiscriminate force. The *Ligue des droits de l’homme* (LDH) reported that many people had been “disabled for life, blinded, mutilated or injured in the face or stomach, with irreparable consequences” due to police violence.<sup>103</sup> Some media outlets reported that the number of mutilated in March 2019 rose to 26: 5 people lost a hand and 21 people an eye.<sup>104</sup>

According to the Commissioner for Human Rights of the Council of Europe, the type of injuries suffered by the protesters and their seriousness rai-

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101 Franceinter, “Flash-ball, LBD 40 : ces armes non-létales dénoncées depuis dix ans par (presque) tout le monde” of 17 January 2019. [Available at : <https://www.franceinter.fr/justice/flash-ball-lbd-40-ces-armes-non-letales-denoncees-depuis-dix-ans-par-presque-tout-le-monde>]

102 Libération, “Tirs de flashball, grenades: combien y a-t-il eu de blessés graves parmi les gilets jaunes ?” of 12 January 2019. [Available at: [https://www.liberation.fr/check-news/2019/01/12/tirs-de-flashball-grenades-combien-y-a-t-il-eu-de-blesses-graves-parmi-les-gilets-jaunes\\_1702417](https://www.liberation.fr/check-news/2019/01/12/tirs-de-flashball-grenades-combien-y-a-t-il-eu-de-blesses-graves-parmi-les-gilets-jaunes_1702417)]. See also: <http://es.rfi.fr/francia/20190117-decenas-de-heridos-y-mutilados-por-balas-de-goma-entre-los-chalecos-amarillos>

103 Monitor Tracking Civic Spaces, Civicus Monitor, “Excessive police force against ‘yellow vest’ protesters threatens freedom of assembly”, 21 February 2019. [Available at: <https://monitor.civicus.org/newsfeed/2019/02/21/excessive-police-force-against-yellowvest-protesters-threatens-freedom-of-assembly/>]

104 L’express, “Violences policières : 483 cas recensés par le journaliste David Dufresne” of 2 March 2019. [Available at: [https://www.lexpress.fr/actualite/societe/violences-policieres-483-cas-recenses\\_2064810.html](https://www.lexpress.fr/actualite/societe/violences-policieres-483-cas-recenses_2064810.html)]

se serious doubts about the compatibility of the means used by France to maintain public order with human rights.<sup>105</sup>

**Other police intervention techniques.** In 2019, a group of United Nations experts expressed concern about the interrogations and arrests of protesters without any crime being identified or any proceedings initiated. They considered that these practices constituted serious interferences with the exercise of fundamental rights and urged that this type of actions be limited to cases in which it was necessary and not as a preventive or intimidating technique.<sup>106</sup>

Police also used violence, tear gas and rubber bullets against minors in the context of student protests in December 2018.<sup>107</sup> On 6 December 2018, 163 boys and girls – some 13 years old – were arrested after violent encounters with the police in the secondary education centre of Saint-Exupéry, 30 km from Paris. The images show these students kneeling, with their hands behind their heads and handcuffed.<sup>108</sup>

Amnesty International reported that some of the children had not been fed or visited by a doctor before their interrogation and that they had also been denied immediate legal assistance.<sup>109</sup>

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105 Council of Europe, "Maintaining public order and freedom of assembly in the context of the "yellow vest" movement: recommendations by the Council of Europe Commissioner for Human Rights", 26 February 2019. [Available at: <https://www.coe.int/en/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for->]

106 High Commissioner for Human Rights, United Nations, "France: UN experts denounce severe rights restrictions on 'gilets jaunes' protesters", 14 February 2019. [Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24166&LangID=E>]

107 Monitor Tracking Civic Spaces, Civicus Monitor, "Excessive police force against 'yellow vest' protesters threatens freedom of assembly", 21 February 2019. [Available at: <https://monitor.civicus.org/newsfeed/2019/02/21/excessive-police-force-against-yellowvest-protesters-threatens-freedom-of-assembly/>]

108 Midi Libre, "Lycéens mis à genoux par la police à Mantes-la-Jolie : Blanquer « choqué », la gauche « scandalisée » " of 7 December 2018. [Available at: <https://www.midilibre.fr/2018/12/07/les-images-choquantes-de-lyceens-mis-a-genoux-par-la-police-a-mantes-la-jolie,5004734.php>]

109 Monitor Tracking Civic Spaces, Civicus Monitor, "Excessive police force against 'yellow vest' protesters threatens freedom of assembly", 21 February 2019. [Available at: <https://monitor.civicus.org/newsfeed/2019/02/21/excessive-police-force-against-yellowvest-protesters-threatens-freedom-of-assembly/>]

## Strategies and responses of civil society

**New types of protest.** French civil society has reorganised itself, due to the evolution of the frame for action. The difficulties in the access to funds and the delegitimizing public discourse, among others, have led to new forms of organization that are less hierarchical and dispersed throughout the territory of the country. The *Gilets Jaunes* movement is a sample of the mobilization capacity of French citizens and a new generation of protests: without leaders, more difficult to control due to their diffuse origin, and possibly more complex. Social networks and the Internet are central to action, which achieves multiple demonstrations at the same time in different cities of the territory.

**Strategic litigation.** Following the harassment of Bolloré, civil society has also begun to prosecute much of its protest. Strategic litigation has become part of the CSO action plans, which recognize that, even with the risks of confusing politics with law, it is a much more efficient reporting technique to guarantee the result.

# Hungary

## Legal and political context

**Introduction.** Since in 2010 FIDESZ – Hungarian Civic Union won the national election, Hungarian civil society has undergone a profound transformation. In 2014, Hungarian Prime Minister Viktor Orbán defined his political project as the construction of “an *illiberal* state, a non-liberal state.”<sup>110</sup> In this regard, Fidesz has tried to create a symbiotic link between state institutions and the party, making Fidesz very present in all institutions. Thanks to the fact that it holds an absolute majority of the National Assembly (*Országgyűlés*), this political project has gained momentum and has materialized through the reform of the legal and constitutional framework.

**The new constitutional and legal framework.** In 2011, a new Fundamental Law (Constitution) was passed in Hungary. In this new Constitution human rights are vaguely and broadly defined and their development is often delegated to “Cardinal Laws” (Organic Laws).<sup>111</sup> The Venice Commission, an advisory body of the Council of Europe, expressed concern about the outcome of this construction. The Commission claimed that it created a risk of erosion of fundamental rights by delegating essential constitutional aspects to the ordinary legislative power and creating significant legal loopholes.<sup>112</sup>

Additionally, mandates of various state regulatory and control agencies have been reformed, for example in the field of media, data protection, the ombudsman or peer commissions. These reforms have been accompanied by a

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110 Speech by Prime Minister Viktor Orbán, on the 25th summer campus of the Free University of Bálványos, 26 July 2014. See also: <https://freedomhouse.org/report/modern-authoritarianism-illiberal-democracies>

111 A 2/3 majority is required to approve or modify these laws. See also: [https://e-justice.europa.eu/content\\_member\\_state\\_law-6-hu-maximizeMS-es.do?member=1](https://e-justice.europa.eu/content_member_state_law-6-hu-maximizeMS-es.do?member=1)

112 Venice Commission, Council of Europe. (2011). “Opinion on the new Constitution of Hungary”. CDL-AD(2011)016, pages. 23 - 24. [Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e)]

forced change of their leadership and the appointment of people loyal to the government.<sup>113</sup>

**Judicial independence.** The amendments of the Constitution that followed its approval were gradually eliminating systems of control and verification of the executive, as well as weakening the independence of the judiciary, including the Constitutional Court.<sup>114</sup> People who occupy high positions in public entities, including judicial ones, are appointed directly by the government, and the procedures for their selection have been modified. For example, the current state attorney general, appointed by Fidesz, can maintain his position until a new attorney general is appointed with the support of two thirds of the parliamentary majority. This new regulation makes his dismissal very difficult and ensures that the official supporting Fidesz remains in the position even after Fidesz has lost its parliamentary majority.

In 2012, the president of the Supreme Court, Judge András Baka, was abruptly dismissed after the eligibility criteria for the position he held were modified.<sup>115</sup> The case was taken to the European Court of Human Rights, which considered that there was a close relationship between his dismissal and the critical opinions he had expressed publicly, and ruled the existence of a violation of his freedom of expression.<sup>116</sup>

On 13 December 2018, the Parliament approved the creation of new administrative courts, which will be operational in January 2020. These courts will have jurisdiction to resolve appeals against decisions of the administration, among others, police authorizations for demonstrations and decisions of the electoral

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113 Human Rights House Foundation. (2017). "Resisting ill Democracies in Europe", pp. 17-19. [Available at: <https://humanrightshouse.org/noop-media/documents/22908.pdf>]

114 Human Rights Council, United Nations. (2017). Report of the Special Rapporteur on the situation of human rights defenders regarding his mission to Hungary A/HRC/34/52/Add.22GE.17-00828, p. 18. [Available at: <https://undocs.org/A/HRC/34/52/Add.2>]  
See also: Venice Commission, Council of Europe. (2011). Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session. CDL-AD(2011)016. [Available at: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29016-e>]

115 Human Rights House Foundation. (2017). "Resisting ill Democracies in Europe", p. 17. [Available at: <https://humanrightshouse.org/noop-media/documents/22908.pdf>]

116 ECHR judgement *Baka v. Hungary*, application No. 20261/12, 23 June 2016, pp. 120-122 and 151. [Available at: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2220261%2F12%22%2C%22itemid%22:%5B%222001-163113%22%5D%7D>]

board. Amnesty International has criticized the fact that this new system blurs the separation of powers,<sup>117</sup> since the judges of this court will be proposed by the country's president and appointed by the National Assembly.<sup>118</sup>

**Lack of consultation.** Moreover, none of these modifications has been subjected to a consultation procedure with civil society or affected groups. Law CXXXI of 2010 provides that laws proposed *by the government* must be submitted to a public participation procedure. However, Fidesz has avoided this legal obligation under the strict interpretation that, if the law is put to the vote based on a proposal of individual parliamentarians, the consultation process is not necessary.<sup>119</sup>

This situation was especially criticized when Law XXVI of 2017, on Transparency of Organizations Financed from Abroad, was adopted, which we will discuss later. None of the opposition parties supported the initiative. Citizens were informed of the draft law only due to leaked information in the press, so there was no public or professional debate about the legislation and its impact.<sup>120</sup>

## Space for civil society and freedom of association

**Government delegitimization policy.** Civil society is being investigated and stigmatized. The government has begun a campaign to delegitimize civil and critical activists, which includes the public media, and uses expressions such as “not being Hungarian enough”, “traitor” or “agent from abroad.” In April 2018, a list of 200 names was published in the pro-government newspaper *Figyelo*

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117 Amnesty International, “Hungary moving beyond red lines”, 29 January 2019. [Available at: <https://www.amnesty.hu/news/2570/hungary-moving-beyond-red-lines>]

118 Article 25.6 of the Fundamental Law of Hungary. [Available at: <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>]

119 Hungarian Civil Liberties Union. (2017). “What is the problem with Hungarian NGO law”, p. 3. [Available at: <https://hclu.hu/files/tasz/imce/2015/what-is-the-problem-with-the-law-on-foreign-funded-ngos.pdf>]

120 Resolution 2162 of the Parliamentary Assembly of the Council of Europe, “Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University”. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=23715>]

identifying members of civil society under the title “Mercenaries of Soros working in Hungary.”<sup>121</sup> George Soros is a Hungarian investor and philanthropist who advocates the concept of “open society.” For years he has been the object of a stigmatization and propaganda campaign and has been accused by Fidesz of having plans to import millions of immigrants and “Islamize” Europe.<sup>122</sup>

**STOP SOROS legislative package.** In June 2018, the Parliament approved a package of three rules, officially called “Stop Soros” and designed, according to the government, to curb illegal mass immigration. This legislative package is a combination of three laws that seeks to prevent the activity of CSOs working with immigrants. It criminalizes, even with prison sentences, entities that work with asylum seekers or undocumented migrants.<sup>123</sup> The vocabulary is very broad and vague, so it is difficult to specify what activities are sufficient to commit the crime of “promotion and support of illegal immigration.”<sup>124</sup> The European Commission has brought these rules before the Court of Justice of the European Union on the grounds that they violate the principles of the Union.<sup>125</sup>

Apart from the STOP SOROS legislative package, section 253 of Act XLI of 2015 was also approved, which created a 25% special tax for CSOs working with immigrants. The law requires donors of economic funds or, failing that, the recipient organization, to pay 25% of their donation to public coffers. The minister of finance said the tax was necessary because the defence against illegal immigration was an additional financial burden on the state.<sup>126</sup>

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121 The Independent, “Pro-Orban magazine lists Hungarian investigative journalists and refugee advocates among “mercenaries of Soros”, 12 April 2018. [Available at: <https://www.independent.co.uk/news/world/europe/hungary-victor-orban-magazine-list-journalists-refugee-george-soros-mercenaries-a8301806.html>]

122 More information available at: <https://okotars.hu/en/democratic-backsliding-and-civil-society-response-hungary>

123 The Guardian, “Hungary passes anti-immigrant ‘Stop Soros’ laws”, 20 June 2018. [Available at: <https://www.theguardian.com/world/2018/jun/20/hungary-passes-anti-immigrant-stop-soros-laws>]

124 More information available at: <https://www.vox.com/policy-and-politics/2018/6/22/17493070/hungary-stop-soros-orban>

125 More details available at: [http://europa.eu/rapid/press-release\\_IP-19-469\\_en.htm](http://europa.eu/rapid/press-release_IP-19-469_en.htm)

126 For a detailed analysis of the legislation see: <https://reliefweb.int/report/hungary/legal-analysis-hungarys-special-tax-migration-related-activities>. See also: The Guardian, “Hungary steps up anti-immigration stance with plans for NGO tax”, 19 June 2019.

**NGOs with foreign financing.** Law LXXVI of 2017 on Transparency of Organizations with Foreign Support is legislation that affects NGOs with international funding and requires them to use a special distinction. The preamble of the law seems to suggest that externally funded organizations seek to put international interests before the interests of the Hungarian nation, jeopardizing the independence of their institutions.<sup>127</sup>

The Hungarian Prime Minister said that “all these organizations have clearly taken sides against the position of the Hungarian government and the migration policy supported by the people of Hungary. We cannot hesitate any longer, transparency must be imposed.”<sup>128</sup>

Some organizations have criticized that this legislation violates the right of citizens and organizations to the freedom of expression, because it forces them to identify with a badge that is intended to be used to discredit them.<sup>129</sup> In this way, the publications of these organizations will always be labelled with a message that will link them to interests opposed to those of Hungarian society. Additionally, the law differentiates NGOs based on the funds they receive, so that the requirements, penalties and taxes vary significantly between those locally funded and those internationally funded.<sup>130</sup> The European Commission has initiated an infringement procedure against these regulations for violating the freedom of association and imposing unjustified restrictions on the free movement of capital.<sup>131</sup>

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[Available at: <https://www.theguardian.com/world/2018/jun/19/hungary-anti-immigration-plans-ngo-tax-orban-bill-criminalise-aid>.]

127 Preamble of Law LXXVI of 2017 on Transparency of Organizations with Foreign Support. [Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:62018CN0078&from=PT>]

128 Statement by Viktor Orbán, Prime Minister of Hungary, January 2017. [Available at: <https://okotars.hu/en/democratic-backsliding-and-civil-society-response-hungary>]

129 Hungarian Civil Liberties Union. (2017). “What is the problem with Hungarian NGO law”, p. 2. [Available at: <https://hclu.hu/files/tasz/imce/2015/what-is-the-problem-with-the-law-on-foreign-funded-ngos.pdf>]

130 Ibid.

131 European Commission, “Asylum: Commission takes next step in infringement procedure against Hungary for criminalising activities in support of asylum applicants”, 24 January 2019. [Available at: [http://europa.eu/rapid/press-release\\_IP-19-469\\_en.htm](http://europa.eu/rapid/press-release_IP-19-469_en.htm)] See also: [http://europa.eu/rapid/press-release\\_IP-17-3663\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3663_en.htm)

## Right to information and freedom of the press

**Situation of the media in Hungary.** In 2010, two new laws were passed: (i) the CIV Law on press freedom, on the imposition of taxes on income from mass media advertising, and (ii) the CLXXXV Law on media services and mass media.

The cumulative effect of these two laws creates enormous difficulties for the creation and maintenance of independent media. As we will see next, the new legislation allows prescribing the content of the information offered by the media, gives great power to regulatory bodies without the need to submit their decisions to judicial control and does not protect the sources of published information. The modifications have been criticized by the Commissioner for Human Rights of the Council of Europe,<sup>132</sup> the United Nations Special Rapporteur for the promotion and protection of freedom of opinion and expression,<sup>133</sup> and by the OSCE representative on Freedom of the Media.<sup>134</sup>

**Media at the service of the government.** The regulation and supervision of the media have been concentrated under a single body: the National Media and Telecommunications Authority. The president of this authority is, at the time of writing this study, the same as that of the Media Council, the body responsible for appointing the executive direction of all public media, effectively locating public radio channels, television and news under the effective power of the government.<sup>135</sup> The legislation also allows controlling the content of broadcasts and publications of these media.

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132 Opinion of the Commissioner for Human Rights: "Hungary's media legislation in light of Council of Europe standards on freedom of media". CoE Doc. CommDH(2011)10. 25 February 2011. [Available at: <https://rm.coe.int/16806daac3>]

133 OHCHR, Press Release, "Hungary/Freedom of expression: UN expert still concerned despite moves on controversial media legislation", on the visit of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to Hungary on 5 April 2011. [Available at: <https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10916&LangID=E>]

134 OSCE, ODIHR. (2018). Hungary, Parliamentary elections. Limited Election Observation Mission, Final Report. 8 April 2018. [Available at: <https://www.osce.org/odihr/elections/hungary/385959?download=true>]

135 Human Rights House Foundation. (2017). Resisting ill Democracies in Europe, p. 21. [Available at: <https://humanrightshouse.org/noop-media/documents/22908.pdf>]

In August 2015, an instruction from the Media Authority was leaked. public television workers were ordered to avoid broadcasting images of women, children and girls in their coverage of the refugee crisis.<sup>136</sup>

In case of violation of the laws on media, the Media Council has the power to initiate procedures to suspend the right to broadcast or publish for both traditional and online media. The penalties are disproportionately harsh, especially those that establish the interruption of services for a certain time, the cancellation of the publishing or broadcasting licence or of the media outlet's registration, or the blocking of content.<sup>137</sup>

Media financing is also strictly regulated and is used, together with the tax system, to shut down independent media.<sup>138</sup> Various sources have reported that the government is the main advertiser, and that this profoundly distorts free competition. With this system of advertisement, the government finances media that are favourable to it.<sup>139</sup> Some journalists have claimed that news about certain government agencies is often omitted, under the threat of a reduction in funds or loss of investors or advertisers.<sup>140</sup>

In November 2018, the government created a “media empire”<sup>141</sup>, an unprecedented concentration of media in Hungary, under the name of the Central European Press and Media Foundation (KESMA). This platform seriously hinders the media market and its plurality, making it almost impossible

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136 The Guardian, “Hungarian TV ‘told not to broadcast images of refugee children’, 1 September 2015. [Available at: <https://www.theguardian.com/world/2015/sep/01/hungarian-media-told-not-to-broadcast-images-refugee-children-memo>]

137 Venice Commission, Council of Europe. (2011). Opinion on the new Constitution of Hungary. CDL-AD(2011)016. [Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e)]

138 Human Rights House Foundation. (2017). Resisting ill Democracies in Europe, p. 21. [Available at: <https://humanrightshouse.org/noop-media/documents/22908.pdf>]

139 More information available at: <https://www.resetdoc.org/story/distortion-propaganda-hungarian-media-interview-sandor-orban/>

140 Mérték Media Monitor, “Self-censorship in the hungarian press”, 11 June 2012. [Available at: <https://mertek.eu/en/2012/06/11/self-censorship-in-the-hungarian-press/>]

141 Amnesty International, “Hungary moving beyond red lines”. 29 January 2019. [Available at: <https://www.amnesty.hu/news/2570/hungary-moving-beyond-red-lines>]

for real competition to exist. The government has described this decision as “of public interest” and considered it a strategy of national importance.<sup>142</sup>

**Limitation of journalistic activity.** Journalism professionals have declared that the government has forbidden them from accessing official events or debates because they have written articles that were critical of official policies. Moreover, they are constantly threatened with legal actions, fines, dismissals and the closure of their media outlet. The *RTL Klub* television channel and websites *4r4.hu* and *hvg.hu* have complained that they are systematically denied access to government facilities or are not invited to official press conferences.<sup>143</sup>

Mándli v. Hungary: In October 2017, three journalists of the Echo TV channel were denied access to the National Assembly building, when they tried to enter to report on parliamentary activities. The press office of the Hungarian Parliament justified the decision alleging that the journalists had broken rules imposed on the media by filming areas the access to which is prohibited for journalists, despite having been advised of these rules.<sup>144</sup>

Szurovecz v. Hungary: Since the summer of 2015, the Hungarian authorities have denied press entry to transit centres and refugee camps. The police forced a journalist to erase the video footage he had recorded. They also beat journalists with batons, broke their equipment and threw tear gas at them, even after they identified themselves as members of the press. Some of the journalists were taken into police custody.<sup>145</sup>

Both cases were brought before the European Court of Human Rights and are awaiting judgements.

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142 Ibid.

143 Index on Censorship, “Hungary: Independent media facing soft censorship”, 21 January 2016. [Available at: <https://www.indexoncensorship.org/2016/01/constant-harassment-of-independent-media-in-hungary/>]

144 More information available at: <https://magyarnemzet.hu/archivum/media/kitiltotak-az-echo-tv-harom-munkatarsat-a-parlamentbol-3859900/>

145 More information available at: [https://www.ifex.org/hungary/2015/09/23/censored\\_attacked/](https://www.ifex.org/hungary/2015/09/23/censored_attacked/)

**Access to information. Public data.** Finally, the Law on Freedom of Information was amended in 2015, without public consultation. Since its implementation, it has allowed all state agencies that handle public interest data to charge a fee from the person or institution that requests them, as “work costs.” The exact price is not determined by law and is left to the specific agency. Additionally, the legislation allows state agencies to reject the request for information if these data are used to “make decisions” or if it is a repeated request, even if the previous request was not answered.<sup>146</sup> According to the Hungarian Civil Liberties Union, agencies sometimes answer that it is not information considered to be of public interest, or they simply do not respond to the request. This decision can be appealed in court, although we must not forget that these types of decisions will be judged in the future by the new administrative courts whose independence is in question.

**Other points of view.** Although the organizational reform of the media has profoundly affected the Hungarian press system, some believe that this is not the main cause of the growing self-censorship of the sector. They believe that the lack of independent media is due to the fact that the two-thirds parliamentary majority of the party in the government has given unprecedented power to the executive branch. Fidesz has managed to place its supporters at the head of all institutions, making journalists feel investigated, scrutinized and noticeably less free. According to others, it is simply not necessary to enforce the new regulations concerning media, since the threatening atmosphere in which the laws were approved is already sufficient for a climate of tension to exist and, as a result, for the media to decide to assume fewer risks.<sup>147</sup>

## Freedom of expression and thought

**The new limits to freedom of expression.** Article 9 of the Constitution was modified to establish a new limit to freedom of expression. According to the new wording: “freedom of expression should not be exercised with the intention of violating the dignity of the Hungarian nation.”

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146 Freedom House, Freedom of the Press 2016: Hungary, 2016. [Available at: <https://freedomhouse.org/report/freedom-press/2016/hungary>]

147 Op. cit. 144.

Defamation continues to be a criminal offence heavily punished in Hungary, and is used against investigative journalists, activists and supervisory organizations.<sup>148</sup> For example, in December 2015, a blog writer who refuted the publications of the mayor of the district of Budapest, in which the mayor claimed on Facebook that asylum seekers caused fires, garbage and crime, was sanctioned for defamation.

The United Nations Special Rapporteur was concerned about the stigmatization of activists and the harsh vocabulary used by government representatives, as well as the use of the label “foreign agents” pejoratively. Additionally, he considered that there was a high risk of self-censorship and limitation of freedom of expression due to the intimidation to which those who criticize the government are subjected.<sup>149</sup>

**Academic and thought freedom.** The United Nations Human Rights Committee noted with concern the amendment introduced in 2017 to the 2011 CCIV Law on Higher Education. This law imposes disproportionate restrictions on the operation of foreign universities, and has been criticized for limiting freedom of thought, expression and association, as well as academic freedom.<sup>150</sup> The Assembly of the Council of Europe requested Hungary to amend this legislation.<sup>151</sup>

Different institutions have denounced that the objective of this law is to reduce the influence of the European Central University (CEU), because it is funded by George Soros. In an open letter to the government of Hungary, more than 120 North American academics working in Eastern and Central Europe considered that “while the legislation is proposed as a generic regulation, its provisions affect only one university in the country.” And they affirmed that “the apparent

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148 Op. cit. 147.

149 Report of the United Nations Special Rapporteur on the situation of human rights defenders, in his mission in Hungary, A/HRC/34/52/Add.2, pp. 58-59. [Available at: <https://undocs.org/A/HRC/34/52/Add.2>]

150 Human Rights Committee, United Nations. (2018) Conclusions on the sixth periodic report of Hungary, CCPR/C/HUN/CO/6, p 51. [Available at: <https://undocs.org/en/CCPR/C/HUN/CO/6>]

151 European Parliament, Council of Europe. (2017). “Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University”, Resolution 2162 (2017). [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23715&lang=en>]

desire of the Hungarian government to silence any kind of criticism and control all alternatives in the field of political competition has little projection and is contrary to these values [freedom of expression and conscience].”<sup>152</sup>

The University again obtained the accreditation of the government in 2018. In October 2018, the courses in “gender studies” were removed from the list of programmes of the university by government decree. The decree motivated its decision by the low number of students enrolled and the ideological opposition of the government to this type of education.<sup>153</sup>

## Right to peaceful assembly and demonstration

**Legislative modifications.** A new legislation on the right to peaceful assembly entered into force on 1 October 2018. With this new law, Act III of 1989 on Freedom of Assembly is repealed.

Under the 1989 law, Hungarian civil society did not have special difficulties in exercising its right to peaceful assembly and demonstration. The new law, however, gives the police broad discretion to ban demonstrations. For example, it allows a demonstration to be prohibited if it “interferes with the obligations of a foreign graduate”, “hinders the private life or activities of third parties” or “directly and disproportionately affects public security and order,” among others.<sup>154</sup> Furthermore, people who participate in a protest that has been declared illegal will be subject to high penalties, and may be sentenced to up to 60 days in prison if it is their third offence in six months.<sup>155</sup>

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152 Open letter available at: <https://budapestbeacon.com/exclusive-western-academics-stand-ceu/>

153 Amnesty International, “Hungary moving beyond red lines”, 29 January 2019. [Available at: <https://www.amnesty.hu/news/2570/hungary-moving-beyond-red-lines>]

154 Zoltán Kovács. About Hungary, “Freedom of assembly: here’s how the new law works”, 4 October 2018. [Available at: <http://abouthungary.hu/blog/freedom-of-assembly-heres-how-the-new-law-works/>]

155 Hungarian Civil Liberties Union, “Summary of the Hungarian civil liberties union’s analysis of the new bill on the right to assembly”. 24 July 2018. [Available at: <https://hclu.hu/en/articles/summary-of-the-hungarian-civil-liberties-unions-analysis-of-the-new-bill-on-the-right-to-assembly>]

The defenders of this legislation argue that this law tries to prevent the abuse by protesters of the rights of third parties, facilitating coexistence.<sup>156</sup>

Although occasionally administrative sanctions have been imposed on protesters, so far the courts have been quite fair, according to the Hungarian Civil Liberties Union. This same organization has shown discomfort about the fact that decisions and police abuses fall within the competence of the new administrative courts, creating uncertainty about how the new legislation will be interpreted.

**Stigmatization of certain social groups.** The United Nations Special Rapporteur on the situation of human rights defenders explained in the report of his visit in Hungary that demonstrations in favour of the Roma<sup>157</sup> or LGBTI community occur in a climate of tension and with a large police presence. Activists from these communities expressed their dissatisfaction regarding the position of the authorities, which instead of taking protective measures to neutralize the threats of the far right, treated their communities as a danger to public safety.<sup>158</sup> This argument is supported by the judgment of a court in Eger, which considered that during the course of a march, the police had not fulfilled their obligation to protect the Roma community from extremist groups, and instead had imposed excessive fines on the protesters for minor altercations, therefore discrimination had occurred.

## Strategies and responses of civil society

**Coalitions and support networks.** The climate of hostility in recent years has led CSOs to explore new types of pressure mechanisms. Activities based on cooperation and support particularly stand out. For example, in response to the Stop Soros legislative package, the Civilizacio movement was born, which aims to coordinate the reaction of civil society to the government's illiberal measures. Civilizacio carried out, among others, a demonstration in the

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156 Op. cit. 155.

157 Minority ethnic group of Eastern Europe.

158 Human Rights Council, United Nations. (2017). Report of the United Nations Special Rapporteur on the situation of human rights defenders. A/HRC/34/52/Add.2. p. 64. [Available at: <https://undocs.org/A/HRC/34/52/Add.2>]

streets of Budapest, as well as a protest in the Justice Committee of the Parliament, where the draft law was discussed.<sup>159</sup>

**Polarization and politicization of public life.** It is important to mention that the United Nations Special Rapporteur on the situation of human rights defenders noted that, in general, human rights defenders could carry out their work in a safe environment, and highlighted the dynamism of the Hungarian civil society. However, he noted with alarm the growing polarization environment, and the emergence of new challenges that could be considered as violations of fundamental rights.<sup>160</sup> According to the Hungarian Civil Liberties Union, the interpretation of the behaviours and attitudes of civil society from a political and ideological point of view is hindering the development of critical voices, and the public space is being occupied by those related to the party.

**International mechanisms.** The European Union has started three infringement proceedings due to the deterioration of the rule of law in Hungary, two of which have reached the European Court of Justice. The OSCE has taken a stance on several occasions on the threat that these legal modifications represent for freedom of expression and of the press, and for the right to political participation of citizens.

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159 European Civic Forum. (2019). *Activizanship, Democracy under stress/rebuilding trust/ rights for all*. Chapter "What lies behind the concept of civil society?" pp. 22-23. [Available at: <http://civic-forum.eu/publication/view/activizanship-3>]

160 Human Rights Council, United Nations. (2017). *Report of the United Nations Special Rapporteur on the situation of human rights defenders*. A/HRC/34/52/Add.2. p. 5, para 14-15. [Available at: <https://undocs.org/A/HRC/34/52/Add.2>]

# Poland

## Legal and political context

**Introduction.** In 2015, the conservative PiS (Law and Justice) party won the presidential elections in Poland with 52% of the votes. In October of the same year, the same party won the parliamentary elections obtaining a large majority. Since then, PiS has endeavoured to create a close link between state institutions and the party, with an *illiberal* political project similar to that of Hungary. The main targets of the new laws were the media and the judicial system, which underwent numerous reforms in a few months. Most of these modifications were not subjected to a consultation procedure and, when they were, it was superficial and without impact.<sup>161</sup>

Unlike Hungary, the ruling party does not have a sufficiently large majority to modify the Constitution, although party members have advocated for the need of its amendment.<sup>162</sup>

**Independence of the institutions.** In 2018, the Electoral Law was modified, jeopardizing the independence of the National Electoral Commission (PKW). The PKW is the body that organizes elections and controls the financing of the parties. So far, the nine members of the PKW were appointed by the Courts, but with the new law seven will be appointed by the parliament and only two by the judiciary. The law was not subjected to any type of consultation procedure.

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161 Malgorzata Szuleka, "First victims or last guardians? The consequences of rule of law backsliding for NGOs: case studies of Hungary and Poland", Centre for European Policy Studies (CEPS). 24 April 2018. [Available at: <https://www.ceps.eu/ceps-publications/first-victims-or-last-guardians-consequences-rule-law-backsliding-ngos-case-studies/>]

162 More information available at: <https://polandin.com/38673249/poland-could-be-forced-to-ignore-ecj-supreme-court-ruling-deputy-pm>

**Independence of the judiciary.** So far, Polish courts have proved to be neutral and have handed down reasonably balanced judgements regarding the right to protest. However, profound reforms of the judiciary make it difficult to predict how jurisprudence will evolve.

Between 2015 and 2017, the judiciary was substantially modified, giving the government broader powers in the allocation of cases and in the training of new judges. The competence of the minister of justice to appoint and dismiss presidents and vice-presidents of courts has also been approved.

Two new chambers have been created in the Supreme Court: the Extraordinary Audit and Public Affairs Chamber, and the Disciplinary Affairs Chamber. The first has powers to validate or reject the results of elections or referendums, while the second judges disciplinary proceedings against members of the judiciary. The judges of the Supreme Court are elected by the National Council of the Judiciary which, since 2018, is in turn chosen by the parliament.<sup>163</sup>

Since 2018, numerous disciplinary proceedings have been initiated against members of the judiciary who criticized government initiatives in public. In April 2019, the European Commission initiated an infringement procedure before the Court of Justice of the European Union against Poland on the grounds of the new disciplinary regime of the judges.<sup>164</sup>

In 2017, the European Commission initiated an infringement procedure against Poland before the Court of Justice of the European Union (CJEU) for threatening the rule of law. Specifically, the CJEU is to issue a ruling on the reduction of the retirement age of magistrates from 70 to 65 years, which forced 27 of the 72 judges of the Supreme Court to leave their positions immediately. The Commission considered that Poland had not fulfilled its obligations under article 2 of the Treaty on European Union – human dignity, freedom, democracy, equality, rule of law and respect for human rights – read in conjunction with article 47 of the Charter of Fundamental Rights of the EU – right to effective judicial protection and an impartial judge.

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163 Freedom House, Freedom of the Press 2019: Poland, 2019. [Available at: <https://freedom-house.org/report/freedom-world/2019/poland>]

164 European Commission. "Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control", 3 April 2019. [Available at: [http://europa.eu/rapid/press-release\\_IP-19-1957\\_en.htm](http://europa.eu/rapid/press-release_IP-19-1957_en.htm)]

The Polish government reinstated the 27 judges in their positions as a precautionary measure. In June 2019, the CJEU resolved that the new disciplinary regime for judges violates the principle of judicial independence.<sup>165</sup>

**Religious power.** The Catholic Church has a great weight in Polish society and maintains a strong institutional influence. It is punishable under criminal law to insult religious institutions or symbols. In 2017, the satirical journalist Antoni Szpak was taken to court for “insulting the Polish nation.” In his report, the columnist criticized the relationship between the Polish authorities and the Catholic Church, and made fun of politicians for this reason. If convicted, Szpak could be sentenced to up to 3 years in prison.<sup>166</sup>

## Space for civil society and freedom of association

**Delegitimization of CSOs.** Although CSOs had traditionally acted without interference in Poland, recently the media and the government leadership have systematically attacked the credibility of civil society. Civil organizations have been accused of poor financial transparency and of pursuing an agenda defined by the opposition.<sup>167</sup>

**Economic funds for NGOs.** In 2017, a new law centralized the distribution of public funds for NGOs, including money received from the European Union and other countries such as Norway. The body responsible for the distribution of funds is a new entity created under the Office of the Prime Minister. The government uses this prerogative to select entities to which funding is granted based on political criteria. For example, it denies funding to organizations that work in the field of gender violence or helping migrants, as well as those that are critical of the government.<sup>168</sup>

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165 Ruling of the Court of Justice of the European Union on case C-619/18, *Commission v. Polonia (Independence of the Supreme Court)* of 24 June 2019. [Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190081en.pdf>]

166 Civic Space Watch, “POLAND: State restricts disability benefits protest”, 14 June 2018. [Available at: <https://civicspacewatch.eu/poland-state-restricts-disability-benefits-protest/>]

167 Freedom House, *Freedom of the Press 2019: Poland*, 2019. [Available at: <https://freedomhouse.org/report/freedom-world/2019/poland>]

168 Human Rights House Foundation. (2017). *Resisting ill Democracies in Europe*, p. 25. [Available at: <https://humanrightshouse.org/noop-media/documents/22908.pdf>]

**CSO surveillance.** Since the Surveillance Act was passed in 2016, the police and secret services have had broader powers to act and investigate. In 2017, information was leaked according to which police were controlling certain civil society leaders, with the aim of obtaining information about those people. Surveillance methods included following individuals on foot and by car, video and audio recordings, and telephone tapping, without judicial authorization.<sup>169</sup> The Helsinki Foundation for Human Rights expressed concern about the discouraging effect of such measures and the threat they pose to democracy and civil society development.<sup>170</sup>

Official sources have given various explanations to these cases of surveillance. In the case of the member of parliament R. Petru, the police alleged they did it to ensure his safety.

On the other hand, the police admitted that they had investigated W. Kinasiewics and T. TT. Jakrezewski, two activists of the Citizens of the Republic of Poland movement. According to the police, this decision was taken after the two activists publicly affirmed that “their actions could result in a violation of the legal system.”<sup>171</sup>

It is worth noting that state surveillance institutions can reach an agreement with telecommunication companies, whereby these companies can give them access to information stored as metadata (informational data, generally for analytical and organizational use, for example, who you call, at what time and how often). Police do not need judicial authorization to access this information, although they do need authorization to access the content of the conversations.

**Intimidation of CSOs that work for women’s rights.** In 2016, Polish civil society mobilized massively to stop the draft law on abortion, which was intended to ban this practice. On 4 October 2017, called “Black Tuesday,” a mass

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169 Civic Space Watch, “Helsinki Committee in Poland, Managing Board and the Board of Directors of the HFHR comments on surveillance of members of NGOs”, 22 August 2017. [Available at: <https://civicspacewatch.eu/helsinki-committee-in-poland-managing-board-and-the-board-of-directors-of-the-hfhr-comments-on-surveillance-of-members-of-ngos/>]

170 Helsinki Foundation for Human Rights, “Police target Opposition politicians and NGO activists.” [Available at: <http://www.hfhr.pl/en/police-target-opposition-politicians-and-ngo-activists/>]

171 Ibid.

demonstration was convened to commemorate the “Black March” or “Women’s Strike” of October 2016, the first mass protest against the abortion bill. After these demonstrations, police entered the headquarters of three centres particularly active in the fight for reproductive rights, confiscating documentation and electronic equipment. CSOs working in this sector do not receive grants from the Ministerial Fund for Economic Aid mentioned above.

## Right to information and freedom of the press

**Situation of the media.** Although private media continue to represent a plurality of opinions, public media are under the influence of the ruling party. In the governing bodies of public media, dissenting voices have been replaced by others in favour of the government, promoting the government’s position in editorial lines. In total, about 200 journalists have been removed from public media outlets since PiS came into power. The United Nations Committee considered the changes in legislation and practice regressive.<sup>172</sup>

The leaders of PiS continue to insist on the need to “deconcentrate” and “re-polonize” the capital invested in the media.<sup>173</sup> The government often blames the presence of German media for negative criticisms of its activities and has attempted to promote the entry of Polish capital into the media.<sup>174</sup>

**Self-censorship risk.** Independent media have been pressured through the use of legislation and have been systematically investigated. According to the Helsinki Foundation for Human Rights, the government complicates access to parliament to independent journalists and does not provide them with direct or exclusive information, leaving them without content to report on or by which to be cited. State-owned companies and public entities are only adver-

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172 Human Rights Committee, United Nations. (2016). “Concluding observations on the seventh periodic report of Poland”, 23 November 2016. CCPR/C/POL/CO/7. [Available at: <https://undocs.org/CCPR/C/POL/CO/7>]

173 Annabelle Chapman, Freedom House. “Pluralism under attack, the assault on Press Freedom in Poland”. [Available at: <https://freedomhouse.org/report/special-reports/assault-press-freedom-poland>]

174 Freedom House, Freedom in the World Report, 2019. [Available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2019>]

tised in private media that support the government of PiS, which is why the most critical media have seen a notable decrease in their income.<sup>175</sup>

In January 2018, the National Broadcasting Council (KRRiT) withdrew the fine of 1.5 million zlotys (almost 350,000 euros) that had been imposed on private television TVN24 in 2017 for “promoting illegal activities and inciting violence”. The reason was a report on the protests against the government. After withdrawing the fine, KRRiT asked the media to act in a responsible manner and urged the media community to regulate itself.

In January 2018, the Polish prosecutor’s office initiated a new investigation of TVN24 because it had issued a documentary that included information on the activities of neo-Nazis in Poland. PiS and the government-related media suggested that some of the broadcast scenes had been staged. In November 2018, the authorities opened an investigation against the documentary’s camera operator for “spreading fascism.”

**New media laws.** In 2015, the Senate passed the “Small Media Act”, a temporary measure to regulate the market until the approval of the “Major Media Act.” The approval of the “Major Media Act ” has been delayed by the government, mainly due to pressure from the European Union. Instead, the “Bridge Media Act”, significantly less aggressive, was approved. This 2016 law cancels the tender system to designate members of the National Media Council, and transfers this competence to the President, who must choose between those designated by the Sejm (the lower house of Polish parliament) and the Senate.<sup>176</sup>

PiS justified the “Small Media Act” by stating that it intended to rationalize and reduce the costs of managing public radio and television networks and ensure the professional and ethical standards that corresponded to their public mission. The PiS member of parliament, Elżbieta Kruk, argued that

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175 Ibid.

176 Article 6 of the Law on the National Media Council, 22 June 2016. [Available at: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/ustawa-o-radzie-mediow-narodowych-eng.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radzie-mediow-narodowych-eng.pdf)]

media had been ignoring their mission by disseminating “social ideologies and trends not accepted by the majority of society.”<sup>177</sup>

After withdrawing the “Major Media Act,” Poland’s deputy minister of culture, Krzysztof Czubanski, elected president of the new National Media Council, said he was still in favour of a profound change in the current system, but in order to do that the EU should be notified. According to Malgorzata Sadurska, director of the Office of the President of Poland, this law was necessary because in most media reports Poland was represented through the opinion of the journalist and not objective facts.

## Freedom of expression and thought

**Situation of freedom of expression.** In general, people are free to participate in political discussions without fear of reprisals. However, the United Nations Committee for Human Rights expressed concern that the crime of defamation is punishable by imprisonment.<sup>178</sup>

**Crime of insult to the nation.** Insulting state symbols, the Polish nation, high-ranking officers of the state, religion or religious institutions is criminally punished. The punishment for “insulting, destroying or publicly removing a symbol of the state” can be up to one year in prison.<sup>179</sup> Publicly insulting the nation or the Republic of Poland is punishable by up to three years in prison.<sup>180</sup>

The activist Elżbieta Podleśna was arrested in May 2019 for hanging a poster with the image of the Virgin Mary, which was considered offensive. The image showed the Virgin with a halo imitating the LGBTI flag. Police confiscated various items of electronic equipment from her home and the activist

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177 Annabelle Chapman, Freedom House. “Pluralism under attack, the assault on Press Freedom in Poland”. [Available at: <https://freedomhouse.org/report/special-reports/assault-press-freedom-poland>]

178 Human Rights Committee, United Nations. (2016). “Concluding observations on the seventh periodic report of Poland”, para. 37. 23 November 2016. CCPR/C/POL/CO/7. [Available at: <https://undocs.org/CCPR/C/POL/CO/7>]

179 Article 137(1) of the Criminal Code of Poland.

180 Article 133 of the Criminal Code of Poland.

was taken to the police station.<sup>181</sup> Currently, she is being accused of “offending religious beliefs” and could be sentenced to up to two years in prison if convicted.<sup>182</sup> The Polish minister of internal affairs, Joachim Brudziński, applauded the police action and tweeted: “All this nonsense about freedom and “tolerance” does not give ANYONE the right to insult the feelings of believers.”<sup>183</sup>

On 5 June 2017, the Warszawa-Śródmieście court ruled in favour of three Green Party activists, accused of insulting “The Anchor”, a symbol of the Polish Secret State during World War II. The activists had shown an image with gender symbols at the tips of the Anchor symbol and the expression “Nie-podległa”, a pun on the adjective “independent.” The judgement is not yet final.<sup>184</sup>

**Holocaust Law.** Originally, the law imposed up to three years in prison to anyone who suggested that Poland participated in the Holocaust, including Nazi concentration camps in Polish territory. After great social and international pressure, in June 2018 the parliament approved an amendment to the law, turning the initially criminal trial into a civil one, and consequently eliminating the possibility of going to jail.<sup>185</sup> The new version of the law is no longer expressly limited to verbal manifestations related to the Third Reich, but sanctions those that affect “the good image of Poland.” This change has been considered insufficient as there is still the possibility of legally prosecut-

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181 More information about the case is available at: [https://www.washingtonpost.com/world/2019/05/09/sensual-bananas-rainbow-halos-poland-finds-itself-divided-over-art/?noredirect=on&utm\\_term=.490a59a9662f](https://www.washingtonpost.com/world/2019/05/09/sensual-bananas-rainbow-halos-poland-finds-itself-divided-over-art/?noredirect=on&utm_term=.490a59a9662f)

182 Amnesty International, “Urgent: Stop harassment of activist Elżbieta Podleśna”, 6 May 2019. [Available at: <https://www.amnesty.org/en/get-involved/take-action/poland-activist-elzbieta-podlesna/>]

183 Statement available at: <https://www.bbc.com/news/world-europe-48257706>

184 Helsinki Foundation for Human Rights, “Court rules for Green Party activists: pro-women rights poster does not insult WW2 resistance symbol”. [Available at: <http://www.hfhr.pl/en/court-rules-for-green-party-activists-pro-women-rights-poster-does-not-insult-ww2-resistance-symbol/>]

185 More information available at: [https://www.theguardian.com/world/2018/jun/27/poland-partial-u-turn-controversial-holocaust-law?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/world/2018/jun/27/poland-partial-u-turn-controversial-holocaust-law?CMP=Share_iOSApp_Other)

ing a person for the legitimate exercise of their freedom of expression.<sup>186</sup> So far, this legislation does not seem to have been used.

## Right to peaceful assembly and demonstration

**State of freedom of association.** Traditionally, freedom of peaceful assembly is respected by law and in practice. Demonstrations occur normally, although they may be prohibited in favour of public order. However, in recent years surveillance, intimidation and use of force by the police have increased. Amnesty International has reported a growing climate of verbal and physical harassment, as well as police arrests and fines for participating in a demonstration.<sup>187</sup>

**Amendment to the Law on Assemblies.** In December 2016, the Polish parliament approved an amendment to the Assembly Law. This law introduces the concept of “cyclical assemblies,” a designation granted to demonstrations that are held regularly in public space and to which the government offers facilities for the demonstrations to take place. The purpose of the law is to prevent two assemblies or demonstrations from happening at the same time, supposedly for security reasons. Civil society has lamented that this law prioritizes demonstrations approved by the government and prohibits counter-protests, alleging that it entails a generic restriction on the critical voices in the possibility of enjoying public space. The Polish president brought this legislation to the Constitutional Tribunal, which validated the law.<sup>188</sup>

Currently, most pending court cases against protesters concern the organization of and participation in these counter-protests prohibited by law. The

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186 Monitor Tracking Civic Spaces, Civicus Monitor, “Government removes criminal sanctions from “Holocaust law””, 8 August 2018. [Available at: <https://monitor.civicus.org/news-feed/2018/08/08/Government-removes-criminal-sanctions-from-Holocaust-Law/>]

187 Amnesty International, “Poland: The power of ‘the street’, protecting the right to peaceful protest in Poland”. 25 de junio de 2018. [Available at: <https://www.amnesty.org/en/documents/eur37/8525/2018/en/>]

188 Citizens Observatory of Democracy, “Law on Assemblies changed by the Law Amending Law of Assemblies of 13 December 2016”. 13 December 2016. [Available at: <http://citizensobservatory.pl/ustawa/amendments-to-the-law-governing-public-assemblies/>]

number of cases is more than 600, according to the Helsinki Foundation for Human Rights.

## Strategies and responses of civil society

**Success of Polish civil society.** Even with this adverse environment, Polish society has achieved some notable successes. For example, in March 2018, the Ministry of Internal Affairs abandoned its idea of amending the Public Funds Law, after more than 112,000 people signed a petition against it. The amendment was intended to give authorities broad power to decide which causes were of public interest and could receive public donations.<sup>189</sup> The amendment to the abortion law was also cancelled after citizens protested massively.

**New methods.** Civil society organizations have noted that, as the government's perception of them changed, traditional methods of action have become inefficient. For example, strategic litigation is losing effect, as it is presented by the government as an attack on national interests, and CSOs are accused of acting against the Polish nation.<sup>190</sup>

To counteract it, various CSOs have created coalitions and established work networks and support systems. An example of this is the "Civil Observatory for Democracy"<sup>191</sup>, which gathers opinions and reactions of civil society to the changes introduced by the government. CSOs also unite to organize protests and actions.<sup>192</sup>

As the channels of conversation with the government at national level closed, CSOs increased their activity in the international sphere. Their presence in

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189 Civic Space Watch, "POLAND: Amendment to law abandoned", 14 June 2017. [Available at: <https://civicspacewatch.eu/poland-amendment-to-law-abandoned/>]

190 Malgorzata Szuleka, "First victims or last guardians? The consequences of rule of law backsliding for NGOs: case studies of Hungary and Poland", Centre for European Policy Studies (CEPS). 24 de abril de 2018. [Available at: <https://www.ceps.eu/ceps-publications/first-victims-or-last-guardians-consequences-rule-law-backsliding-ngos-case-studies/>]

191 Para More information, ver: <http://citizensobservatory.pl/>

192 Malgorzata Szuleka, "First victims or last guardians? The consequences of rule of law backsliding for ngos: case studies of Hungary and Poland", Centre for European Policy Studies (CEPS). 24 de abril de 2018. [Available at: <https://www.ceps.eu/ceps-publications/first-victims-or-last-guardians-consequences-rule-law-backsliding-ngos-case-studies/>]

the European Union, Council of Europe and the United Nations has increased considerably, in search of support that can pressure the Polish government from abroad.

**Judicial solidarity.** There is a strong movement of resistance and solidarity among judges, many of whom have openly criticized these reforms. According to the Helsinki Foundation for Human Rights, the effect of four years of attacks on the judiciary is starting to take a toll, creating a polarized society in which cases related to the exercise of the right to protest are often interpreted from a political point of view. Additionally, it should be noted that the jurisprudence of the courts plays a new role in the right to protest, since the Law on Assemblies has recently been amended.<sup>193</sup>

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193 Helsinki Foundation for Human Rights, "Constitutional Tribunal: what next?". [Available at: <http://www.hfhr.pl/en/constitutional-tribunal-what-next/>]

# Spain

## Legal and political context

**Introduction.** The political situation in Spain in recent years has been convulsive. Since the economic crisis, the country has lived a period of constant mobilization. Many social movements took to the streets for various reasons, especially against the lack of social policies and austerity measures.

Successive laws have been restricting freedom of demonstration and freedom of expression, and increased surveillance of the population. The criminal complaints against activists and artists have increased considerably in the last five years, with a very active State Public Prosecutor's Office supporting the accusations in this type of causes.

**High citizen mobilization.** In the context of the economic crisis of 2008, citizen mobilization intensified significantly. A high number of corruption cases were uncovered and the political system was severely questioned. Society began to demand a more active role in the democratic system and more transparency in the management of the economic crisis and state finances. In May 2011, the *15-M Movement* or *Movement of the Indignant*, of a collective and assembly nature, was born with the intention of changing these dynamics. The "tides", or mass protests of social groups that took to the streets to show their opposition to austerity measures, also appeared. Among them it is worth mentioning the White Tide and Green Tide that have denounced the dismantling and privatization of public services in healthcare and cuts in education, respectively.

According to data from the Ministry of Interior, in 2012 and 2013 the highest number of annual demonstration requests was reached, with 45,000. Already in 2014 they began to decline, and in 2016 and 2017, 27,880 and 29,091 communications were registered respectively. These data do not include information on the autonomous communities of Catalonia and the Basque Country.<sup>194</sup>

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<sup>194</sup> Information available at: <http://www.interior.gob.es/web/archivos-y-documentacion/332>.

Barcelona reached a historic record in demonstrations and concentrations on public roads in 2018, with 4,451 communications of such events. These data place Barcelona second in Europe, surpassed only by Berlin, as the undisputed continental capital of demonstrations, according to data collected by La Vanguardia.<sup>195</sup>

**Legal reforms of 2015.** In 2015, various legal reforms were passed that significantly restricted the right to protest. First, a double amendment of the Criminal Code was approved. The penalty has been hardened for the crimes of exalting terrorism and humiliating the victims, which can be punishable by up to 3 years in prison when carried out on the Internet. This reform is accompanied by a tendency to a broad interpretation of crimes. In this rather hostile environment, numerous persons, artists and comedians have been prosecuted for inciting violence or for offences against symbols of the state.

Secondly, a new citizen security law, Organic Law 4/2015 on the Protection of Citizen Security (LOSC), popularly known as the “Gag Law” was passed. This law shields and reinforces the powers of police officers, without increasing control over their actions. It also sanctions administratively a broad list of behaviours protected by the exercise of the right to protest.

The Law on the Protection of Citizen Security includes as a serious infraction (a fine of 601 to 30,000 euros) the “obstruction that seeks to prevent any authority, public employee or official corporation from exercising their functions, performance or enforcement of administrative or judicial resolutions.”<sup>196</sup> Thus, the *attempt* to prevent a judicial commission from accessing the property of a person who is being evicted can be sanctioned. The same precept could be used to sanction real estate occupations when officers do not consider them a crime of usurpation.

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195 La Vanguardia, “Nunca Barcelona se manifestó tanto” (Barcelona has never demonstrated so much) of 11 March 2019. [Available at: <https://www.lavanguardia.com/politica/20190311/46959832395/barcelona-record-manifestaciones-concentraciones-2018.html>]

196 Organic Law 4/2015 on the Protection of Citizen Security (LOSC), Art 36.4. 30 March 2015. [Available at: <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>]

La ley también prohíbe las manifestaciones y reuniones frente a las sedes del Congreso de los Diputados, el Senado y las asambleas legislativas de las comunidades autónomas cuando se ponga en grave riesgo la seguridad ciudadana, y siempre que no constituyan infracción penal.<sup>197</sup> Esta nueva infracción deriva de las protestas de 2012 organizadas por iniciativas como “Rodea el Congreso”.

The law also prohibits demonstrations and meetings in front of the headquarters of the Congress of Deputies, the Senate and the legislative assemblies of the autonomous communities when citizen security is put at serious risk, and provided that they do not constitute a criminal offence.<sup>198</sup> This new infraction derives from the 2012 protests organized by initiatives such as “Surround the Congress.”

**The Catalan independence process.** The Catalan independence process culminated in the holding of the referendum on 1 October 2017, previously prohibited by judicial authorities. People who went to vote found a violent response from Spanish police authorities who tried to prevent it. Some of the leaders escaped abroad, while others were arrested and are still pre-trial detention accused of rebellion, sedition and embezzlement of public funds, awaiting judgements. Among those imprisoned, there are two representatives of civil society, Jordi Cuixart and Jordi Sànchez, without political positions at the time of their arrest. After the declaration of independence, the central government took control of the autonomous government and ordered elections in December of the same year.

The persistent conflict has strongly polarized the political landscape in the rest of Spain and Catalonia, with very diverse narratives and factual stories. There is no doubt that the judicial judgement issued for the representatives of civil society in pre-trial detention will be decisive for the conceptualization of the right to protest in Spain and the limits to its exercise.

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197 Ley Orgánica 4/2015 de Protección de la Seguridad Ciudadana (LOSC), Art 36.2. 30 de marzo de 2015. [Disponible en: <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>]

198 Organic Law 4/2015 on the Protection of Citizen Security (LOSC), Art 36.2. 30 March 2015. [Available at: <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>]

In May 2019, the Working Group on Arbitrary Detention considered that “the criminal charges against Messrs. Cuixart, Sánchez and Junqueras aimed to justify their detention as a result of the exercise of rights to freedom of opinion, expression, association, assembly and participation”<sup>199</sup> and that the detention “was carried out to the detriment of the principle of equality of human beings having been motivated by his political opinion.”<sup>200</sup> The government has criticized the report, stating that there are doubts about the “independence and impartiality” of the Working Group.<sup>201</sup>

Already on 28 January 2019, the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clément Nyaletsossi – together with three other United Nations Special Rapporteurs – addressed Spain in an official communication. They expressed “concern about the arrest and prosecution of Mr. Cuixart, president of Òmnium Cultural, a non-governmental cultural association that promotes Catalan language and culture, for the crime of rebellion, for acts that do not appear to involve violence or incitement to violence by Mr. Cuixart, which would be an interference with his rights to public protest and freedom of expression.”<sup>202</sup>

## **Space for civil society and freedom of association**

**Situation of the right to protest in Spain.** Although the associative system is simple, the political and economic environment is increasingly hostile to the social structure. The United Nations Special Rapporteur for human rights de-

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199 Report point 120.

200 Working Group on Arbitrary Detention, Human Rights Council. (2019). “Opinion no. 6/2019, regarding Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies (Spain).” A/HRC/WGAD/2019. 27 May 2019. [Available at: [http://exteriors.gencat.cat/web/.content/Noticia/afers\\_exteriors/2019/20190529-DictamenONUPresos.pdf](http://exteriors.gencat.cat/web/.content/Noticia/afers_exteriors/2019/20190529-DictamenONUPresos.pdf)]

201 More information available at: <https://www.lavanguardia.com/politica/20190529/46256222543/onu-junqueras-sanchez-cuixart-gobierno-exteriores-independenistas.html>

202 Communications of the Working Group on Arbitrary Detention; of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; of the Special Rapporteur on the rights to freedom of peaceful assembly and association; and of the Special Rapporteur on the situation of human rights defenders. AL ESP 5/2018. 28 January 2019. [Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24271>]

fenders noted that, in particular, the groups in favour of the right to self-determination in Catalonia, and those working on socially sensitive issues, migrants and women had suffered considerably more restrictions and intimidation.<sup>203</sup>

**Delegitimization and prosecution of the protest.** The report “Gag laws and criminalization of the protest in the Spanish State”, published by the Defend Those Who Defend platform,<sup>204</sup> describes how, during the years of economic and institutional crisis, citizen protests highlighted the restrictive behaviour of the Spanish state. The attitude of authorities towards social movements was that of confrontation, delegitimization and, ultimately, criminalization.

As we will see in the following sections, many activists, artists and social leaders were brought before courts under the new wording of the crime categories approved in 2015,<sup>205</sup> whose ambiguity opens the door to the violation of fundamental rights. The State Prosecutor’s Office upheld the action in most cases.

In February 2016, two puppeteers of the *Titeres desde Abajo* group were arrested by order of the National Court after having displayed a banner containing the words “Gora Alka-ETA” in a puppet show for adults. The National Court decreed prison without bail under the FIES regime – prison regime applicable to armed gangs or terrorist groups – for both puppeteers for the exaltation of terrorism and for the offence committed on the occasion of the exercise of fundamental rights and public freedoms guaranteed by the constitution. Three days later, after a change in the position of the public prosecutor’s office, freedom with charges and passport withdrawal

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203 Michel Frost, United Nations Special Rapporteur on the Situation of Human Rights Defenders. (2018). World report on the situation of human rights defenders, Spain, p. 483. December 2918. [Available at: <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>]

204 Bondia, D. (dir.), Daza, F. and Sánchez, A. (coords.). (2015). “Leyes mordaza y criminalización de la protesta en el Estado Español” (Gag laws and criminalization of protest in the Spanish state) in *Defender a quién defiende* (Defend Those Who Defend). Barcelona, Icaria Ed. [Available at: [https://www.icariaeditorial.com/pdf\\_libros/defender%20a%20quien%20defiende.pdf](https://www.icariaeditorial.com/pdf_libros/defender%20a%20quien%20defiende.pdf)]

205 For an extensive presentation of the new categories of crime see: Sol Legal Commission (2015) “La ciudadanía como enemiga: Balance tras cuatro años de represión de la protesta” in *Defender a quien defiende. Leyes mordaza y criminalización de la protesta en el Estado Español*. Barcelona, Icaria Ed.

was decreed.<sup>206</sup> In January 2017, the National Court discontinued the prosecution for the offences of exaltation of terrorism and the Provincial Court of Madrid dismissed the lawsuit for the offences of hate speech.

According to the puppeteers, the banner did not represent their ideology but rather tried to denounce police actions intended to cover human rights violations committed by authorities. As stated by the puppeteers' support groups, the story of the show developed as follows: *"(...)That is when the police, representing the force of the state, appear and beat the witch until she is unconscious, then the police arrange circumstances for trumped-up charges against the witch by placing on her body a "Gora Alka-ETA" banner, which the police try to keep standing in order to take a photo as evidence. Then a fourth figure appears – that of the judge, who accuses and condemns the protagonist to death, showing the gallows."*<sup>207</sup>

**Epecially repressed groups.** Most of the restrictions have been suffered by housing rights activists. Numerous cases of economic sanctions, lawsuits against activists and two notorious cases of imprisonment have been documented.<sup>208</sup>

**Numerous activists have been brought to courts for crimes of resistance to authority and injuries, punishable by imprisonment, in the context of peaceful sit-ins and resistance to try to stop evictions.**

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206 More information about the case is available at: [https://www.eldiario.es/politica/juez-archiva-causa-delitos-titiriteros\\_0\\_600540754.html](https://www.eldiario.es/politica/juez-archiva-causa-delitos-titiriteros_0_600540754.html)

207 Freedom for the Puppeteers Assembly. [Available at: [www.libertadtitiriteros.wordpress.com](http://www.libertadtitiriteros.wordpress.com)] and see also: Act in Freedom by Amnesty International, 'España: una obra de teatro no representa un peligro para la seguridad' (Spain: a theatrical performance does not pose danger to security) . [Available at: [https://www.es.amnesty.org/actua/acciones/espana-titiriteros-feb16/?utm\\_source=FBPAGE&utm\\_medium=social&utm\\_term=Freedom\\_of\\_expression&utm\\_content=Web\\_petition-titiritero-Spain-20160212-FBPAGE&utm\\_campaign=Online\\_activism&utm\\_source=FBPAGE&utm\\_medium=social&utm\\_term=Freedom\\_of\\_expression&utm\\_content=Web\\_petition-titiritero-Spain-20160212-FBPAGE&utm\\_campaign=Online\\_activism#formcompleto](https://www.es.amnesty.org/actua/acciones/espana-titiriteros-feb16/?utm_source=FBPAGE&utm_medium=social&utm_term=Freedom_of_expression&utm_content=Web_petition-titiritero-Spain-20160212-FBPAGE&utm_campaign=Online_activism&utm_source=FBPAGE&utm_medium=social&utm_term=Freedom_of_expression&utm_content=Web_petition-titiritero-Spain-20160212-FBPAGE&utm_campaign=Online_activism#formcompleto)]

208 See, among others, the case of Jorge J., a young man denounced by the police at a Bankia launch. [Available at: <https://www.publico.es/espana/desahucios-finde-entrare-carcel-no-pagar-euro-desahucia-familias.html>]. Also the case of Isabel, accused of resistance crimes and injuries when she was trying to stop an eviction. [Available at: [https://www.eldiario.es/madrid/activista-enfrenta-lesionar-Policia-desahucio\\_0\\_706579727.html](https://www.eldiario.es/madrid/activista-enfrenta-lesionar-Policia-desahucio_0_706579727.html)]

Groups related to the feminist movement have also suffered police intimidation. Numerous cases of sexist repression, high surveillance, identification, picket arrests and administrative fines have been reported, especially in relation to the mass demonstrations of each 8 March.<sup>209</sup> Moreover, religious fundamentalist groups and far-right political parties have harassed activists in social media and filed numerous criminal lawsuits against their actions for the right to decide or against sexist violence.

## Right to information and freedom of the press

**Situation of the media.** The Platform for the Defence of Freedom of Information (PDLI) identifies three main threats to the right to information: the crimes of insults and slander included in the Criminal Code; the Law on Honour Protection and, finally, the crimes of exaltation of terrorism, also included in the Criminal Code. The significant volume of administrative sanctions imposed on journalists and information professionals during protest coverage should be noted.

**Journalists in demonstrations.** In 2011, a cooperation agreement on the protection of the journalistic community during protests was signed between the Ministry of Interior and the Federation of Journalist Associations of Spain to identify information professionals in demonstrations. The agreement created an identification vest for the media. However, there have been numerous complaints from journalists regarding the growing difficulties in covering demonstrations and public meetings due to excessive police methods.<sup>210</sup>

**According to the Ramon Barnils Journalist Group, between 2017 and 2018, only in Catalonia, Valencia and the Balearic Islands, 55 journalists, photo-**

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209 Bonilla Martínez, T (coord.). (2017). "Informe Represión y género: resistencias y aportaciones a la lucha antirrepresiva desde los feminismos" (Report: Repression and gender: resistance and contributions to the fight against repression from feminisms), in *Defiende a quién Defiende* (Defend Those Who Defend). [Available at: [http://defenderaquiendefiende.org/wp-content/uploads/2018/05/represion\\_genero\\_CAST.pdf](http://defenderaquiendefiende.org/wp-content/uploads/2018/05/represion_genero_CAST.pdf)]

210 Michel Frost, United Nations Special Rapporteur on the Situation of Human Rights Defenders. (2018). "World report on the situation of human rights defenders, Spain". December 2018. [Available at: <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>]

graphers and media professionals were attacked, threatened or intimidated while doing their job. The group also identified 62 cases of censorship of artistic, academic or other expressions; 30 cases of persecution of bloggers, social media accounts or citizen journalism; and 17 court decisions, police actions or complaints that may hinder the work of information professionals, among others. In total, they calculated 431 violations of the right to freedom of expression in the mentioned territories.<sup>211</sup>

**Use of the image.** The Law on the Protection of Citizen Security, which penalized unauthorised use of personal or professional images or data of authorities or members of security forces and bodies, has significantly affected media. This new infraction has been harshly criticized for being understood as a limitation to documenting possible police abuses or excesses, since the police officer's identification number is essential to identify the perpetrator.

According to statistics from the Ministry of Interior, 32 sanctions were imposed in application of this article in 2016, and a total of 41 sanctions in 2017.

In March 2016, a photographer from the Basque magazine *Argia* was sanctioned with 601 euros for posting on his Twitter account "without authorization and with the possibility of identifying the acting officers" an image of the arrest of the activist Naroa Ariznabarreta.

In May 2018, Rubén Molina, a journalist for La Burxa, was denounced for photographing an eviction attempt and publishing the images on social networks. The police held him, and fined him, without telling him which article of the LOSC he had allegedly violated.

## Freedom of expression and thought

**Situation of freedom of expression in Spain.** In general, freedom of expression is protected in Spain and people can criticize the government in public or in private without fear of reprisals. However, there is a growing range of

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211 These data are collected in the *Mapa de la Censura* (Censorship Map) by the *Observatori de Mitjans, Mèdia.cat*.

See also: <https://www.grupbarnils.cat/el-grup-ramon-barnils-juntament-amb-iridia-present-en-el-manifest-per-la-democracia-i-contra-la-censura-prou-atacs-als-i-les-professionals-de-la-informacio/>

politically issues, which are very sensitive and their judicial prosecution is increasingly common. As we will see below, a whole series of expressions on the Internet, from politically controversial song lyrics to simple jokes, have been criminally prosecuted with the use of generic categories such as “exaltation of terrorist” and “humiliation of victims of terrorist crimes” vaguely foreseen in the law.<sup>212</sup>

**Persecution of artists and comedians.** There is a general regression concerning the right to freedom of expression, especially in response to the Catalan independence movement and satire about institutional symbols of the state, such as the monarchy or the national flag. Freemuse marks Spain, together with Turkey and Russia, among the countries of the Global North which imprisoned the greatest number of artists in 2018.<sup>213</sup>

In 2015, the government amended article 578 of the Criminal Code and expanded the scope of its application. This article criminalizes the “exaltation” of terrorism through the public dissemination of “messages or slogans” and the “humiliation of victims of terrorism.” Moreover, article 510 of the Criminal Code punishes hate crimes and incitement to violence. Both types of crimes are aggravated if they are committed on the Internet. The crime of insult to democratic institutions and crimes against the crown are severely punished, and are interpreted broadly. Defamation and crimes against honour are also punishable by imprisonment.

The cumulative effect of all these laws and the current intense judicial activity are creating a climate of self-censorship and inhibition, not only among professionals and activists, but also among users of social networks.

**Last year, a lot of publicity was given to a large number of cases of people who were brought to court by the public prosecutor’s office for statements made on social networks. For example, the case of Cassandra Vera in March 2018.**

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212 Amnesty International. (2018). Report “Tweet ... if you dare: how anti-terrorism laws restrict freedom of expression in Spain.” [Available at: <https://www.amnesty.org/download/Documents/EUR4179242018SPANISH.PDF>]

213 More information available at: [https://freemuse.org/def\\_art\\_freedom/the-state-of-artistic-freedom-2019-report-launch/](https://freemuse.org/def_art_freedom/the-state-of-artistic-freedom-2019-report-launch/)

Cassandra, a 22-year-old student, was sentenced by the National Court to a conditional punishment of one year in jail in 2017 for exalting terrorism after publishing a series of joking tweets about the death of Carrero Blanco, a Francoist Spanish politician who died 46 years ago in a terrorist attack. The Supreme Court finally acquitted the tweeter. The initial conviction, however, caused the loss of her university scholarship and seven years of disqualification from public office.

Since the legal reform of 2015, sentences for the crime of exalting terrorism have increased dramatically: from three judgements in 2011 to 39 in 2017. The number of convictions arising from the application of this regulation has also increased: a single conviction in 2011, compared to 35 people convicted in 2016 and 31 in 2017.<sup>214</sup>

Particularly well-known are the cases of Pablo Hasél and Valtònc, two rappers who in 2018 were indicted for the content of the lyrics of their songs. Valtònc went into exile in Belgium and international arrest warrants were issued against him. However, in September a Belgian court ruled against his extradition.

Pablo Hasél was sentenced in February 2018 by the National Court to two years and one day in jail, and a fine of 24,300 euros for crimes of exalting terrorism, with the aggravation of recidivism, and insults and slander against the crown and state institutions. The conviction is based on the rapper's opinions about members of the terrorist groups ETA and Grapo expressed on his Twitter profile. In total, the sum of the two sentences amounts to five years in prison.

Sporadic cases of censorship have also been documented on politically sensitive issues. In 2018, the work of Santiago Serra was censored at the International Contemporary Art Fair of Madrid (ARCO). The exhibition was titled "Political Prisoners in Contemporary Spain" and showed about twenty black and white photographs, including ones that portrayed Oriol Junqueras, Jordi Cuixart and Jordi Sànchez in pre-trial detention for leading the Catalan independence movement.<sup>215</sup> The government defended the decision of the insti-

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214 Op. cit. 212.

215 More information available at: <https://www.elperiodico.com/es/ocio-y-cultura/20180221/arco-santiago-sierra-presos-politicos-junqueras-jordi-sanchez-6639335>

tution managing the Madrid fair, stating that there were no political prisoners in Spain.<sup>216</sup>

**Law on the Protection of Citizen Security.** The new Law on the Protection of Citizen Security classifies as a violation the lack of respect and consideration for officers (art. 37.4). The law does not define the concept of “lack of respect and consideration”, leaving room for subjective observation of the officer. Additionally, the LOSC considers complaints, testimonies or statements formulated by the officers as a “sufficient basis” for the competent administrative authority to be able to effectively impose the sanction, unless the sanctioned person proves otherwise.

As of March 2018, a total of 47,980 fines were processed for “lack of respect and / or consideration” for the police and civil guard officers. That is, the civil guard and police imposed 48 fines each day for this reason since this infraction was approved. As these are administrative sanctions, they are proposed by the officers of the different police forces of the state through the corresponding complaint, without the need for further judicial intervention.

According to statistics published by the Ministry of Interior, in 2016, the lack of respect and consideration for officers was the third most common reason why sanctions were imposed in application of the Gag Law, with a total of 19,497 sanctions. In 2017, the lack of respect and consideration for the authority was the second most widespread reason for sanctions, with a total of 21,122 sanctions, which is about 1,175 penalties more than in the previous year.

## **Right to peaceful assembly and demonstration**

**Situation of the freedom of peaceful assembly in Spain.** Since the application of the Citizen Security Law, the repression of the protest that was already taking place during the mass mobilizations of 2010-2015 has intensified. The problem is not only the law but also the disproportionate use of force.

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216 More information available at: <https://www.publico.es/culturas/psoe-aplaude-retirada-obra-presos-politicos-arco.html>

The Office of the High Commissioner for Human Rights (OHCHR) dealt with the situation of protest in Spain in its sixth periodic report: "The Committee is concerned about the deterrent effect which the recent approval of the Law on Citizen Security and the subsequent reforms of the Criminal Code may have on the freedom of expression, association and peaceful assembly. In particular, the Committee is concerned about the excessive use of administrative sanctions contained in the Law, which exclude the application of certain judicial guarantees, established in the Covenant; the use of vague and ambiguous terms in some provisions, which could give rise to a wide margin of discretion in the application of said law; and the prohibition of making use of images or personal or professional data of members of the authorities or security forces and bodies. The Committee observes that said law has been widely questioned by various sectors of society (art. 19, 21 and 22)."<sup>217</sup>

**Police abuses.** Historically, the management of demonstrations in Spain is no stranger to police violence. Spain does not have an independent investigation system for cases of police abuse and normally, among the highest police and political instances, there is a tendency to justify the actions of police authorities. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, in her letter of November 2018 said that "the broad and imprecise wording of the Law gives a great discretion to law enforcement in its interpretation and thus allows potentially disproportionate and arbitrary limitations to the exercise of the rights to freedom of expression and freedom of peaceful assembly, as protected by the European Convention on Human Rights" and reminded that "Spain lacks an independent body to which complaints against police forces could be addressed."<sup>218</sup>

**Issues with the identification of police officers.** In 2013, the so-called Police Operational Number was created (referred to by its Spanish acronym NOP), in the wake of the complaints of several civil society organizations and the recommendations of the Spanish Ombudsman. The NOP is displayed only

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217 Human Rights Committee, United Nations. (2015). Concluding observations on the sixth periodic report of Spain. CCPR/C/ESP/CO/6. 14 August 2015. [Available at: <https://undocs.org/es/CCPR/C/ESP/CO/6>]

218 Letter available at: <https://www.coe.int/en/web/commissioner/-/commissioner-urges-spain-to-ensure-that-the-law-on-citizens-safety-upholds-the-rights-to-freedom-of-expression-and-freedom-of-peaceful-assembly>

on the back of the officer's vest, and should not be confused with the Personal Identification Number or Professional Identity Card (referred to by its Spanish acronym TIP), which is the personal number assigned to officers when they join the Police Corps, and which they preserve throughout their career. Currently, the use of the NOP is an extended practice, although cases of lack of visibility or display are still spotted. In addition, organizations and civil society groups highlight the need to improve certain aspects, among others: displaying the NOP also at the front of the vest, using a clearer typography and using shorter numbers to make it easy to remember.

**Misuse of riot control weapons.** It is estimated that, since the Spanish transition to democracy, the rubber bullets used by police forces in Spain have caused up to 23 dead and at least 39 seriously injured<sup>219</sup>. In addition, the protocols for action and use of riot equipment by National Police officers are vague and are not public. This issue was raised by the Spanish Ombudsman in June 2014, when she recommended the approval of a detailed regulation of the use of riot control weapons and proposed a minimum content that those new rules should observe.<sup>220</sup> However, the General Directorate of Police Forces did not accept the aforementioned recommendation "considering that the existing regulation and control mechanisms are sufficient".<sup>221</sup>

The last documented case has been that of Roger Español, who lost the vision of one eye due to the impact of a rubber bullet shot by the National Police during the referendum in Catalonia, the 1st October 2017. The case sparked controversy as the rubber bullets used by the National Police had been prohibited in Catalonia since April 2014 from the Mossos d'Esquadra, the regional police.

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219 Cronología de las balas de goma: al menos 39 heridos graves y 23 fallecidos. [Disponible en <https://www.elsaltodiario.com/balas-de-goma/cronologia-balas-de-goma-al-menos-35-heridos-graves-y-23-fallecidos>]

220 Defensora del Pueblo (2014). Recomendación sobre la normativa de utilización de material antidisturbios. [Disponible en <https://www.defensordelpueblo.es/resoluciones/normativa-de-utilizacion-de-material-antidisturbios-2/>]

221 Defensor del Pueblo (2015). "Informe anual 2014 y debates en las Cortes Generales". [Disponible en <https://www.defensordelpueblo.es/wp-content/uploads/2015/06/Informe2014.pdf>]

**Law on the Protection of Citizen Security.** The norm multiplies the number of infractions and new criteria of gradation of the sanctions are introduced. For example, some infractions according to the LOSC include protests around the Congress or the Senate, going to demonstrations with clothes that hide someone's face and make identification difficult, climbing and occupying buildings. Art. 37.3 of the LOSC foresees a specific infraction in the event that the route of a communicated demonstration is not followed. Many of these new types of infractions codify the new types of protest that were born after 15M, as explained above.

The law is written vaguely and inaccurately, creating great administrative discretion. As mentioned above, the LOSC considers the testimonies of officers as sufficient evidence to impose sanctions, unless proven otherwise. Given the nature of the cases, it is very difficult to provide evidence to refute the version provided by the police officer.

Since September 2017, at least 40 residents of Murcia, associated in the Pro-Underground Platform were sanctioned on the basis of the LOSC for not complying with the formal requirements to communicate mobilizations and for cutting off rail traffic. The Pro-Underground Platform is opposed to the plan of building high-speed train rails through the middle of the city, which creates an impassable wall and divides the city into two parts. In total, the fines amount to 50,000 euros.

**Sanctions for disobedience and resistance to authority.** Article 36.6 of the LOSC provides that a serious infraction, punishable by a fine of 601 to 30,000 euros, is "disobedience or resistance to the authority or its officers in the exercise of their functions." It should be noted that the infraction of disobedience was aggravated with the approval of the LOSC, since it was previously classified as a minor infraction. Since the approval of the Gag Law, the number of administrative penalties for disobedience and resistance to authority has increased exponentially. According to data published by the Ministry of Interior, in 2016 and 2017, this infraction was the fourth most common reason of imposing penalties, accounting for a total of 12,094 and 13,033 sanctions respectively.

According to Amnesty International, the problem lies in the fact that some case files do not specify the concrete actions of the three that may constitute the infraction – disobedience, resistance or refusal to identify oneself, which hinders the right to defence in the framework of the administrative sanctioning procedure. In recent years, the Ombudsman has received nu-

merous complaints regarding the application of this provision, especially in the autonomous communities of Madrid and Andalusia.<sup>222</sup>

### **The Catalan independence process. September and October 2017.**

In September 2017, abundant demonstrations occurred throughout the Catalan territory in favour of holding a referendum of self-determination in Catalonia, scheduled for 1 October 2017. Attempts to curb it with police searches and detentions were received in Catalonia with a wave of spontaneous demonstrations that sought to show dissatisfaction with such actions. Jordi Cuixart and Jordi Sànchez, presidents of the Òmnium Cultural and Catalan National Assembly social organizations respectively, were arrested and charged with sedition for opposing a police operation, although the detainees claim that they only tried to manage the influx of more than 40,000 people. The Supreme Court initiated legal proceedings against Jordi Sànchez and Jordi Cuixart and extended the investigation against them with a possible crime of rebellion (according to the prosecutor's office) and sedition (according to the state lawyers). As at the time of writing of this study, the two activists remain in pre-trial detention awaiting judgements.

On 1 October 2017, state police forces raided numerous polling stations and, faced with resistance from people who peacefully opposed their actions, continued with police charges leading to a large number of people being injured. The images of police violence went around the world and were criticized by numerous international instances. Zeid Ra'ad Al Hussein, High Commissioner for Human Rights, said: "I am very affected by the violence in Catalonia this Sunday. With hundreds of people injured, I urgently ask the government of Spain to ensure detailed, independent and impartial investigations of all these acts of violence. The police must always act in a proportionate and necessary way."<sup>223</sup>

**Michael Forst, Special Rapporteur on the situation of human rights defenders criticized the ban in Madrid and Vitoria of two public assemblies su-**

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222 Amnesty International. (2018). Report "Get out on the street... If you dare. Three years of the application of the organic law on citizen security" p, 9. 26 June 2018. [Available at: <https://doc.es.amnesty.org/ms-opac/recordmedia/1@000030148/object/38826/raw>]

223 Comment of the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, about the situation of Catalonia, Spain. [Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22192&LangID=E>]

pporting the referendum. He also criticized the generic prohibition of any demonstration related to the referendum in Castelldefels, a town in Catalonia.

## Strategies and responses of civil society

**New forms of protest.** The emergence of new and diverse social movements led to new means of protest and the revaluation of historical forms such as civil disobedience. The use of social networks, the appearance of numerous assembly movements without leaders, camping in public spaces (for example, squares), escrache campaigns and protests in front of the parliaments should be highlighted. Pressure methods are also used, such as the occupation of buildings and institutional spaces, as well as concentrations with direct action in public spaces.

**Civil disobedience.** Old methods of protest, such as civil disobedience have been rediscovered and renewed. Various groups are violating current laws or certain court orders as a form of making a claim, when such orders are considered unfair or when they violate fundamental rights. In recent years, there have been numerous examples: the refusal to pay tolls on motorways, or the refusal by 15-M participants to suspend protests during the election campaign period.

For example, given the citizens' difficulty in paying interest rates on the mortgage – aggravated by an unemployment rate triggered after the economic crisis – the Platform for Persons Affected by Mortgages (PAH) was created in Barcelona. Its objective is to paralyze evictions of families in vulnerable situations, and to file lawsuits against abusive clauses included in the financing contracts. The movement extended to the metropolitan area of the city and other places in Spain (Madrid, Andalusia, the Basque Country, etc.), and is still actively working today.

**Support networks.** The creation of support groups for activists is an increasingly used strategy among civil society. In this regard, networks are being created to jointly cope with the costs of judicial proceedings and increase the pressure capacity of small CSOs. Psychosocial support and support groups have also been created for victims of police and judicial repression.



# Recommendations

## **To the governments:**

Avoid any interference in the operation and participation of civil society.

Distribution of public funds for civil society to be done in accordance with the principles of publicity, transparency and non-discrimination, and in a manner that may be subject to judicial control.

Ensure that representatives of the executive branch effectively respect the separation of powers and the independence of their functions.

Implement at the state, regional and local level effective mechanisms of prevention and investigation of the excessive and wrongful use of force by police forces.

Establish mechanisms for citizens and for human rights organizations to allow them to denounce specific situations of police violence.

Prohibit police controls that are based on ethnic profiles or that imply any type of discrimination in police actions.

Repeal any norm or regulation that allows interference by the authorities in the public media and, in particular, in relation to the contents of the broadcasts.

Promote effective measures to ensure political and social participation of minorities and women.

## **To the parliaments:**

Put into operation parliamentary commissions in charge of supervising police action.

Prohibit the use of heavy weapons, grenades, rubber bullets and other non-lethal weapons for demonstration control.

Oblige police officers to wear identification in visible places, both at the front and at the back of police uniforms, with clear and legible typography.

Allow the recording of images and prohibit restrictions on the dissemination of audiovisual material in the context of a protest.

Modify the legislation so that criticism of the symbols of the state does not constitute a crime or grounds for an administrative penalty.

Adopt regulations that protect the exercise of journalistic work, as well as the sources of journalists, guaranteeing non-interference in the media.

Ensure that norms on citizen surveillance, as well as the powers of secret services, are clearly delimited by law and maintain a fair balance with individual freedoms. Likewise, ensure that the decisions taken by the authorities may be subject to judicial control.

Ensure that legislation on online social platforms and networks establishes judicial supervision on censorship decisions.

### **To the administration of justice:**

Interpret restrictively regulations that constrain people's rights and freedoms.

Publish the statistics regarding crimes against freedom of expression or association annually.

Publish the statistics regarding crimes committed by police bodies annually.

Ensure that specific training in the field of human rights and public freedoms is offered to the judiciary, prosecution and other legal operators.

Ensure that the integrity and independence of the Constitutional Court is respected and protected, as well as compliance with all its decisions.

Guarantee transparency and impartiality in the processes of appointing members of the judiciary, judicial councils and related bodies, through a transparent and impartial process, which complies with the requirements of international and domestic legality.

### **To police administration:**

Adopt effective measures, in particular in the area of training, to avoid excessive use of force or sub-lethal weapons by law enforcement officers and security forces.

Introduce mandatory training on human rights and public freedoms in all police forces.

Investigate exhaustively complaints related to race, ill-treatment and excessive use of force, and ensure that the perpetrators are prosecuted and, if convicted, punished with penalties proportional to the seriousness of the crime.

Ensure that police bodies are instructed to avoid improper controls and detentions based on ethnicity.



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