

CDDH CONFERENCE ON THE PROTECTION AND PROMOTION OF CIVIL SOCIETY SPACE IN EUROPE

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HELSINKI

Gerhard Ermischer – President of the CoE INGOs

This panel has been tasked with giving good practice examples. As my co-speakers I feel a bit awkward to just talk about good practices while we bemoan the fact of democratic backsliding and human rights deficits all over Europe (and globally). So, I would like to start on a more general question: what can make democracies more resilient, how can societies become better equipped for protecting their democratic rights.

And my answer would be twofold:

- First: a truly vibrant civil society is the best protection you can have for democracy and human rights.
- And Second: this civil society also needs protection itself, and that needs an independent guardian of these rights. A formal guardian, which is an independent judiciary, and an informal guardian, which is a free and independent press / media.

A strong and vital civil society is the basis of a truly democratic society. I could personally experience such a strong civil society in Poland during my first mandate, when we were linking up with civil society organisations to fight against laws which were intended to limit the access of civil society to schools and introduce a curriculum that was no longer based on the values of the Council of Europe but on a reactionary and chauvinistic ideology. It was fascinating to experience this civil society fighting back against democratic backsliding and the willpower and determination shown by those activists. And quite many of them had not been activists before but had decided that it was now time to stand up for their values.¹

But what to do if there is no culture of a strong independent civil society raising its voice with confidence and vigour? You cannot just induce that from the outside but on the long term this is most and for all a question of culture and of education. A determined education for democracy is the basis for acquiring a resourceful civil society. In this the Council of Europe was very good, developing programmes and implementing them in member states successfully. For instance, in Bosnia and Hercegovina such programmes had a most positive effect after the war helping to build up a new civil society and to foster reconciliation and understanding.

¹ links to communications on this issue: [Webinar](#) with Polish teachers, unionists, and NGO representatives on Changes in Polish Education Law, [Webinar](#) on the Developments in Polish Education Law and Emergency Measures for Ukrainian Students in Polish Schools, [Open](#) letter from the President of the Conference of INGOs to the Government of Poland

Such processes are long term, they need continuity and patience. Unfortunately, due to financial restrictions, many of these programmes had to be cut back again and already achieved positive results were lost consequently. In our recent country visit to Bosnia and Herzegovina the complaints of young people for a lack of democratic and inclusive education were very loud and we could see the negative effect of measures cut short, long before they could truly take roots.² There is a lesson to be learned to be consequent and keep up the effort to achieve as cultural change is a marathon, not a sprint.

It needs also to be understood what even the most vital civil society can achieve with protests and manifestations. Finally, there complaints have to stand up in court and the ultimate test comes in the elections. When parties with authoritarian tendencies are elected and re-elected their power consolidates and fighting back becomes ever more difficult. This is why truly fair elections are of the utmost importance. Not just elections that are formally correct in the final process of voting, but fair in the long uprun to the elections, providing equal chances in the media and without harassment of candidates through unfair judicial measures. There lies the value of a free press and independent judiciary.

For the judiciary, like so many other aspects of democratic life, the COVID-19 crisis was a litmus test. It did highlight existing problems and show in a nutshell which solutions were working well or not. It was for a good reason that the CDDG at the time was evaluating anti COVID measures in the member states and put a focus on the reactivity of the judiciary. I spent the first lockdown in Germany, the second in Austria and so could see the reactions in both my home countries myself. And it was good to see how courts reacted and found, after quite a short time, new ways of communications, opening online gates for complaints of citizens and how they would react to overshooting measures taken by the government and administration.

In Austria the Court of Constitution finally decided to divert from one of its key principles, never to give verdicts on laws no longer in place. As most of the measurements taken during the pandemic crisis were of a temporal nature, they were mostly already defunct again when complaints had run their course through the instances and had finally arrived at the constitutional court. But the Court decided to investigate these cases and give verdicts, as it saw them as of a general interest and that it was important to learn from mistakes in this exceptional crisis to avoid similar reactions in future crisis. I believe it was also important for a process of reconciliation after an emergency that had widened the already existing gaps in society and opened new rifts.³

The Council of Europe, as an international intergovernmental organisation, provides standards, rules and guidelines, it provides its own last line of defence in the European Court of Human Rights and it creates programmes to support civil society in the member states. In all that it is a top-level organisation, and we have to understand that a vibrant civil society has to grow up from the ground – that the heart blood of a resilient democratic society are the many small local and regional associations, the grass-roots organisations doing hands-on work in the field on a daily basis. Big international organisations are not normally very good in linking up with those grass-roots organisations. The creation of field offices was an important step by the Council of Europe to get closer to the ground.

When it comes to an institutionalised connection with civil society, the Council of Europe provides participatory status to International Non-Governmental Organisations, or the EU likes to interact with big international NGOs that can afford offices and staff in Brussels. As the Conference of INGOs we ourselves are not very close to the ground level. Therefore, during our own reform process, we opened opportunities for NGOs who can not enjoy participatory status to interact with us, participate in our committees and to meet with them on their own playing field. With the help of some member states, like Andorra, Finland, and Croatia, we

² Link to the report [Bosnia and Herzegovina - Conference of INGOs \(coe.int\)](#)

³ For examples (in German) [COVID-19: Entscheidungen des Verfassungsgerichtshofes 2021 | Parlament Österreich](#)

have developed a new type of field visits where we meet those organisations, we normally do not reach even during our more official country visits. And to so on a more equal footing, e.g. by providing interpretation for these meetings, to allow representatives to express themselves in their own language, as language is a very effective barrier to participation.

In my work with the Conference of INGOs I could meet quite some of these organisations which really make a difference. As I am personally attached to the European Landscape Convention I might mention here one example from Italy, an association which was recommended by the European Landscape Award. Libera is an association that takes on land confiscated by the Mafia in Sicily and Southern Italy in a special programme called Libera Terra. Changes in the Italian law made the confiscation of property from organised crime easier, but especially with confiscated land it begs the question: what to do with it? As few people dare to touch this land in fear of repercussions. Libera does, it develops sustainable economic projects, with respect for the landscape and local traditions, provides jobs in areas that are deprived of good job opportunities and shows that the vicious circle of crime, violence and corruption can be broken. Its members do so at great personal risk. But they manage to slowly change culture and prejudices by creating alternatives and simply by not succumbing to the violence and permanent threat of organised crime.⁴

We must learn from the example of the grass-roots organisations facing challenges on an everyday basis in the field. We need to be bold as the Council of Europe and live up to expectations. Especially in a body as the CDDH, which has the task to draft new standards in the field of Human Rights and protecting our democratic societies. This is the core task of the Council of Europe. We have heard a lot about today being a dark moment in the history of democratic Europe, maybe the darkest time in the history of the Council of Europe. As a historian I have different perspective. The Council of Europe was founded on the still smouldering ruins of a Europe devastated by fascism and war in the shadow of the emerging cold war and the threat of total nuclear annihilation. These were not happy times indeed. The promise made creating the Council of Europe was to help the free states of Europe to develop into truly democratic societies, to protect the rights of its citizens and to be a beacon for human rights, democracy, and rule of law.

The Council of Europe has done a sterling job in that. It has done what is its primary function: to set standards and to create instruments to implement them. Based on its core convention, the European Convention of Human Rights, backed up by the European Court of Human Rights the Council of Europe has delved into practically alle areas of life and created instruments to aid the citizens of Europe to defend their rights: from the Social Charter to conventions on health, culture, cultural heritage, education, equality, protection of children, against torture or human trafficking – there seems to be no aspect of human life not covered by and instrument of the Council of Europe.

The Council of Europe managed to draft groundbreaking instruments like the Bern Convention, that set standards in nature protection and developed through time taking into account new scientific standards. It was a model for others and has inspired developments in nature and environment protection. When the Iron Curtain fell the Council of Europe experienced a period of rapid enlargement which finally led to the coverage of nearly all geographical Europe (and beyond). In the euphoria of the time, it was believed that this process was final, irreversible and would continue for ever. We were not prepared for the backlash we experience today. A backlash that forces us to come back to the values and strategies of the founding era of the Council of Europe.

It seems that we have experienced a shift of priorities in the enlargement process: from content to coverage. To cover all of Europe through its membership seemed to have become more important than to implement our values. The full invasion of Ukraine by Russia and the expulsion of Russia as a result of this act of aggression needs to remind us that this is a value-

⁴ [About \(libera.it\)](http://libera.it)

based organisation. The success of a new instrument should not be measured by the number of signatures, but by its value and strength. Even a convention not signed, but strong in its purpose and determination, can have a positive effect and will be used by civil society as a benchmark. A weak instrument may find more states willing to sign it but it also sets a bad example and opens the door to misuse and undermining the rights of European citizens. We need to find our way back to the determination and consequence of the founding days of this great institution to ensure its value and purpose for the future.