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NON-GOVERNMENTAL ORGANISATIONS: REVIEW OF DEVELOPMENTS IN STANDARDS, MECHANISMS AND CASE LAW 2020-2024

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Approved by the Expert Council on NGO Law
on 31 January 2025

**The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.*

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EXECUTIVE SUMMARY

This review covers many developments between 1 January 2020 and 31 December 2024 that are of note relating to non-governmental organisations and which are relevant to the mandate of the Expert Council. It deals with a wide range of issues relating to standards, the work of various mechanisms and case law.

The developments relating to standards involve the elaboration of standards relating to civil society space, Covid-19, engagement with the Council of Europe, the environment, funding and resources, hate crime and hate speech, journalists' associations, migrants and refugees, participation in political and public life, radicalisation, transparency and youth.

Some of those issues are also addressed by the mechanisms, albeit from a slant generally highlighting problems, but they deal with a number of other issues as well. Thus, the issues covered are ones relating to: accountability for violations; civil society space; discrimination; the environment; establishment; funding and resources; human rights defenders; membership; migrants and refugees; participation in political and public life; peace and democratic transition; stigmatisation; supervision; terrorism and extremism; and transparency.

The case law developments relate to many of the foregoing issues concerning non-governmental organisations but often differently framed, namely, their objectives, registration, capacities, membership, activities, funding and resources; protection; dissolution; and victim status.

As with past reviews, the situation of non-governmental organisations continues to generate considerable activity in terms of standard-setting, the functioning of various supervisory and other mechanisms and in regional courts and tribunals. This can be seen as both an endorsement of the immensely valuable role that non-governmental organisations continue to play but also as a reflection of the growing pressures to which they are subject. Thus, continued efforts to ensure the effective implementation of all the standards that have been elaborated to enable non-governmental organisations to play their role in an effective manner clearly remains vital for the maintenance of democratic societies.

A. INTRODUCTION

1. This review has been prepared for Expert Council on NGO Law ("the Expert Council") of the Conference of INGOs of the Council of Europe ("the Conference"). The Expert Council was established by the Conference with a view to it contributing to the creation of an enabling environment for non-governmental organisations ("NGOs") throughout Europe by examining national NGO law and its implementation and promoting the compatibility of law and practice with Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe ("Recommendation CM/Rec(2007)14") and other relevant standards.

2. To achieve its aim, the Expert Council monitors the legal and regulatory framework in European countries, as well as the administrative and judicial practices in them, which affect the status and operation of NGOs.

3. This is its fifth review of developments in standards, mechanisms and case law affecting NGOs throughout the Council of Europe and beyond. The Review considers the work of Council of Europe organs (the Committee of Ministers, the Parliamentary Assembly ("PACE"), the European Court of Human Rights ("the ECtHR"), the European Commission for Democracy through Law ("the Venice Commission") and the Commissioner for Human Rights, as well as that of the United Nations High Commissioner for Human Rights, various UN Special Rapporteurs, the Office of Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe ("OSCE/ODIHR"), the courts of the European Union, the Inter-American Court of Human Rights ("the IACtHR"), The European Union Agency for Fundamental Rights ("the FRA"), the Financial Action Task Force ("the FATF") and the Expert Council itself.

4. As with previous updates, there have been many developments between 1 January 2020 and 31 December 2024 that are of note relating to NGOs and which are relevant to the mandate of the Expert Council. The principal ones – which deal with standards, the work of various mechanisms and case law - cover a very wide range of issues and are summarised in the paragraphs that follow.

5. Of particular note, in a positive sense, has been the reaffirmation of the commitment to civil society in the Reykjavik Principles for Democracy appended to the Reykjavik Declaration and the adoption by the Council of the European Union ("the Council") of its conclusions on The role of the civic space in protecting and promoting fundamental rights in the EU and the tightening up by the FATF of its Recommendation 8 and its Interpretive Note to address the misapplication and misinterpretation of the previous version by many States, as well as efforts by the European Court and the UN Special Rapporteur on the

rights to freedom of peaceful assembly and of association to respond to unjustified limits on access by NGOs to funding.

6. On the other hand, many existing standards are not being properly implemented or even ignored as is evident, for example, in the many judgments of the European Court dealing with matters such as registration, membership, activities and dissolution of NGOs, the delayed execution of its earlier judgments, the stigmatisation of NGOs as foreign agents and the misuse of measures dealing with terrorism and extremism, all of which play a big part in the shrinking of the space for civil society.

B. STANDARDS

7. The developments relating to standard-setting concern a wide range of issues, namely, ones relating to civil society space, Covid-19, engagement with the Council of Europe, the environment, funding and resources, hate crime and hate speech, journalists' associations, migrants and refugees, participation in political and public life, radicalisation, transparency and youth.

8. These issues illustrate the considerable contribution that is and can be made by NGOs and build on existing standards, notably the rights under the European Convention on Human Rights ("the ECHR"), Recommendation CM/Rec(2007)11, the Joint Guidelines on Freedom of Association of the Venice Commission and OSCE/ODIHR and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe. At the same time, they show the many difficulties and obstacles that can be put in the way of their making that contribution.

Civil society space

9. In the Reykjavik Principles for Democracy appended to the Reykjavik Declaration adopted at the Fourth Summit of Heads of State and Government in May 2023, the Heads of State and Government reaffirmed that:

> CIVIL SOCIETY is a prerequisite for a functioning democracy and commit to supporting and maintaining a safe and enabling environment in which civil society, as well as human rights defenders, can operate free from hindrance, insecurity and violence.

10. Furthermore, the Council of the European Union ("the Council") has adopted conclusions on The role of the civic space in protecting and promoting fundamental rights in the EU.

11. These state that the Council:

> 2. **Emphasizes** that the right to freedom of association constitutes one of the essential foundations of a democratic and pluralist society as it enables citizens to act collectively in areas of common interest and, by doing so, contributes to the proper functioning of public life.

3. **Acknowledges** that civil society actors at all levels need appropriate and sufficient human, material and financial resources to carry out their missions effectively and that the freedom to seek, receive and use such resources is an integral part of the right to freedom of association. Such access must be in accordance with the principle of legality and adhere to the common values of the Union.
4. **Stresses** that civil society organisations (hereinafter 'CSOs') and human rights defenders4 are essential in our constitutional democratic societies to contribute to the promotion and the protection of the values and rights enshrined in Article 2 of the TEU and in the Charter and help ensuring that the Charter is properly applied, thereby increasing the impact of fundamental rights on people´s lives. They are an indispensable element in the system of checks and balances in a healthy democracy; unjustified restrictions to their operating space can present a threat to the rule of law.
5. **Underlines** that Article 11 of the TEU requires Union institutions to give citizens and representative associations the opportunity to make known and publicly exchange views in all areas of Union action; and that the institutions shall maintain an open, transparent and regular dialogue with representative associations and CSOs and to carry out broad consultations on new initiatives.
6. **Acknowledges** the value of knowledge sharing and exchanges of good practices between Member States on efforts to protect, support and empower CSOs and human rights defenders, and the lessons to be learnt from the different sources of knowledge compiled by e.g. the European Commission and the Fundamental Rights Agency.
7. **Notes** with concern that the Fundamental Rights Agency's reports on civic space show evidence that CSOs are challenged and therefore hampered in fulfilling their important roles regarding fundamental rights, democracy and the rule of law across the Union.
8. *Stresses* the importance of improving consultation mechanisms to ensure that CSOs and human rights defenders are appropriately involved in processes to prepare, implement and monitor legislation and policies.

12. Furthermore, the Council invited Member States to:

9. **Safeguard and promote** an enabling environment for CSOs and human rights defenders so that they are able to pursue their activities in line with Union values without unjustified interference by the State as required by EU- and international standards.
10. **Set up or facilitate** the establishment of national human rights institutions in compliance with the United Nations Paris Principles and adopt a legislative framework enabling them to carry out their role independently and provide them with the adequate mandate and appropriate resources to carry out their tasks effectively.
11. **Nominate**, where not already done, a Charter focal point or to entrust an existing focal point with the promotion and coordination of capacity building, exchange of information and awareness raising on the Charter.
12. **Increase** the efforts to protect, support and empower CSOs and human rights defenders, providing them with a range of opportunities to co-operate.
13. **Protect** the civic space by ensuring that no unnecessary or arbitrary restrictions are adopted, such as registration requirements and tax regimes that specifically target the civic space in an unfavourable manner.
14. **Protect** CSOs and human rights defenders from, inter alia, threats, attacks, persecution of critical voices and smear campaigns targeting organisations, staff and volunteers by active means, such as by taking targeted actions to address these issues, by establishing monitoring mechanisms to prevent such threats, by ensuring the prompt identification, reporting, investigation and follow-up on such incidents, and by putting in place dedicated support services for civil society actors.
15. **Protect** the possibility for CSOs and human rights defenders to be safe and act independently also in the digital space, inter alia by finding pathways for technology to be an enabler for engagement and democratic action and not be used to restrict the space of civil society actors and their activities.
16. **Support** CSOs by tackling challenges relating to the availability, accessibility and sustainability of funding, inter alia, by ensuring a fair distribution through transparent and non-discriminatory criteria,

by publishing and broadly disseminating calls for proposals so that they are widely accessible as well as by simplifying access to flexible funding for CSOs of all sizes, including through digitalisation and new innovative ways of distribution. At the same time it should be recognised that funding of CSOs should not solely be dependent on public funds, in order to safeguard their independence.
17. **Empower** civil society actors by ensuring the meaningful participation of a wide range of CSOs when drafting and implementing legislation and other initiatives across relevant policy areas, that may fall under their specific remit, including when designing funding opportunities.
18. **Empower** CSOs by ensuring that they have the opportunity to assess and express their opinion on how proposed legal and policy measures may affect them, their members, their constituencies, or fundamental rights more generally.

13. Finally, the Council welcomes the European Commission's work relating to the role of the civic space in protecting and promoting fundamental rights in the EU and invites it to:

20. **Protect** CSOs and human rights defenders by continued efforts to foster and protect democracy, the rule of law, and fundamental rights across all relevant policy areas, including by ensuring coherence between the Union's approach to protecting human rights defenders externally and internally.

14. However, in Resolution 53/13 Civil society space, the United Nations Human Rights Council drew attention to a range of problems faced by civil society that were, to say the least, not conducive to a safe and enabling space for it. In the face of these problems, it reaffirmed that:

creating and maintaining a safe and enabling environment, both online and offline, in which civil society can operate free from hindrance and insecurity, assists States in fulfilling their existing international human rights obligations and commitments, without which equality, accountability and the rule of law are severely weakened, with implications at the national, regional and international levels.

15. Moreover, the Resolution:

4. Urges States to recognize and promote the important role of a diverse and pluralistic civil society and to acknowledge the important contribution of civil society, including grass-roots organizations, human rights defenders, journalists and media workers, to the promotion of human rights, including the principle of non-discrimination, and to ensure a safe and enabling environment for their work, both online and offline;
5. Also urges States to ensure that legislation, policies and practices do not undermine the capacity of civil society to operate free from hindrance and insecurity;
6. Encourages States to take every opportunity to support diversity of civil society participation, with particular emphasis on underrepresented parts of civil society, including women, children, youth, older persons, persons with disabilities, persons belonging to ethnic, religious, national, linguistic and racial minorities, migrants, refugees, and others, and also including Indigenous Peoples and others not associated with or organized in nongovernmental organizations;

16. In addition, it:

7. Emphasizes the essential contribution that civil society makes to regional and international organizations, including through advocacy and awareness-raising, participation in conferences, the sharing of expertise and knowledge, engagement in decision-making processes, and implementation, monitoring and evaluation processes, once again unequivocally reaffirms the right of everyone,

individually and in association with others, to unhindered access to and communication with regional and international bodies, and their representatives and mechanisms, and urges States to refrain from practices that prevent or hinder such access and communication;

and it

10. Encourages States and regional and international organizations to put in place transparent, fair and gender-responsive accreditation processes that deliver prompt decisions and respect human rights, including by establishing grievance mechanisms for redress, and to address any erroneous accreditation decisions;
11. Calls upon States and encourages international and regional organizations to review, and update as appropriate, their frameworks for engagement with civil society and ensure that those frameworks reflect and respond to the challenges faced, including by taking measures to tackle barriers to participation by underrepresented parts of civil society, and also calls upon States to enable and institutionalize meaningful online participation in hybrid meetings;
12. Also calls upon States to ensure that provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the ability to solicit, receive and utilize resources for their work;
13. Urges States to create and maintain a safe and enabling environment, online and offline, in which civil society can operate free from hindrance, insecurity and reprisals, including by putting in place and, where necessary, reviewing and amending relevant laws, policies, institutions and mechanisms, and also urges States to ensure that such measures are gender-, disability- and age-responsive, address racism, racial discrimination, xenophobia and related intolerance, and take into account the needs of different groups and the online dimension of threats and attacks;
14. Also urges States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors, including human rights defenders, to investigate any such alleged acts, to ensure access to justice and accountability and to end impunity where such violations and abuses have occurred;
15. Calls upon States to establish or enhance information-gathering and monitoring mechanisms, such as databases, including by benefiting from data collected by civil society and the media, to permit the collection, analysis and reporting of concrete quantitative and qualitative disaggregated data on threats, attacks or violence against civil society, including human rights defenders, journalists and media workers, and to do their utmost to make data available to relevant entities, in particular the Office of the High Commissioner.

17. Similarly, PACE, in its Resolution 2362 (2021) Restrictions on NGO activities in Council of Europe member States noted that the civil society space continued to shrink in several Council of Europe member States, particularly in the case of NGOs working in the field of human rights. In particular, it was concerned about excessive reporting and public disclosure obligations on NGOs receiving funding from abroad, various attacks on NGOs assisting refugees and migrants, and on their donors, the impact of restrictive measures adopted during the Covid-19 pandemic and the need for support for NGOs working in the field of national minorities protection.

18. PACE therefore urged all the member States to:

10.1 comply with international legal standards with regard to the rights to freedom of assembly, association and expression;
10.2 fully implement Recommendations CM/Rec(2007)14 and CM/Rec(2018)11;

10.3 fully and rapidly implement the judgments of the European Court of Human Rights concerning violations of NGOs' right to freedom of association;
10.4 repeal and/or amend legislation that interferes with NGOs' ability to work freely and independently and ensure that such legislation conforms to international human rights instruments, in particular Articles 8, 10 and 11 of the Convention;
10.5 refrain from enacting new legislation entailing unnecessary and disproportionate restrictions on NGO activities; in this context, the Covid-19 pandemic should not be used to justify the imposing of such restrictions;
10.6 where appropriate, make use of the expertise of the Council of Europe, and in particular of the Venice Commission and of the Conference of International Non-Governmental Organisations and its Expert Council on NGO Law;
10.7 ensure that NGOs can seek, secure and use financial and material resources of both domestic and foreign origin, without suffering discrimination or encountering unjustified obstacles, in line with the recommendations included in the Venice Commission's report on the funding of associations;
10.8 ensure that NGOs enjoy effective legal protection, and in particular, in the event of a dispute with the authorities, that judicial scrutiny conforms to the safeguards inherent in the right to a fair trial (Article 6 of the Convention);
10.9 ensure that NGOs are fully involved in consultations on new legislation concerning them as well as on other important subjects and in relevant public debates;
10.10 ensure that civil society continues to benefit from its own space, particularly by refraining from all forms of harassment, whether judicial, administrative or fiscal, negative public statements, smear campaigns aimed at NGOs and acts of intimidation against civil society activists.

19. Finally, the European Commission has published a Comparative Legal Analysis of Associations Law and Regimes in the EU which details the regulatory frameworks applicable to associations, showing where there is a common approach and also where there are differences.

Covid-19

20. PACE in Resolution 2471(2022) The impact of the Covid-19 restrictions on civil society space and activities emphasised that "Civil society actors, including NGOs and human rights defenders, should be able to continue promoting public awareness, participating in public life and campaigning for the transparency and accountability of public authorities despite the Covid-19 pandemic".

21. However, it noted that various restrictive measures had been adopted in response to the pandemic, such as denial of or delay in registration of new NGOs, limited access to the beneficiaries of their actions, reduced funding or limitations on governing bodies' meetings, which have had a direct and adverse effect on the functioning of civil society organisations ("CSOs"). PACE was worried that the pandemic had highlighted or worsened problems that already existed in the environment in which civil society operated and considered that there was a risk that laws aimed at combating the Covid-19 pandemic might be used to further restrict the rights and fundamental freedoms of civil society.

22. Notwithstanding that certain good practices had also emerged during the pandemic, PACE therefore called on all Council of Europe member States to:

> 9.1 comply with international legal standards that are pertinent to the functioning of civil society, and in particular with regard to the rights to freedom of assembly, association and expression;
> 9.2 fully implement Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe and Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe;
> 9.3 fully and rapidly implement the judgments of the European Court of Human Rights concerning violations of civil society actors' human rights and fundamental freedoms, as well as those related to the measures taken to combat the Covid-19 pandemic;
> 9.4 avoid imposing unnecessary and disproportionate restrictions on human rights and fundamental freedoms of individuals and civil society actors on the basis of existing laws aimed at combating the Covid-19 pandemic;
> 9.5 repeal any legislation that interferes with civil society actors' ability to work freely and independently and that is no longer justified by the Covid-19 pandemic or any other public health issue;
> 9.6 refrain from enacting new legislation entailing unnecessary and disproportionate restrictions on civil society actors' activities; the Covid-19 pandemic, or any other future pandemic or public health issue, should not be used to justify the imposition of such restrictions;
> 9.7 provide sufficient financial and other support to NGOs in order to enable them to continue their work, despite the negative impact of the Covid-19 measures, and devise long-term strategies for supporting them;
> 9.8 encourage potential private donors to provide such support;
> 9.9 ensure that civil society actors are adequately consulted on laws, policies and practices concerning them as well as on other important subjects such as the handling of the Covid-19 pandemic; in particular, European Union member States should ensure that civil society is involved in the adoption, implementation and monitoring of national recovery and resilience plans;
> 9.10 provide unhindered access to public information and documents;
> 9.11 promote and support the use of online communication tools with and within civil society; such tools should be available at any time and not only during a public health or other crisis;
> 9.12 ensure a conducive environment for all civil society actors, in particular by refraining from harassment, smear campaigns and acts of intimidation against them.

Culture

23. In Recommendation CM/Rec(2020)7 of the Committee of Ministers to member States on promoting the continuous prevention of risks in the day-to-day management of cultural heritage: co-operation with States, specialists and citizens it is specifically recommended that governments "use the experience of non-governmental organisations specialised in cultural heritage protection to enhance opportunities for successful action in this field".

24. Moreover, the Guidelines for developing and promoting plurilingual and intercultural education for democratic culture that are appended to Recommendation CM/Rec(2022)1 of the Committee of Ministers to member States on the importance of plurilingual and intercultural education for democratic culture are aimed at, amongst others, NGOs involved in the promotion of language learning. These guidelines seek to define the elements required to support the development of plurilingual and intercultural education

for democratic culture, which valorises all languages, spoken and signed, whether or not they have official status or are part of the official curriculum.

Engagement with the Council of Europe

25. Following the "call for a review and further reinforcement of the Organisation's outreach to, and meaningful engagement with, civil society organisation" in the Reykjavik Declaration, the Secretary General of the Council of Europe prepared a Roadmap on the Council of Europe's Engagement with Civil Society 2024-2027.

26. This has three elements and an appendix with a Theory of Change Table. The three elements concern: the modalities for civil society's engagement with the Council of Europe (raising awareness, increasing knowledge and better understanding); an institutional framework for civil society's engagement (enhanced access and exchange of good practice, enhanced institutional engagement and synergies); and NHRIs and human rights defenders: forward looking observations (NHRIs and human rights defenders). The Theory of Change Table covers the measures to be taken, the immediate and intermediate outcomes of them and their impact, the ultimate goal being that the work of the Council of Europe is more effective.

27. A concrete step pursuant to the Roadmap is the preparation by the Steering Committee on Democracy (CD-DEM) now under way of Guidance to enhance civil society participation in Council of Europe work, including as regards a Council of Europe Code of Conduct on civil society engagement.

Environment

28. Member states of the Council of Europe have been recommended in Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment to reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law and to review their national legislation and practice in order to ensure that these are consistent with the recommendations, principles and guidance set out in its appendix. In the latter, it is provided that member States should, taking into consideration their vital role in the protection of the environment, consult and co-operate with civil society and environmental human rights defenders in the implementation of this recommendation.

29. Furthermore, in Recommendation CM/Rec(2024)6 of the Committee of Ministers to member States on young people and climate action, the measures which member States

of the Council of Europe were recommended to promote and apply with a view to protecting the rights of young people and young environmental defenders included that they should:

- respect, protect and fulfil the rights of young people to freedom of assembly and association under Article 11 of the European Convention on Human Rights;
- build the capacity of and provide support, including financial support, to young people and youth organisations working on climate issues, so that they can co-create and evaluate actions with the authorities responsible for their implementation;
- respect the freedom of speech and expression and the autonomy of youth organisations and other youth-led climate movements, as safe spaces that can offer support, guidance and opportunities for young people who wish to engage in climate advocacy;
- consider giving social recognition and value to the skills acquired by young environmental defenders through their activism, particularly when they transition into the labour market or educational programmes; and
- include young people and young environmental defenders, particularly those from marginalised, disadvantaged or Indigenous groups, or those in vulnerable situations in the development of frameworks that move beyond climate change mitigation, such as transformational adaptation, to create and prioritise permanent resilience across all social groups.

Funding and resources

30. In the report General principles and guidelines on ensuring the right of civil society organizations to have access to resources, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association firstly presented a compilation of nine general principles that, in accordance with international human rights law, should guide the effective implementation of civil society's right to access resources, namely:

1: The freedom to seek, receive and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of civil society
2: Any association – registered and unregistered - should enjoy the right to seek, receive and use funding and resources
3: States must respect, protect and facilitate the right to seek, receive and use funding and other resources of all associations, without discrimination
4: Restrictions on associations' right to seek, receive and use resources must meet requirements set out in Article 22(2) of the International Covenant on Civil and Political Rights, meaning that they must be provided by law and comply with the strict test of necessity and proportionality in a democratic society
5: The right to seek, receive and use resources must be protected offline and online
6: Rules governing access to resources by both the corporate and civil society sectors should be equitable (sectoral equity)
7: States must ensure that associations are not subject to stigmatization, harassment, threats, and attacks, including on the basis of the sources of their funding
8: States and other stakeholders should support and incentivize voluntary efforts by civil society organizations to enhance self-regulation, transparency and accountability mechanisms, based on existing good practice and standards
9: States and other stakeholders must meaningfully engage with civil society organizations when adopting any measures affecting their right to seek, receive and use resources

31. Secondly, the report sets out practical recommendations and guidelines on measures States are expected to take to comply with their human rights obligations in this field. It also provides practical recommendations to the donor community, and key stakeholders, such as financial institutions and multilateral entities (e.g., the FATF), so they can also ensure their policies and practices do not unduly restrict civil society's access to resources.

32. The aim of the report is to assist States, the donor community and other key stakeholders in the implementation of the recommendations made by the Special Rapporteur in his 2022 annual report to the Human Rights Council (A/HRC/50/42), which examines global trends and challenges threatening civil society's access to financial resources, including access to foreign funding.

33. In November 2023, the FATF released amendments to Recommendation 8 and its Interpretive Note to address the misapplication and misinterpretation of Recommendation 8, that had led countries to apply disproportionate measures on Non-Profit Organisations ("NPOs"). The revised Recommendation 8 ("R.8") and its Interpretive note will require countries to protect NPOs from terrorist financing ("TF") abuse through the risk-based implementation of strengthened measures.

34. The newly adopted amendments clarify that focused, proportionate and risk-based measures are at the core of an effective approach in identifying, preventing and combatting TF abuse of NPOs. When implemented appropriately, they will preserve the integrity of the NPO sector, the donor community, and the financial institutions and intermediaries they use, without unduly disrupting or discouraging legitimate NPOs activities.

35. The key updates include the need for:

- periodic identification of organisations that fall within the FATF definition of NPOs and assessment of the TF risks posed to them as R.8 does not apply to the entire universe of organisations working in the not-for-profit realm: but only to those that fall within the FATF definition of NPOs, with only a small portion of the latter facing a "high risk" of TF abuse;
- having in place focused, proportionate and risk-based measures to address TF risks identified, bearing in mind that many NPOs may already have adequate self-regulatory measures and related internal control measures to mitigate TF risks, such that national authorities do not need to take additional measures; and
- being mindful of the potential impact of measures on legitimate NPO activities. In particular, disproportionate obligations on NPOs may hinder their legitimate activities and the delivery of much needed services, thus affecting economic and other human rights.

36. The FATF has also updated its Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8) to reflect the amendments to Recommendation 8 and to help countries, the non-profit sector and financial institutions understand how best to protect relevant NPOs from abuse for terrorist financing, without unduly disrupting or discouraging legitimate NPO activities.

37. This paper includes, for the first time, includes examples of bad practices and specifically explains how not to implement the FATF's requirements. With the revision to Recommendation 8, and the updated best practices paper, the FATF considers that it has clarified how to implement measures that are proportionate to the assessed terrorist financing risks and prevent the implementation of measures that are overly burdensome or restrictive for organisations working in the not-for-profit realm.

38. Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing clarifies that NPOs are generally not obliged entities which are required to undertake specific (and now enhanced) due diligence measures on their customers. They would, however, be so regarded where they operate non-profit crowdfunding platforms and the compliance obligations could deter them from operating such platforms, thereby affecting the fundraising efforts of some CSOs Moreover, the enhanced due diligence measures might be applied to them as customers of obliged entities, such as financial institutions with which they have dealings. These measures – which could affect access to financial services and the ability to transfer funds abroad - could particularly have an adverse impact on the ability to conduct NPO activities in high-risk third countries (such as ones concerned with humanitarian aid and peacebuilding efforts).

Hate crime and hate speech

39. The role that CSOs can play in tackling hate crime and hate speech was specifically recognised in the steps included in the Recommendation CM/Rec(2024)4 of the Committee of Ministers to member States on combating hate crime.

40. Thus, it was stated that such organisations "relevant to the area of hate crime should be encouraged and supported in their diverse roles as a means to promote social inclusion, democratic participation and tolerance".

41. Also, it was recommended that member States should develop training in consultation with them, amongst others, for the purpose of ensuring that victims are enabled to seek, and be provided with, the support that they need, including any referrals required.

42. Furthermore, a specific section of the Recommendation was devoted to CSOs, which provided that:

> 64. Member States should provide civil society organisations with appropriate funding and resources in order that they can provide, as necessary, local, targeted and specialised support to victims of hate crime, contribute to training of criminal justice professionals, act as a bridge between State institutions and members of groups targeted by hate crime and inform local and national policy with respect to combating hate crime.
> 65. Member States should promote a safe, inclusive and enabling online and offline civic space in which civil society organisations working in the area of hate crime can operate, by ensuring adequate support and protection from threats, harassment or attacks, so that civil society organisations are empowered and enabled to thrive.
> 66. Such organisations should, in particular, be funded in order to provide support to victims as outlined in paragraph 15 above and capture third-party data regarding the prevalence of hate crime outlined in paragraph 48.
> 67. Member States should encourage and facilitate co-operation between civil society organisations, at national and international levels, in relation to the exchange of good practices, particularly on matters such as victim support and data collection.

43. Similarly, a role is also envisaged for CSOs in Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech. Thus, it provides that:

> 43. Civil society organisations should be encouraged to set up specific policies to prevent and combat hate speech and, where appropriate and feasible, provide training for their staff, members and volunteers. Civil society organisations should also be encouraged to co-operate and co-ordinate between themselves and with other stakeholders on hate speech issues.

Journalists' associations

44. Journalists' associations and trade unions are recognised in the *Guidelines on promoting quality journalism in the digital age* appended to Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age as having an important role to play in promoting quality journalism, and in assisting the profession to adapt to new business models and technological changes.

45. The Guidelines specify that, among other priorities, such unions and associations should:

> defend the rights of the rapidly growing number of freelance journalists, and advocate on their behalf for a core of common rights enjoyed by salaried employees, including minimum pay. Media and professional associations should diversify themes and fields of training, and develop specific support programmes especially for young professionals and their colleagues exposed to particularly precarious working conditions. Furthermore, freelance journalists, project-based professionals and other media practitioners in precarious forms of employment should fully benefit from protection mechanisms

aimed at ensuring the safety of journalists and other media actors in line with the requirements of Recommendation CM/Rec(2016)4.

Migrants and refugees

46. Cooperation with civil society is envisaged in Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, which provides that:

> 26. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant, refugee and asylum-seeking women and girls, and that defend and empower them.
> 27. Migrant and refugee women's organisations, including where appropriate Roma and Travellers women's organisations, should be consulted when devising migration, asylum and integration policies.

47. PACE in Resolution 2356 (2020) Rights and obligations of NGOs assisting refugees and migrants in Europe paid tribute to the enormous and tireless efforts of so many NGOs which are assisting refugees and migrants in Europe and globally and underlined that, without the efforts of thousands of volunteers working for NGOs, member States would not be able to meet either their legal commitments regarding refugees and migrants or their daily humanitarian needs. It encouraged NGOs and donors to include refugees and migrants in the implementation of their humanitarian work and its monitoring.

48. However, it also strongly condemned:

> attacks on NGOs and their donors, which have taken the form of physical violence; legal obstacles; judicial, administrative or fiscal harassment; smear campaigns; political accusations or even racist attacks.

49. PACE stated that:

> Respecting the rights and freedoms of NGOs, in particular the rights and freedoms guaranteed under Articles 8, 10 and 11 of the European Convention on Human Rights, is imperative for upholding fully functioning democratic societies. At the same time, governments or political organisations should not use NGOs as vehicles for extending their sphere of influence through political agitation

and that it was

> deeply concerned by reports about politically motivated and undue restrictions on the work of NGOs which are assisting refugees and migrants.

and considered that member States

should neither discriminate against foreign NGOs providing humanitarian assistance to refugees and migrants on their territory, nor should they restrict foreign funding of humanitarian work by domestic NGOs. In this regard, humanitarian donations and activities should not be subject to taxation by national fiscal authorities.

50. In addition, PACE pointed out that:

> 8. Being such pivotal civil society actors, NGOs must, for their part, comply with requirements such as respect for national laws and transparency. They should be incorporated and ensure clarity regarding their objectives, staff, funding, use of financial resources and activities. Lack of transparency, political agitation, religious or philosophical proselytising or commercial lobbying by NGOs which assist refugees and migrants would undermine public trust in them. (…)
> 10. Because NGOs can be vehicles for illegal activities, such as the smuggling or human trafficking of migrants, money laundering or aiding terrorism, they must take all precautions to ensure that they do not unintentionally become parties to such criminal activities. In line with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 2000), member States should not criminalise the transport of migrants across borders on purely humanitarian grounds. They must also refrain from criminalising other activities of NGOs which assist refugees and migrants, unless they are justified in doing so under Article 11 of the European Convention on Human Rights. European history provides a multitude of heroic examples of humanitarian smuggling of refugees fleeing various dictatorships or ethnic cleansing.
> **11.** Recalling its Resolution 2229 (2018) on international obligations of Council of Europe member States to protect life at sea, the Assembly emphasises that NGOs should be allowed to carry out search and rescue activities in international waters and disembark rescued persons at the nearest safe port, in accordance with international maritime law. National border guards can set up rules or codes of conduct for the co-operation of NGOs in official search and rescue operations within national territorial waters. In the current context of the Covid-19 pandemic and its aftermath the Assembly recalls that the "safety" of a port is also determined by local health risks. Nevertheless, the specific health problems of people rescued at sea require more rapid disembarkation and medical treatment.

51. In 2020, the Expert Council developed Guidelines on protecting NGO work in support of refugees and other migrants with a view to ensuring that laws, policies and practices concerned with human trafficking, migrant smuggling and the treatment of refugees and other migrants do not encroach on the legitimate activities of NGOs.

52. The Guidelines not only set out what laws, policies and practices should not do, namely:

> a. Prohibit or prevent NGOs from helping refugees and other migrants in distress whether at sea or on land;
> b. Prohibit or prevent NGOs from monitoring the treatment of refugees and other migrants at border crossings, reception centres and wherever they are deprived of their liberty;
> c. Prohibit or prevent NGOs from providing refugees and other migrants with food, shelter, medical treatment, education and legal advice and assistance on these and other needs;
> d. Prohibit or prevent NGOs from raising funds to help refugees and other migrants in distress or provide refugees and other migrants with food, shelter, medical treatment and legal advice and assistance on these and other needs;
> e. Impose taxes, other charges and reporting obligations with respect to income raised or received by NGOs solely on account of its intended use being to help refugees and other migrants in distress or provide refugees and other migrants with food, shelter, medical treatment and legal advice and assistance on these and other needs;

f. Treat NGOs, their members and their staff who help refugees and other migrants in distress or provide refugees and other migrants with food, shelter, medical treatment and legal advice as aiding and abetting or otherwise being complicit in any illegality involved in their presence in, or gaining access to or leaving, the country;
g. Prohibit or prevent NGOs from campaigning to bring laws or practices concerning refugees and other migrants into line with international standards and best practices;
h. Prohibit or prevent NGOs from submitting complaints or bringing proceedings under national and international procedures with respect to the rights and treatment of refugees and other migrants;
i. Tolerate the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of NGOs, their members and their staff on account of them having helped refugees and other migrants in distress or having provided them with provision of food, shelter, medical treatment and legal advice; and
j. Impose any disqualification or other disadvantage on NGOs, their members or their staff on account of them having helped refugees and other migrants in distress or having provided them with food, shelter, medical treatment and legal advice

but also what these should do, namely:

a. Establish that assisting refugees and other migrants in distress without financial gain and providing those already in the country with food, shelter, medical treatment and legal advice and assistance does not fall within any type of offence concerned with human trafficking or migrant smuggling;
b. Provide NGOs with information, as well as the right to seek and receive it, about migration flows and places where refugees and other migrants are deprived of their liberty;
c. Permit NGOs to monitor the treatment of refugees and other migrants, including at border crossings and wherever they are deprived of their liberty;
d. Facilitate the provision of legal advice and assistance by NGOs to refugees and other migrants, who are deprived of their liberty or are at risk of a violation to their human rights;
e. Protect NGOs, their members and their staff from harassment, intimidation, physical attacks and threats of prosecution on account of them having helped refugees and other migrants in distress or having provided them with food, shelter, medical treatment and legal advice; and
f. Encourage and facilitate the participation of NGOs helping refugees and other migrants in distress or providing them with food, shelter, medical treatment and legal advice in processes to reform any requirements relevant to these activities.

Participation in political and public life

53. Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems includes in the guidelines set out in its Appendix that "Private sector actors should actively engage in participatory processes with consumer associations, human rights advocates and other organisations representing the interests of individuals and affected parties, as well as with data protection and other independent administrative or regulatory authorities, on the design, development, ongoing deployment and evaluation of algorithmic systems, as well as on their complaint mechanisms".

54. Specific guidelines for national minority organisations and CSOs are included in Recommendation CM/Rec(2023)9 of the Committee of Ministers to member States on the active political participation of national minority youth.

55. Thus, these provide that:

> 26. National minority organisations, including the elected bodies of national minorities and other national minority structures of self-governance at local, regional and national levels, should be encouraged to provide space for youth, and in particular girls and young women and others exposed to intersectional discrimination, to participate in their organisational, advocacy and other activities, while ensuring that a wide range of views of persons belonging to national minorities is represented.
> 27. The bodies mentioned in the previous paragraph should be encouraged to develop their own strategies for promoting political participation of young people, to include in those strategies and action plans clear objectives, indicators, baselines, targets, budgets and timelines, and to identify those responsible for achieving each objective. National minority youth, including those exposed to intersectional discrimination, should participate in the planning, implementation and evaluation of such strategies.
> 28. Political parties, especially those of national minorities, should be encouraged to take effective measures to achieve an appropriate representation of national minority youth, including those exposed to intersectional discrimination, within their structures, for example by encouraging and supporting their presence in governing structures, by introducing quotas for their representation and by including young candidates belonging to national minorities in good positions in election campaigns.
> 29. While respecting the independence of the media, national, regional and local media should be encouraged to give adequate space to national minority youth to express their views and present themselves in media reporting and news coverage, including in regional or minority languages, especially during election campaigns. Media should also be encouraged to promote inclusive and gender-sensitive content on national minority youth, for example through training regarding stereotyping, discrimination and sexism.
> 30. Civil society organisations, in particular those operating in fields dealing with youth, equality and minority groups, should be encouraged to motivate national minority youth, including those exposed to intersectional discrimination, and help them to join their organisations and to become involved in their activities.

56. Furthermore, CSOs are included in those bodies to which the principles and guidelines in the Appendix to Recommendation CM/Rec(2024)1 of the Committee of Ministers to member States on equality of Roma and Traveller women and girls are directed.

57. Thus, it is provided that such organisations should:

> - work with Roma and Traveller women and their organisations to identify the obstacles that Roma and Traveller women and girls who might wish to participate in political and public life are facing and provide them with effective support;
> - take measures and actively engage with Roma and Traveller women and girls, including through awareness-raising activities, to ensure that they are adequately informed about the importance of political participation, about the different forms and methods of political participation and about opportunities, activities or projects that may be of interest to them. Those measures should also reach Roma and Traveller women and girls living in rural areas;
> - actively promote the participation of Roma and Traveller women in their internal structures, including at leadership levels and when nominating candidates for elections. To that end, they should consider the introduction of minimum proportional quotas;
> - implement training programmes for members and staff to avoid, reject and react to all forms of discrimination, prejudice and antigypsyism against Roma and Traveller women and girls; and work with the media and journalists with a view to ensuring that media reporting on Roma and Traveller women

and girls is free from stereotypes and sexism and that media promote Roma and Traveller women who are involved in political and public life as role models.

58. In addition, it is recommended that, with a view to using their expertise, member States should:

regularly involve and consult Roma and Traveller women and girls and their civil society organisations in the different stages of policy making, including needs assessment, planning, implementation, monitoring and evaluation. To that end, they should establish platforms for permanent dialogue and participation such as working groups, committees, public forums and advisory councils.

Radicalisation

59. CSOs are recognised in Recommendation CM/Rec(2021)7 of the Committee of Ministers to member States on measures aimed at protecting children against radicalisation for the purpose of terrorism as having a particular role to play.

60. Thus, it provides that:

32. Recognising that preventing radicalisation of children requires the participation of society as a whole, member States are encouraged to engage with civil society actors with a view to building trust and forging co-operation, especially in building and strengthening democratic values and inclusion.
33. Where appropriate, member States are encouraged to identify and develop arrangements with civil society and the private sector, in particular with internet service providers and communication technology companies, for the purpose of preventing the radicalisation of children.

Transparency

61. In Resolution Civil society and the Parliamentary Assembly: towards greater transparency and engagement, PACE welcomed the recognition in the Reykjavik Declaration that "civil society is a prerequisite for a functioning democracy" and emphasised that "[T]he role that civil society plays in the work of the Assembly and in the democratic life of Council of Europe member States is to be celebrated and protected".

62. However, this resolution adopted following a similarly titled report of PACE's Committee on Legal Affairs and Human Rights, seeks to increase PACE's "exchanges with civil society, whilst simultaneously increasing the transparency of exchanges with interest representatives as a whole". The term "interest representative" is used "to refer to any individual or organisation that carries out activities with the objective of influencing the policy, guidelines, or decision making of Council of Europe bodies".

63. The Resolution provides as follows:

6. The Assembly therefore resolves to increase its exchanges with civil society, whilst simultaneously increasing the transparency of exchanges with interest representatives as a whole.

7. Noting the need to increase the transparency of the work of interest representatives, the Assembly resolves to ensure that their co-operation with the Assembly is governed by a code of conduct, taking into account the possible development of a framework code of conduct applicable to the Organisation as a whole.

8. The code of conduct applicable to interest representatives engaging with the Assembly should ensure the protection of freedom of expression and association, and comply with relevant international standards (including Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making). At a minimum, the future code should:

8.1 require interest representatives to declare their name and who they work for, the interests and objectives they promote, and the legal or natural persons that they represent, when interacting with parliamentarians, their staff, or members of the Assembly's and its political groups' secretariats;

8.2 require interest representatives to act honestly and in good faith;

8.3 prohibit interest representatives from having conflicts of interest;

8.4 prohibit interest representatives from using undue pressure, offensive language or other improper behaviour;

8.5 prohibit interest representatives from inducing parliamentarians, their staff, or members of the Assembly's and its political groups' secretariats to contravene the rules and standards applicable to them.

9. The Assembly further resolves to examine possible changes to the code of conduct for members of the Assembly which would increase the transparency of exchanges with interest representatives, also in compliance with the principles of Committee of Ministers Recommendation CM/Rec(2017)2; for example, by extending the prohibition on the seeking or taking of instructions to a wider range of members fulfilling important functions, such as chairpersons of committees and sub-committees, leaders of political groups, members of the Bureau of the Assembly, and the President of the Assembly.

10. Noting the need to review and further reinforce its outreach to, and meaningful engagement with, civil society, the Assembly resolves to:

10.1 make more committee meetings open to the public, by agreeing that all committee hearings will be open to the public as a general rule and considering including such a principle in the Rules of Procedure;

10.2 examine the feasibility of regular exchanges between civil society and Assembly members, for example with the Presidential Committee or the Bureau of the Assembly.

11. The Assembly resolves to examine further steps to increase the accessibility of the Assembly's work, including by:

11.1 making it easier for civil society to participate in part-sessions of the Assembly, for example by providing civil society representatives with the opportunity to register directly to have access to Council of Europe premises, simplifying the process for civil society to participate and organise side events (decreasing the time that such requests need to be made in advance and by making more rooms available), providing a dedicated office space for civil society, and allowing civil society to reserve meeting rooms;

11.2 making more information available to civil society attending the Assembly's sessions, such as through information sessions for civil society at the beginning of each Assembly session conducted by the secretariat, and producing a practical written guide on how to engage with the Assembly;

11.3 ensuring that introductory memoranda and minutes of public hearings are declassified as a general rule;

11.4 making the Assembly's work more accessible online, including through greater use of live-streaming of public hearings, making introductory memoranda and other committee documents available on the Assembly's website at an earlier stage, creating a user-friendly web page that describes

> reports currently under preparation and how external actors can make an input to them, and making it possible to subscribe to email updates for the work of each committee.
> **12.** Any changes to the Assembly's Rules of Procedure required to implement the present resolution will be introduced through a subsequent resolution to be adopted on the basis of a report by the Committee on Rules of Procedure, Immunities and Institutional Affairs.
> **13.** Finally, the Assembly is concerned by the development of legislation or government bodies in several member States, ostensibly to address transparency of foreign funding of civil society organisations as well as not for profit media outlets. The Assembly notes that the positive goal of transparency has been manipulated in certain "foreign agent" laws to undermine the operation or existence of legitimate groups, by using excessive regulation to create an atmosphere of mistrust and a chilling effect on civil society. This was most notable in the Russian Federation, leading the European Court of Human Rights to find violations of the European Convention on Human Rights (STE No. 5) for 73 non-governmental organisations in the case of *Ecodefence and Others v. Russia*. The Assembly expresses its deep concern that measures to address "foreign agents" in a number of member States, including Bosnia and Herzegovina, Hungary, and Georgia, will also damage civil society's work in favour of human rights, democracy, and the rule of law and will make it more difficult, or even impossible, for civil society to engage with international organisations.

64. The European Commission of the European Union ("the EU") proposed in December 2023 the adoption by the European Parliament and the Council of a Directive of establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries. This would be directed at establishing requirements for Member States of the EU to take various steps to regulate the entities covered by it through those entities: being able to identify the recipient of the service provided by them; providing certain information to their sub-contractors; keeping certain records; establishing a legal representative in a Member State where they are not established in the EU; and registering in a national register certain details about it and the interest representation being undertaken. In addition, the draft Directive provides for public access to the register, the publication of aggregated data relating to information in the national registers and the supervision and enforcements of all the foregoing matters.

65. The Explanatory Memorandum for the draft Directive seeks to distinguish the proposals in it from so-called "foreign agent" laws – which the EU itself has condemned - on the basis that: there is no negative labelling of the activities of specific entities; there is no attempt to limit civic space; there is no ban on any type of activity; there is no requirement of transparency of foreign funding that is unrelated to interest representation activities carried out on behalf of third countries; and there are safeguards aimed at ensuring a proportionate transposition and enforcement and avoiding risks of stigmatisation.

66. In addition, the draft Directive specifically provides that its purpose is to achieve the transparency sought:

> In such a manner as to avoid creating a climate of distrust apt to deter natural or legal persons from Member States or third countries from engaging with or providing financial support to entities carrying out interest representation on behalf of a third country entity

Youth

67. Recommendation CM/Rec(2022)6 of the Committee of Ministers to member States on protecting youth civil society and young people, and supporting their participation in democratic processes proposes measures in its Appendix which aim to identify and address threats to youth civil society and to ensure that all young people and youth civil society can engage meaningfully with and in democratic political processes.

68. In particular, with a view to creating an enabling and safe environment for a sustainable youth civil society, it provides that member States should:

> review their legal frameworks and update them where needed to ensure an environment which allows for a strong and independent youth civil society that is able to operate freely;
> analyse, in co-operation with youth civil society, the progress made towards creating the requisite conditions for a sustainable enabling environment, by using existing instruments or, where needed, defining new indicators and methods for collecting relevant data and information;
> foster independent, scientifically reliable national and European research on youth, and share open-source data to support it;
> share best practices among member States on how to enable and expand youth civil society and seek synergies with other existing exchange mechanisms in the European sphere;
> eliminate threats to the work of youth civil society on living together in peaceful and inclusive societies, and on fostering the Council of Europe's core values of human rights, democracy and the rule of law in order to protect pluralistic democracy;
> adopt, where appropriate and in accordance with relevant national legal frameworks, simple, flexible and widely accessible public funding and reporting mechanisms for youth civil society;
> eliminate undue legal and administrative burdens or hindrances to the receipt of funding by youth civil society from private and international donors and develop national financial mechanisms for the financing of activities aimed at promoting and reinforcing the Council of Europe's values, in accordance with Recommendation CM/Rec(2018)11 and with national legislation;
> ensure appropriate support for quality youth work, including its digital dimension, that fosters critical youth citizenship and empowers young people from different backgrounds, including those from marginalised and under-represented groups, to tackle challenges that young people and youth civil society face in exercising their rights and building a democratic and just Europe;
> endeavour to maintain and support, to the greatest extent possible, an enabling environment for youth civil society in times of crisis.

69. In addition, with a view to strengthening youth participation in democratic life, it provides amongst other things that member States should:

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> - facilitate the access of all young people and youth civil society, including those from rural and remote areas, to digital tools and internet connections in order to promote equal opportunities for access and a higher quality of life in the framework of their human, cultural, social, political and economic development; and
> - engage in open and structured dialogue with young people and youth civil society and create the requisite conditions for the widest possible political participation by young people, for example by considering lowering age restrictions on the right to vote or by promoting new forms of digital participation.

70. Finally, with a view to ensuring young people's access to rights, it provides that member States should protect and promote the rights to freedom of association and (peaceful) assembly and "create the necessary conditions for the representation of young people's and youth civil society's pluralistic and marginalised views and positions in public debate, without fear of retribution".

C. MECHANISMS

71. A number of the mechanisms concerned with the implementation of human rights commitments have addressed issues relating to the exercise of the right to freedom of association and the work of NGOs.

72. These issues have been concerned with: accountability for violations; civil society space; discrimination; the environment; establishment; execution of judgments; funding and resources; human rights defenders; membership; migrants and refugees; participation in political and public life; peace and democratic transitions; stigmatisation; supervision; terrorism and extremism; and transparency.

73. The issues addressed overlap to an extent with those that have been the subject of standard-setting but the focus, in many instances, is on shortcomings in implementing established standards.

74. In addition, the Venice Commission has issued an updated Compilation of Venice Commission's Opinions and Reports Concerning Freedom of Association

Accountability for violations

75. In the report Advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association examined the practical gaps in accountability for serious crimes committed against activists and protesters.

76. The report's conclusion stated that:

> 79. Ensuring accountability for violations related to the exercise of the rights to freedom of peaceful assembly and of association is an integral part of the responsibility of States to respect, protect and enable those rights. The Special Rapporteur is calling for States and the international community to put promises and commitments into action to end the endemic and widespread impunity for serious violations of the rights of those exercising these fundamental freedoms.
> 80. The Special Rapporteur emphasizes that for the effective enjoyment of the rights to freedom of peaceful assembly and of association and to ensure full accountability, States should halt their negative

narratives, criminalizing and stigmatizing activists and protesters. Protecting those rights through robust and timely accountability is vital for preserving the ever-shrinking civic space as a whole, countering expanding authoritarianism and preventing deterioration of peace and security. Accountability has a deterrent effect, is crucial for ending the cycle of violence and preventing atrocities against activists and protesters and is vital for sustainable transition and peacebuilding.

81. The international community has a vital role to play in advancing accountability and the Special Rapporteur stresses the need for collaboration at the regional and international levels to strengthen mechanisms to bring justice to civil society and protesters when they face serious violations, but also to act in a timely and pre-emptive manner. Victims, survivors, their representatives and civil society should be an integral part of national and international accountability processes, while States should respect and protect their rights to freedom of peaceful assembly and of association to enable their meaningful participation in the accountability processes.

77. Furthermore, based on a victim-centred approach, the Special Rapporteur made recommendations in the report to States and the international community to advance accountability and end impunity for such crimes, to ensure the fundamental freedoms of peaceful assembly and of association can be effectively exercised. These recommendations concerned: the use of excessive and unlawful force, enforced disappearance and all forms of ill-treatment; harmful and hostile narratives and stigmatisation; investigations and prosecution; and reparations and guarantees of non-repetition.

Civil society space

78. As requested by the Human Rights Council in its resolution Civil society space: COVID-19: the road to recovery and the essential role of civil society, the United Nations High Commissioner for Human Rights prepared a report Civil society space: COVID-19: the road to recovery and the essential role of civil society. This report examined in detail the key challenges that civil society faced in the context of the coronavirus disease (COVID-19) pandemic, both online and offline, and also examined best practices.

79. In the report, the High Commissioner calls for a much more systematic investment in meaningful, safe and inclusive participation at all levels, together with effective measures to protect access to information, an enabling environment for debate and freedom from insecurity for those who speak up.

80. Moreover, as requested by Resolution 53/13 Civil society space of the Human Rights Council, the United Nations High Commissioner for Human Rights prepared a thematic report concerning challenges and best practices for regularly assessing civic space trends. This report, which was based on inputs from States and civil society, combined with desk research, explored the roles played by different actors and identified key civic space elements common to different assessment frameworks, as well as gaps and challenges.

81. The report concluded that:

> 60. Protecting the right to defend human rights, in accordance with the United Nations Declaration on Human Rights Defenders, requires an understanding of the trends and threats to civic space that is reliable and current. Building such a foundation of understanding of civic space trends is vital for addressing obstacles to the implementation of all human rights, for ensuring accountable and responsive Governments and thus for sustainable economic progress and peace. Civic space assessments are also critical for identifying early warning signs when situations deteriorate.
> 61. Despite numerous obstacles, many different actors contribute invaluable "puzzle pieces" which, taken together, allow for fuller pictures of civic space trends. When these efforts are based on transparent methodologies and shared taxonomies, they facilitate cross-context comparisons and generate compelling evidence. Viewing elections as specific moments within longer civic space cycles can help complement other efforts in tracking civic space trends beyond such periods. When focusing on specific categories of defenders, such as environmental defenders, youth activists or women's rights defenders, it is essential to build on common key elements to ensure the complementarity and comparability of findings. Understanding the variations and limitations of such assessments, such as their link to human rights and the elements they focus on, is crucial to using them.
> 62. Assessing civic space trends, especially at the country level, must involve independent and empowered local actors, as analysis should be firmly anchored in specific country contexts, taking into account the political, legal and socioeconomic dynamics that determine who has a voice and who lacks power. Broader factors, such as the rule of law and respect for economic, social and cultural rights, should be integrated into civic space assessments.
> 63. Tracking online civic space trends requires a common understanding of the key elements required for measurement and investment in accessible tools and approaches, with due consideration for privacy and confidentiality. Existing partnerships that record Internet shutdowns in accordance with a pre-agreed set of factors have proven successful in gathering credible data. Increased transparency on the part of Governments and companies can expand access to relevant data, for instance regarding requests for removing or regulating certain types of content.

82. Furthermore, the High Commissioner called on States to increase access to relevant data, drew attention to the need to ensure that contributors to civic space assessments on the ground can do their work safely and recommended stepping up work on assessing trends relative to online civic space

83. The FRA has published a series of reports – Protecting Civic Space in the EU, Europe's Civil Society: Still Under Pressure – Update 2022 and Protecting civil society – Update 2023 - that not only detail the diverse challenges faced by CSOs across the EU but also identify positive developments that foster an enabling environment for such organisations.

84. In the report Participation of civil society organizations seeking to express international solidarity through transnational, international and regional networks, the UN Independent Expert on human rights and international solidarity confirmed the growing trend of shrinking civic space in both the physical and the digital arenas, which has a negative impact on opportunities for expressing international solidarity.

85. The report concluded that:

> 54. International solidarity provides a future-oriented universal narrative of inclusion and recognition of the diversity of civil society in the enjoyment of human rights that also serves to combat inequality, polarization and fragmentation among and within nations. There is an imperative to create strategic

networks and coalition alliances between civil society, States, international organizations, academia, businesses, human rights institutions and faith-based institutions in order to design and implement international solidarity initiatives. The surge in resilient civil society engagement around the world confirms that international solidarity merits both normative recognition and institutional implementation to guarantee its fair enjoyment and protection from censorship and oppression. International solidarity provides a path towards a renewed global social contract based on equality and non-discrimination to reopen civic spaces. It underscores the principle of self-determination, decolonization and the ending of apartheid everywhere.

55. International solidarity should be mainstreamed in the work of the Office of the United Nations High Commissioner for Human Rights and the Human Rights Council in order to improve awareness of its intrinsic role as a means for amplifying civil society's pursuit of equal recognition of human rights for all in line with the Sustainable Development Goals

86. The Independent Expert made recommendations to States, companies and international organizations in order to better support civil society's right to engage in the exchange of international solidarity ideas, including a recommendation concerning the creation of a United Nations digital international solidarity platform. In doing so, it was emphasised that the suppression of the non-violent expression of international solidarity would only foment violence. The Independent Expert recommended, therefore, that States should create new channels for the expression of solidarity to support social cohesion. The Independent Expert also called upon States to collaborate in the development of international solidarity law, through the adoption of the revised draft declaration on the right to international solidarity, to provide a foundation for reopening spaces for expressions of solidarity by civil society.

87. In the report Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presented the core analysis and findings of a global study on this impact.

88. This study documented unrelenting restrictions on civic space across every region and revealed a direct link to the regulatory and institutional practices of counterterrorism and prevention and countering of violent extremism.

89. There were five key findings regarding the conditions, features and consequences of such systemic misuse:

(a) civil society experiences complex and compounding misuse of measures and practices relating to counter-terrorism and prevention and countering of violent extremism, with connections to an ever-growing national, regional and global counter-terrorism, prevention and countering of violent extremism and security architecture;

(b) the multiplicity of measures described is consistent and constant; moreover, certain regionally concentrated features of counter-terrorism and the prevention and countering of violent extremism stem from regional partnerships, donor relations and multilateral technical assistance and capacity-building programmes;

(c) when States deploy counter-terrorism or prevention and countering of violent extremism measures, they enter a realm of exceptionality where human rights deficits pervade and the normal rules of due process and procedural protections generally do not apply, creating sustained vulnerabilities to further and layered human rights violations;
(d) misuse is often discriminatory and directed against religious, ethnic and cultural minorities, women, girls, lesbian, gay, bisexual and transgender and gender-diverse persons, Indigenous communities and other groups in society that are historically discriminated against; and
(e) there is limited monitoring and evaluation and/or independent oversight of laws and programming on countering terrorism or preventing and countering violent extremism and, overall, accountability for violations of counter-terrorism-related human rights abuses is either absent or deficient.

90. The report concluded that:

> 65. The findings of the global study require pause and recognition of the resilience, positive force and sheer determination of civil society across the globe, which seeks to realize peaceful, just and inclusive societies. Notwithstanding the hardship, challenges and undulating Sisyphean task of advancing rights in complex and closing spaces, civil society consistently shows up, takes risks for rights, defends the vulnerable, strives for the greater good and is tireless in its advocacy, hard work, reliability and solidarity. The individuals who took risks to provide evidence for the global study, who take risks every day for the dignity and humanity of others, deserve recognition, support, protection, defence and care.
> 66. The terrain described in the global study is exceedingly difficult and the scale of harms experienced is indisputable and unacceptable. It should also be self-evident that effective counter-terrorism is not being realized through the widespread, systemic targeting of civil society. Precisely the opposite is true. The kinds of violations revealed by the global study demonstrate that security is not the goal of abusive State practice but rather its opposite, namely, the continuance of instability, insecurity and cultures of impunity and violence.

91. Amongst its recommendations, the report saw a need to:

> 73. Establish consistent, United Nations-wide, public, principled and official stances on the impact of counter-terrorism and prevention and countering of violent extremism measures on civil society and civic space, with a view to advancing the compliance of those measures with human rights and the rule of law. This includes addressing the lack of a visible, outspoken and clear position among senior United Nations officials on the documented impacts of counterterrorism on civil society and civic space.

92. In the report The Protection and Promotion of Civic Space: Strengthening Slignment with International Standards and Guidance, the Organisation for Economic Co-operation and Development ("OECD") offers a baseline of data from its 33 OECD Members and 19 non-Members and a nuanced overview of the different dimensions of civic space, with a focus on civic freedoms, media freedoms, civic space in the digital age, and the enabling environment for civil society.

93. Amongst its findings are that:

- despite the foundations for the protection of civic space being strong, there are exceptions, legal gaps and implementation challenges;
- online civic space is increasingly affected by the prevalence of mis- and disinformation and hate speech designed to exclude and silence people, especially women and minorities;
- the enabling environment for CSOs is comparatively robust but administrative procedures remain burdensome in some States and access to government funding is generally seen as a significant challenge;
- CSOs, activists, and journalists are increasingly targeted by strategic lawsuits against public participation (SLAPPs) that aim to silence people who publicly criticise or investigate powerful individuals, companies or interest groups in respondents; and
- basic disaggregation of data by public institutions that address complaints regarding civic freedoms remains rare, hindering the development of prevention and response initiatives targeting affected groups**.**

94. The report recognises the need to adopt a comprehensive, whole-of-government approach to protecting civic space that is co-ordinated across public institutions. Moreover, it considers that all countries would benefit from an ongoing review of the manner in which legal frameworks governing civic space are implemented at the national level, as part of reinforcing their democracies. It finds that, in some countries, reviews of existing legislation could help ensure it is in line with international standards and does not restrict civic freedoms. Furthermore, it is suggested that ongoing monitoring of civic space - using disaggregated data to understand emerging challenges and gaps, and cross-government efforts to identify and reverse any negative trends - would also be beneficial.

95. The report emphasises that, even in mature democracies with a strong commitment to civic participation and a positive international standing in relation to civic space protection, a sustained effort is needed to maintain high standards.

96. The Expert Council's report The Legal Space for Non-Governmental Organisations in Europe was concerned with the implementation of Recommendation CM/Rec(2007)14. This found that NGOs in just over two-fifths of the countries surveyed still did not appear to be aware of it and that many Council of Europe member states were not guided in their legislation, policies and practice by the minimum standards set out in this recommendation, did not take account of the standards in it in monitoring the commitments they have made and did not ensure that this recommendation and the accompanying Explanatory Memorandum were translated and disseminated as widely as possible to NGOs and the public in general, as well as to parliamentarians, relevant public authorities and educational institutions, and used for the training of officials.

97. Amongst the report's other finding were that: there were extensive limits in some countries on "political" activities being undertaken by NGOs; there was considerable variation in the time taken to process applications for where some form of approval was required in order to establish NGOs; there was an openness to foreign NGOs being able

to operate in many countries, as well as a readiness to allow NGOs within them to collaborate with NGOs abroad; the adoption of measures to enable NGOs and their activities to acquire charitable or public benefit status undoubtedly could be more widespread; the requirements for NGOs to submit reports on their accounts and an overview of their activities to a designated supervising body seemed to go beyond the stipulation in the Recommendation that this should apply to those granted any form of public support; and not all countries seem prepared to draw upon the valuable experience of NGOs when developing their laws and policies through consulting them.

98. The report concluded that:

> much still remains to be done to ensure the realisation of the important standards set out in Recommendation CM/Rec(2007)14. There are clearly good foundations for this task in many countries. However, there is a need not only for these to be reinforced so that a truly enabling environment is provided for them but also for the failure to comply with them in some countries to be quickly remedied.

99. In the report Essential role of social movements in building back better, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted the important role social movements around the world play in creating more just and inclusive societies. It emphasised that social movements have a key role to play in helping States to build back better from challenges related to the coronavirus disease (COVID-19) pandemic and to achieve the full implementation of the 2030 Agenda for Sustainable Development.

100. However, the report regretted that many States had not fully respected social movements' rights to freedom of peaceful assembly and of association. The Special Rapporteur therefore recommended several measures that States and other actors could take to enhance the ability of social movements to contribute to the construction of a more open, inclusive, equitable and sustainable future. These concerned: creating safe and enabling space; ensuring inclusive policy processes and responsivity to demands; promoting social movements and developing partnerships; providing support; and promoting freedom of movement.

Discrimination

101. In the report Celebrating women in activism and civil society: the enjoyment of the rights to freedom of peaceful assembly and of association by women and girls, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recognized and elevated the contributions of women in civil society and activism to the advancement of democracy, peace and sustainable development and examined the gendered and intersectional barriers, reprisals and backlashes faced by women to their full and equal enjoyment of the rights to freedom of peaceful assembly and of association.

102. It concluded that:

> There is no acceptable justification for the continued trends of discrimination and violence described in the present report, much less for regression of hard-fought gains

103. As a result, the Special Rapporteur provided recommendations to promote an enabling environment for the rights of women to assemble and associate. These included:

> 85. (…) Enable the formation of girl-led groups and young feminist associations and encourage and facilitate girls' participation in public life, including by providing them with relevant role models of women in civil society and activism and creating, in partnership with civil society, mentoring programmes.
> 86. The Special Rapporteur recommends that development and donor organizations provide longer-term investment (such as multi-year grants) and adaptive core support systems for women's organizations and movements, based on their real needs and interests. This includes multi-year funding for gender transformative work. He encourages the adoption of measures to increase and facilitate funding to local women's organizations, including unregistered organizations. Development and donor organizations can leverage their position in the international community to promote intersectional feminist values and principles in development programming and increase collaboration with women's organizations and movements.
> 90. Civil society actors should proactively revisit their gender balance and increase efforts to meeting gender and intersectional goals in their practice and internal structures. The Special Rapporteur encourages civil society to:
> (a) Commit to achieving gender parity in management leadership by 2030, in line with the Sustainable Development Goals. The adoption of intersectional feminist principles can help civil society to address and challenge oppressive and patriarchal structures and practices within their organizations;
> (b) Adopt and implement policies to prevent and respond to sexual harassment and gender and intersectional discrimination across organizations. The effective implementation of these measures will require rigorous and well-resourced gender training and sensitization;
> (c) Build solidarity with and among women's groups and movements, including those defending women's rights and gender equality

104. The problem of discrimination in connection with freedom of association was also addressed by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in the report Protection against violence and discrimination based on sexual orientation and gender identity in relation to the human rights to freedom of expression, peaceful assembly and association. This report demonstrated that, despite all these freedoms being fundamental to full participation in society, restrictions based on sexual orientation and gender identity aimed to erase vulnerable minorities from the public sphere and render them invisible. Such restrictions were said to be often defended based on spurious and discriminatory grounds, accompanied by hostile political rhetoric. The report stated that the net result was that lesbian, gay, bisexual, transgender and other gender-diverse persons were less able to advocate for themselves in increasingly inhospitable environments. In particular it was concluded that:

> 77. In a global context, civil society space is being eroded. There is a proliferation of laws and policies restricting groups from working on sexual orientation and gender identity issues. This is a dangerous

> brew: hostile, misleading public rhetoric, restrictive laws and policies, and severely restricted civil society space. This combination creates an environment in which systematic State-sanctioned discrimination and violence is inevitable. Even when proposed legislation does not ultimately pass, the negative public attention on sexual orientation and gender identity associated with parliamentary processes contributes to a climate of abuse. Urgent attention is needed to address the widespread discrimination and violence that occurs as a result of these restrictions.

105. The Independent Expert concludes the report by offering recommendations to States and other stakeholders relating to matters such as social stigmatisation, hate speech and awareness-raising.

Environment

106. In the report Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, the Special Rapporteur on the rights to freedom of peaceful assembly and of association unpacked the challenges and risks facing individuals, communities and organizations exercising their rights to freedom of peaceful assembly and of association in order to support and advance climate justice. The report emphasised that civil society plays an essential role in addressing the climate crisis and ensuring a just transition towards environmentally sustainable economies and societies, including fostering a green recovery from the COVID-19 pandemic. It underlined that the rights to freedom of peaceful assembly and of association are essential to the work of civil society actors, providing means through which they may come together to build a greener and more sustainable future.

107. However, the report showed that all too often these rights were violated extensively within the climate justice context. The challenges and threats analysed concerned: physical attacks, killings and intimidation; vilification, smear campaigns and disinformation; climate protest bans and other restrictions on assemblies; criminalization, judicial harassment and surveillance; restrictions on civil society's operations and access to funding; and restrictions on participation in national and international climate negotiations. It also noted certain challenges and risks faced by specific groups.

108. The Special Rapporteur called, therefore, on States and other relevant actors to respect and ensure these fundamental freedoms and to ensure that civil society actors can continue their work in this field. In particular, there was a need for: an enabling environment for civil society as essential for addressing the climate crisis and ensuring a just transition; recognition and facilitation of climate-related protests, including civil disobedience; inclusive participation in development and implementation of climate and just-transition policies; prevention of, protection from and accountability for attacks; and the ending of legal harassment and unlawful surveillance.

Establishment

109. In an Opinion on amendments to the Croatian Laws of Associations and of Foundations – the general objective of which was to strengthen the overall legal regime combating the abuse of NGOs and other private legal persons for illicit purposes, as well as strengthen the regime of transparency of data pertinent to their registration and internal governance – the Expert Council firstly noted that they were enacted without prior risk or *ex ante* impact assessment and a proper period of public consultation. Furthermore, the restrictions on the ability of persons convicted for terrorism financing and money laundering to establish an association was seen as potentially disproportionate. In addition there was considered to be a lack of clarity in the language of the provisions, including those governing criminal offences and sanctions.

Execution of judgments

110. In its study The Execution of Judgments involving Freedom of Association: the Impact on Human Rights Organisations and Defenders, the Expert Council considered the challenges associated with the execution of judgments of the European Court of Human Rights ("the ECtHR") involving freedom of association.

111. The study found that, in many of the cases canvassed, the execution of judgments had been ineffectual, with some States having failed to adopt adequate or effective individual measures that put an end to the violation and to redress, as far as possible, its effects. These failings invariably persist, even after the passage of significant time since the adoption of the judgments. Likewise, some States had failed to adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.

112. There were also seen to be numerous repetitive cases involving violations of freedom of association, with applicants experiencing same or similar violations after the issuance of the judgment finding a violation, and with the same or similar violations being experienced by new, different applicants. This was despite the repeated engagement of the Committee of Ministers.

113. The study concluded that the failure to execute, and the delayed execution of, judgments of the ECtHR involving freedom of association constituted a continuation and exacerbation of the violations of freedom of association that the applicants concerned had already experienced and contravened the standards related to the treatment of NGOs applicable to Council of Europe member States, including Recommendation CM/Rec(2007)14 and Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe. The failed and delayed execution of such judgments was considered to show a disregard for the essential contribution made by civil society in all their diversity

to the cultural life and social well-being of democratic societies, and undermines the adherence to principles of democratic pluralism.

114. The study made a series of recommendations to improve this situation that were directed to the ECtHR, Council of Europe member States, the Committee of Ministers, the Secretary General, Council of Europe local offices, PACE and national human rights institutions and civil society.

Funding and resources

115. In an Opinion on a French Bill relating to the funding of associations - which would require religious and mixed associations (with both a religious and a cultural or social goal) to declare receipt of foreign resources in excess of 10 000 euros and other associations (with no religious purpose) to declare any foreign funding when they receive more than 153 000 euros in annual donations - the Expert Council expressed concern about the choice of a negative presumption affecting all foreign funding, rather than a mechanism targeting the suspect association because of its actions. It was considered that the condition of public order could justify measures imposed on associations suspected of endangering public order, but not a general regulation imposing on all associations, whatever their purpose and activities, the declaration and publicity obligations in question.

116. There was also concern about a proposed requirement for any association requesting a public subsidy to enter into a contract of republican commitment. This was seen as giving rise to the risk of partially distorting the status of associations, which were essential third parties between the citizen and the public authorities and as also being uncertain as to the scope of the commitment.

117. In addition, such an obligation was considered as resulting in the associations concerned being dissuaded from expressing views or carrying out actions which, although protected by Articles 10 and 11 of the ECHR could be perceived unfavourably by the administration.

118. Finally, there was concern about the proposed extension of the grounds for dissolution of associations so that they would take into account the fact that the association "contributes by its actions" to discrimination, hatred or violence (and no longer only provokes it). Moreover, the dissolution of the entities concerned would also be made possible when their leaders refrained from stopping such acts, even though they were aware of them and had the means to do so. Such an extension of dissolution was seen as beyond "provocation", to the fact of "contributing by its actions" to discrimination, marks a significant broadening of the administration's powers, distending the causal link the association's behaviour and the infringement of the protected public interest.

Human rights defenders

119. In a succession of reports, the UN Special Rapporteur on the situation of human rights defenders has drawn attention to the important contribution made by such defenders but also the considerable difficulties that they face.

120. The former is addressed in three reports, the first of which is Success through perseverance and solidarity: 25 years of achievements by human rights defenders. In this report, the Special Rapporteur takes stock of the 25 years that have passed since the adoption of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), and highlights examples of achievements and success stories that human rights defenders have shared with her. The report includes examples of accessing justice, changing laws, protecting the vulnerable and holding businesses to account. The report offers a change in focus from the violations committed against human rights defenders to their often uncredited successes.

121. In the report Pathways to peace: women human rights defenders in conflict, post-conflict and crisis-affected settings, the Special Rapporteur analyses the situation of women human rights defenders working in conflict, post-conflict and crisis-affected settings and highlights their contributions to peace and security, despite the often difficult and even hostile environments in which they work. The report contains examples of individual cases of women human rights defenders working in these contexts, as well as recommendations to States and other relevant stakeholders on providing a safe and enabling environment in which to carry out their legitimate human rights work.

122. In the report The contributions made by human rights defenders to achieving the Sustainable Development Goals, the Special Rapporteur demonstrates that, across every one of the 17 Goals, human rights defenders are placing human rights at the core of sustainable development and, in doing so, are assisting States in their responsibility to leave no one behind. However, the Special Rapporteur highlights that this work is being made more difficult by increasing restrictions on the right to defend rights.

123. However, there are five reports dealing with the serious difficulties endured by human rights defenders, the first of which is Final warning: death threats and killings of human rights defenders. In this report, the Special Rapporteur analysed the situation of the killing of human rights defenders. Her report raises the alarm about the prevalence of killings in many parts of the world, and considers the issue of death threats that often precede the killing of human rights defenders.

124. The report concluded that:

> 103. Many Governments are failing in their moral and legal obligations to prevent the killings of human rights defenders. This is primarily because of a lack of political will. States can and should intervene to prevent killings by responding more effectively to threats against human rights defenders. Such interventions include taking action to stop vilification and threats aimed at defenders, which make them more vulnerable to attacks. Businesses should also intervene when threats are made against defenders, in order to prevent them from escalating into attacks.

125. Its recommendations include a series of protective measures to be taken by States, as well as action which should be taken by national human rights institutions, businesses and financial institutions, social media companies, NGOs and donors.

126. In the report, States in denial: the long-term detention of human rights defenders, the Special Rapporteur analysed the situation of human rights defenders in long-term detention, serving sentences of 10 years or longer. She drew attention to underlying factors that contribute to the phenomenon of such lengthy periods of detention as a result of the legitimate human rights activities being undertaken. The Special Rapporteur found evidence of the widespread misuse of counter-terrorism and related legislation and referred to instances of human rights defenders being sentenced to death, dying in detention and being tortured.

127. The report concluded that:

> 155. Many Governments are failing in their legal and moral obligations by sentencing human rights defenders to long terms in prison, and then denying that they have done so.
> 156. This is due primarily to the presence of a political will to silence those who peacefully defend the rights of others, and the negligible international consequences for States that commit these violations. States can and should immediately stop this practice, and abolish the mechanisms which enable it, including the misuse of anti-terrorism legislation and other national security laws against human rights defenders, the use of unfair trials and coerced confessions and the denial of legal access to defenders.
> 157. Targeting human rights defenders with long jail terms destroys lives, families and communities. States should end this unjustifiable, indefensible and contemptible practice immediately and forever

128. Amongst the steps to halt and reverse these trends and to prevent this from happening in the future, the Special Rapporteur recommends that:

> 160. National human rights institutions and NGOs should: (a) When a defender is arrested, immediately mobilize intense attention and assertive intervention on behalf of the detainee; (b) Invite relatives of the defender to speak at international forums; (c) Raise the case of defenders held in long-term detention in the media.
> 161. In addition, more coordinated action should be considered by NGOs and others working on the release of defenders in prison. For example, while the HRD Memorial project coordinates the work of many NGOs to commemorate human rights defenders who have been killed, there is little such collective or coordinated action by NGOs to pool resources and information and advocacy efforts for human rights defenders in prison.
> 162. Members of parliaments and other elected bodies and members of civil society organizations, including trade unions, should maintain a long-term focus on human rights defenders in detention, raising (with the consent of the defenders) their cases in public and private forum.

129. In the report At the heart of the struggle: human rights defenders working against corruption, the Special Rapporteur analysed the situation of human rights defenders working against corruption and stresses that protection frameworks applicable to human rights defenders should apply to them. The report includes examples of the types of threats and structural difficulties faced by human rights defenders fighting corruption and concludes that:

> 116. Corruption is a human rights issue, which ought to be recognized as such by States, the business community and civil society. Those who peacefully work for the rights of others against corruption should be recognized, celebrated and protected as human rights defenders. States have an obligation to combat corruption in compliance with their human rights obligations, which includes taking appropriate steps to enable and encourage human rights defenders working against corruption.

130. It includes a recommendations that States:

> 117 … (i) Meaningfully engage CSOs and other non-State stakeholders in all stages of the review process of the United Nations Convention against Corruption: specific details on how civil society is engaged should be disclosed in country review reports and executive summaries; and CSOs and other stakeholders should also be allowed to participate as observers in the subsidiary bodies of the Conference of the States Parties to the United Nations Convention against Corruption, including the Implementation Review Group, which oversees the review process.

131. In the report Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers, the Special Rapporteur analyses the situation of human rights defenders working on the rights of migrants, asylum-seekers and refugees. She draws attention to the often vulnerable situation of defenders supporting migrants, refugees and asylum-seekers and the particular administrative, legal, practical and societal barriers they face. The report contains examples of individual cases of human rights defenders working in this area. The Special Rapporteur makes recommendations to States and other relevant stakeholders on providing a safe, accessible and supportive environment for individuals and organizations that work to promote and protect the human rights of migrants, asylum-seekers and refugees. These include that States should:

> 115. … (l) Enable everyone to defend the rights of others regardless of their immigration status, including by recognizing in domestic legislation migrants' right to freedom of association and encourage them to self-organize, regardless of their migration status;
> (m) Ensure that criminal law is not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants;
> (n) Guarantee that administrative and law enforcement officials are adequately trained with regard to the respect of the rights of those advocating for migration-related issues.

132. In the report "We are not just the future": challenges faced by child and youth human rights defenders, the Special Rapporteur analyses the situation of child and youth human rights defenders, with a particular focus on structural and societal barriers to their activism, legal restrictions on their participation in civic space and the human rights violations that they face as a result of their peaceful activities in promoting and protecting human rights.

133. The report includes recommendations with respect to: national and international protection mechanisms and standards; increasing participation in public and political affairs; increasing participation in United Nations processes; supporting collaboration and alliances; increasing capacity development; addressing entrenched ageism in the human rights movement; countering negative narratives and increasing global advocacy on the issue of child and youth human rights defenders; addressing academic sanctions; increasing documentation of restrictions on the rights of child and youth human rights defenders; and in increasing documentation of restrictions on the rights of child and youth human rights defenders.

134. The deteriorating situation faced by human rights defenders was also underlined in the report Human Rights Defenders in the Council of Europe Area in Times of Crises following a round table organised by the Council of Europe Commissioner for Human Rights in October 2022.

135. In the conclusions, it was stated that:

> The Commissioner firmly believes that to overcome these unprecedented challenges and preserve the democratic fabric of our societies all European countries should adopt an approach based on the respect of human rights, rule of law and democratic governance in their policies and decision making. Round-table participants also expressed concern over the tendency of the general public in many European countries to accept backsliding on human rights protection in the context of various crises. The media plays a crucial role in that context. The participants saw a correlation between the state of the media in a country and the situation of human rights defenders there whereby they face more obstacles and reprisals in countries where the media is not free.
>
> To counter these adverse tendencies, the participants agreed that there is a need for reinventing the human rights narrative and make it more relevant to the general public. The human rights agenda should remain at the centre of public opinion and the decision-making process. Another key element is solidarity: solidarity of Council of Europe member states, their citizens and civil society and solidarity among human rights defenders. Human rights defenders should remain united and supportive of each other in times of increased hostility and challenges.
>
> The international community also plays an important role in that context. Participants stressed that key international stakeholders, including donors and protective mechanisms, should remain fast, flexible and innovative in supporting human rights defenders. Sustainable funding is crucial to ensuring that human rights defenders can carry out their work, maintain their well-being, including through psychological support, and counter the various forms of harassment and intimidation they face. Another important step proposed by the round-table participants was better co-operation with the various mechanisms mandated to protect and support human rights defenders who, in turn, could also improve coordination of their efforts in supporting human rights defenders.
>
> The contribution made by human rights defenders to peace, freedom, human rights, justice and democracy are needed especially during times of crisis.

136. Apart from recommendations concerned with the specific situations in Belarus and Russia, the report included ones on; the safety and security of human rights defenders; their liberty and freedom assembly; the criminalisation of humanitarian assistance and solidarity; judicial harassment of human rights defenders and Strategic Lawsuits against

Public Participation ("SLAPP"); discrediting activists and NGOs; the registration, reporting, sanctioning and dissolution of NGOs; access to funding; and participation in public affairs.

137. Finally, in the report Protecting Human Rights Defenders at Risk, FRA addresses the situation of human rights defenders who no longer have the option of staying in their country because the risks of doing so are too high. In such situations, it notes that emergency visas can provide much needed instant relief, while longer-term residency can help those in exile. However, given that current EU law does not explicitly protect human rights defenders, there is no common, consistent EU approach. The report looks at initiatives facilitating entry and temporary stay at the EU level and the practices of Member States. It also offers recommendations on how Member States can use the flexibility in existing legal provisions and provide shelter for those who flee from third states.

Membership

138. In an Opinion on amendments to the Turkish Law on Associations that required notification of changes in an association's membership within thirty days or become liable to a penalty, as well as dealing with notification of continued membership, the Expert Council found that there had been a failure before their adoption to conduct any impact assessment or proper public discussions. Moreover, the notification requirements and the penalties for non-compliance with them were seen as meeting the legality and proportionality requirements applicable to restrictions on freedom of association.

Migrants and refugees

139. In the report Search and rescue operations and fundamental rights - June 2024 update, FRA provides an overview of criminal investigations and other legal proceedings initiated by EU Member States against CSOs deploying search and rescue vessels and aircraft in the Mediterranean and/or against individual crew members, underlining the difficulties faced by civil society in their efforts to prevent deaths at sea.

140. The Expert Council's report Civil Society Support to Refugees and Other Migrants in Europe: the Need to End the Backlash on Civil Society Space explained how civil society space in Europe is being adversely impacted by policies to deter refugees and other migrants from accessing Europe. It assesses the impediments imposed on NGOs and solidarity networks who provide humanitarian and related support to those arriving either by sea or by land, as well as to those who have already arrived. Such humanitarian and related support reflected the vital role CSOs play in fostering the fundamental values of human rights, democracy and the rule of law and was protected by freedom of association among other rights.

141. The impediments facing civil society seen in the report include: the criminalisation of their activities, subjecting them to harsh regulations and fines; publicly stigmatising them and their work; impeding their access to locations where refugees and other migrants are located; imposing barriers on their ability to register as NGOs or to maintain their registration; and obstructing their access to funding.

142. The report found striking the failure of governments and European institutions to entertain any substantial dialogue with civil society on what is practically required to arrive at effective and rights-compliant solutions for all those affected. Instead of engaging with civil society groups, the externalisation deals brokered by European countries and the EU appear to be undermining the human rights and democracy work of civil society groups in those "partner" countries. Moreover, there was little sign of the 'multi-stakeholder and partnership approach' and 'whole-of-society approach' advocated respectively by the Global Compact on Refugees and the Global Compact for Migration.

143. Notwithstanding this, the commitment shown by NGOs and solidary networks in the face of the backlash was even more striking. Solidarity networks continued to be active on the frontlines providing invaluable humanitarian support and essential services. In addition, civil society in all its diversity continue to monitor, to report, to advocate and litigate.

144. In an Opinion, as well as a subsequent Addendum, on legislative amendments relating to registration and certification of Greek and foreign NGOs engaged in activities related to asylum, migration, and social inclusion, the Expert Council noted first the absence of adequate and timely public consultation and discussion with NGOs on reforms that affect their interests. The onerous, complex, time-consuming and costly requirements for NGO and individual member registration (including re-registration) and to maintain active membership in the registry were seen as lacking legitimacy and proportionality. Similarly, the certification process was considered to breach the requirements for legal certainty on account of the vague and overly broad criteria and the wide discretion accorded to decision-makers, as well as their lack of independence.

145. It was concluded that the provisions would have a significant chilling effect on the work of civil society on account of the significant number of NGOs who were likely not to complete the registration process either because they are ineligible for registration or certification on formal grounds, are rejected by decision-makers for having failed any number of the overly broad criteria for registration or certification, or because they exempt themselves from the registration process because it was judged to be too onerous, they do not wish to share personal data or they are unconvinced that there is a reasonable likelihood of registration or certification.

146. In an Opinion on provisions concerning the management of migratory flows in an Italian decree that relates to search and rescue operations, the Expert Council again found an absence of adequate and timely public consultation and discussion with NGOs on reforms

that affect their interests. Furthermore, the requirements in the provisions for NGOs carrying out search and rescue work – which related to the provision of information, the collection of data and disembarkation - were seen as onerous, arbitrary and at times unlawful (in the sense that they might breach law of the sea requirements) and as placing vulnerable people at heightened risk and violating their privacy. It was considered that the provisions would have a significant chilling effect on the work of civil society on account of the unlawfulness of some of the provisions, and the concomitant increased risks that NGOs would face as a result of continuing with search and rescue work.

Participation in political and public life

147. The Expert Council's report European Practices related to Participation of NGOS in Policy Development identified several key requirements in order for the NGOs expertise and experience to be fully utilised in the process of public policy development. These are: a holistic approach; an open process of consultation; inclusive participation; and non-discrimination. It also suggested that a government's central online platform (eGovernment) has emerged as a focal point of consultation with NGOs and other stakeholders. In addition, the emerging practice of establishing a system of quality control of consultation (stakeholders' engagement) was thought to contribute to its overall quality and consistency. Finally, it was found that some member States had made progress in introducing innovative digital tools (policy chat platforms, interactive crowdsourcing platforms), in order to encourage policy dialogue and participation at early stages of policy development. These tools were seen as particularly useful in encouraging young population and youth organisations to engage in consultation.

Peace and democratic transitions

148. In the report Importance of the rights to freedom of peaceful assembly and of association in advancing sustainable peace and democratic transitions, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted the critical role the rights to freedom of peaceful assembly and of association play in ensuring inclusive peace and democratic transition processes.

149. The report also highlighted the vital contributions by civil society and movements in building sustainable peace and democratic transitions. These concerned: protection and service delivery; monitoring and early warning; mobilization and agenda setting; socialization and sensitization; facilitation and mediation; direct representation at the negotiating table; and ensuring transitional justice and accountability.

150. However, it also identified key barriers and challenges, namely those concerning: exclusion and barriers to participation; threats to the rights to freedom of peaceful

assembly and of association; Legislative restrictions; threats, intimidation and reprisals; digital threats and surveillance; and attacks against women activists and protesters.

151. The Special Rapporteur therefore recommended measures that all stakeholders can take to enable, promote and support the inclusion of diverse civil society in all phases and decision-making for such processes to ensure that peace and democratic transitions are sustainable and just. These concerned: creating a safe and enabling environment; promoting and facilitating inclusion and participation; and technical and financial support.

Stigmatisation

152. In the report Protecting the rights to freedom of peaceful assembly and of association from stigmatization, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted the harmful impact of the increasing negative and stigmatizing rhetoric targeting civil society and activists on the effective enjoyment of these freedoms. Amongst the problems noted were: vilification, demonization and misuse of security and counter-terrorism measures and policies; narratives of preventing foreign influence and preserving national interests; narratives exploiting discrimination and structural racism; narratives related to preserving economic growth and development; narratives exploiting historic grievances and conflict; stigmatisation of children and young people; stigmatisation and repression of global critical social movements and unions; stigmatisation and repression of peaceful assembly and association; and the role of technology.

153. The report called for decisive action to prevent and counter these narratives as part of the State's obligations to create an enabling environment and facilitate the exercise of these rights. This would involve: changing the narrative by ensuring an enabling normative framework; countering anti-rights narratives; enhancing space for dialogue and inclusion; solidarity and building resilience; and awareness-rising through documentation.

154. In the report Advancing human rights through the positive interface of international human rights law and international humanitarian law in the context of counter-terrorism, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism applauded the work of humanitarian organizations, including the contributions that many make as guarantors and enablers of civic space in many of the most fragile and contested areas in the world. However, she denounced attacks on the integrity, independence and operational capacity of such organizations, whether directly or indirectly, by States through the prism of counter-terrorism rhetoric or regulation, and underscored that the organizations are critical to the protection of humanity and the dignity of the most vulnerable and, thus, to conflict resolution.

155. The issue of stigmatisation was also addressed in the Expert Council's report Stigmatisation of Non-governmental Organisations in Europe. The report examined the extent to which NGOs are being stigmatised for work in support of particular causes or groups; identified which causes/groups are subject to stigmatisation and what is the underlying rationale provided by public authorities for the restrictions imposed on NGOs working in support of those causes or groups; and identified what strategies and resources may assist to combat stigmatisation of those NGOs.

156. The survey on which the report was based indicated a widespread and concerning pattern of stigmatisation of NGOs in Europe and Russia, recognising that the situation inevitably varies from country to country and is subject to ongoing development. The NGOs that were found to have been particularly subject to stigmatisation include those active in the area of human and minority rights, as well as watchdogs (anti-corruption and investigative journalism) and environmental NGOs. The forms of NGOs stigmatisation reported in the survey included legislative measures; the lack of effective legal protection; the media smear campaign; physical attacks against leadership and members of NGOs; limited access to public funds; and exclusion from the decision-making process, in particular.

157. Nevertheless NGOs were found to have been actively confronting the pattern of stigmatisation through a variety of actions, including advocacy; engaging with domestic and international stakeholders; reaching out to independent institutions; and instigating legal proceedings at national and European level. However, robust engagement and coordinated efforts of the Council of Europe and EU institutions was seen as essential for efforts to tackle stigmatisation and to encourage member States to honour their commitment to democracy, human rights and the rule of law.

Supervision

158. The Expert Council's report Non-governmental Organisations and the Implementation of Measures against Money Laundering and Terrorist Financing found that the way in which the relevant requirements were being applied was leading, or would lead, to significant burdens for NGOs that are not at risk of being implicated in money laundering or terrorist financing and thus doing so without making any useful contribution to tackling such activities.

159. This situation stemmed in part from the fact that the requirements themselves had been developed and elaborated without really taking sufficient account of the diverse nature of NGOs. Despite some improvements, there was seen still to be some scope for improving the guidance on implementation so that this deals much more specifically with the particular character of NGOs when implementing FATF Standards so that member States do not then resort to a "one-size fits-all" approach, which imposes unnecessary burdens for no actual benefit in tackling money laundering and terrorist financing. Such a conclusion was also seen as applicable to the framing of the beneficial ownership

requirement in Directive 2015/849, which does not address in a particularly helpful way what this requirement should entail for NGOs that are legal entities.

160. However, the main problem was seen to lie in the way in which the relevant requirements were being implemented. In this connection, it was considered that the evaluation process could be used to emphasise more that the measures adopted do not always respect the limits on applying the standards of the FATF to NGOs and could focus more on the use actually made of the implementing measures and their impact on NGOs. In particular, the justified emphasis on the importance of risk assessment seen in the FATF standards did not seem to be being taken sufficiently seriously by all member States.

161. It was also seen as desirable for input by NGOs into the evaluation process to occur not only before the reports were prepared but also afterwards, particularly in plenary meetings and follow-up activities, as well as in connection with the provision of technical assistance.

162. Following the establishment in Hungary by Act LXXXVIII of 2023 on the Protection of National Sovereignty ("the Act") of the Sovereignty Protection Office, which has a mandate to carry out regular monitoring of political parties, NGOs and others in the name of "protection of national sovereignty", an Opinion of the Venice Commission considered that the existence of an office with such broad discretion, on such vague legal bases and not subject to any State oversight raised significant concerns it enjoying disproportionate power unjustifiable in a democratic society. Further, the Venice Commission considered that, whether or not the Office is an "authority" under Hungarian law, its very public power threatened to chill expression and association in ways that raise serious doubts about its consistency with international standards. Finally, the Venice Commission failed to see the need for the establishment of a new body which clearly overlapped with the ordinary institutions of the State without providing for the corresponding guarantees in respect of interferences in the exercise of fundamental rights.

163. The Opinion of the Venice Commission considered that the extension by the Act of the prohibition of political party funding from foreign sources to all election competitors including individual candidates and local NGOs registered as nominating organisations, appeared to be legitimate. However, it regarded the new definition of foreign support to be too broad as it did not make any distinction based on the types of funding sources (States, private entities, political parties in particular) and did not make any exceptions for funding by international organisations. Moreover, the provisions which regulate the prohibited use of foreign funds with regard to elections, as well as corresponding declaration requirements and administrative sanctions, were regarded as too broad and not precise enough. In particular, it was considered unclear how and on what basis it would be established that certain activities (a) were aimed at influencing or attempting to influence the will of voters, and (b) were financed from foreign funds and not from other sources of candidates' and nominating organisations' income and assets. In the Venice

Commission's view, the law was formulated in such a way that it potentially covers any foreign funds received at any time, even completely outside the electoral processes. It considered that such wide regulations might have a chilling effect on the free and democratic debate in Hungary and on citizens' engagement in elections, noting reports that certain NGOs had already refused to accept foreign funding (outside the electoral cycle) and others would no longer nominate candidates for election. The vagueness of terms and definitions was seen as even more problematic when it came to criminal law provisions relating to the illegal influence of the will of voters.

164. Finally, the Venice Commission was concerned about the amendments to the Criminal Code, consisting in the prohibition for the perpetrator of the offence concerning illicit behaviour in the electoral context to be a responsible person in an NGO or to hold an office in a political party. This residual penalty was regarded as disproportionate in preventing individuals from engaging in a leadership role in NGOs and political parties, under certain circumstances even for the rest of their lives. Another problem with this provision was that in cases deserving special consideration the 'disqualification' can be waived as this terminology was too broad and too vague to be used in this politically sensitive area.

Terrorism and extremism

165. In the report Human rights impact of policies and practices aimed at preventing and countering violent extremism, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressed the global and national effects of the widespread use of policies and practices aimed at preventing and countering violent extremism. Although acknowledging the social and political imperatives of addressing violent extremism, the report underscored that only rights-affirming and rights-focused policies would have long-term success in preventing violence. It further underscored the lack of a robust scientific basis for the current policies and practices aimed at preventing and countering violent extremism and the complete absence of human rights-based monitoring and evaluation, including by United Nations entities.

166. The Special Rapporteur cautioned against the simplistic deployment of policy aimed at preventing and countering violent extremism in complex conflict and fragile settings, where a broader spectrum of interconnected interventions is necessary to stem violent extremism. In particular, the lack of precise legal definitions of extremism and violent extremism and the widespread abuses of human rights that that produces was noted. The report referred to violations of derogable and non-derogable rights being experienced particularly by religious groups, minority groups and civil society. In addition, the report noted the persistent lack of meaningful consultation with and participation of communities targeted by measures to prevent and counter violent extremism. It also highlighted the commodification of women and girls to advance policy aimed at

preventing and countering violent extremism, identifying multiple ethical concerns. The Special Rapporteur reminded United Nations entities of their foundational due diligence obligations when supporting technical assistance in and capacity-building on preventing and countering violent extremism.

167. In the report Advancing human rights through the mainstreaming of human rights in counter-terrorism capacity-building and technical assistance at the national, regional and global levels, the Special Rapporteur identified a pervasive failure to ensure that capacity-building and technical assistance is owned by a wide and diverse variety of stakeholders, including civil society at the national level. She emphasised that civil society participation in and civilian oversight of the security sector is essential to prevent terrorism effectively.

168. Furthermore, in the report Impact of counter-terrorism on peacemaking, peacebuilding, sustaining peace, conflict prevention and resolution, the Special Rapporteur observed increased challenges for United Nations and civil society actors who expose detrimental shifts in the unparalleled growth of the United Nations counter-terrorism architecture and the ways in which it engages States in a service-driven and on-demand model of technical assistance and capacity-building without concrete consideration for how such programming ultimately delivers to the United Nations primary stakeholders – the people of those States.

169. Moreover, in the report Human rights implications of the development, use and transfer of new technologies in the context of counter-terrorism and countering and preventing violent extremism, the Special Rapporteur drew attention to the devastating impact on human rights, particularly the exercise of the rights to privacy, expression, association and political participation, of the adoption of high-risk and highly intrusive technologies, including biometric, surveillance and drone technology. The report demonstrated that the rationales for adopting such technologies and the supposed limitations on them rarely hold, and that the claim of exceptional use to respond to security crises was a chimera, when the reality was broad and wholesale use which lacked adequate human rights or rule of law restraints.

170. Finally, in the report Protection of human rights by regional organizations while countering terrorism: norms, cooperation, victims of terrorism and accountability, the recommendations to regional organizations and States of the Special Rapporteur included that they:

> 77. Provide and publicize avenues for regular, accessible, inclusive and meaningful engagement by diverse civil society actors in the design, implementation and monitoring and evaluation of counter-terrorism measures; ensure that accountability and remedial mechanisms are accessible to civil society; and protect civil society from reprisals.

171. In an Opinion on Turkey's Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, the Venice Commission considered that,

notwithstanding the asserted intention to comply with a FATF report on Turkey and certain United Nations Security Council Resolutions, the solution chosen went beyond their scope since the new provisions applied to all associations, irrespective of their goals and records of activities, and lead to far reaching consequences for basic human rights, in particular the right to freedom of association and expression and the right to a fair trial. It regretted the absence of any consultations with civil society and considered that the provisions relating to the said collection activities of associations could result in a serious restriction of their freedom of association.

172. Although there was a risk of funds being used to finance terrorist activities, the indiscriminate scope of the new provisions did not seem to meet the requirements of necessity and proportionality. Moreover, it considered that the ambiguity in the wording of the amendments, government control over online fundraising attempts in the absence of clear and objective criteria of permit applications, along with the authorities' wide scope to apply sanctions, might have a negative impact on legitimate fund-raising activities of NGOs and thus violate their right to freedom of association. Furthermore, it regarded the lack of transparency for risk-assessment and its indiscriminate application to the entire civil society sector, rather than to specific NGOs identified as being vulnerable to financing by terrorist entities, might result in misuse of the proposed audits for the purpose of deterring civil society activism under the pretext of conducting a "risk assessment".

173. The Venice Commission was also concerned that certain amendments to the Law on Associations enabled the authorities to remove the board members without judicial review and to replace them with trustees who did not need the approval of the members of the association concerned. Such an introduction into the bodies of the association of one or more persons without approval and without clear guarantees that they act in the best interest of the association and its members was seen as constituting a serious infringement of the right of associations to conduct their own affairs. It also observed that foreign associations, to which Turkish law was applicable for their activities in Turkey, including provisions on data reporting, were equally affected by the flaws of the amendments in question. In addition, it considered that imposing upon them the obligation to seek permission for any cooperation activity in Turkey did not meet the requirements of necessity and proportionality.

174. Finally, in an Opinion on amendments to the Belarusian legislation affecting NGOs, the Expert Council found that, through an overly broad conception of "extremist activities" and excessive controls relating to the organising and holding of mass events in the adoption of these amendments, the operation and continued existence of NGOs in Belarus is seriously threatened.

Transparency

175. In an Opinion on a series of Bills introduced by the Russian State Duma in 2020 to amend laws affecting "foreign agents", the Venice Commission expressed concern as to their combined effect on entities, individuals, the media and civil society more broadly. The Venice Commission recommended that the Russian authorities abandon the special regime of registration, reporting, and public disclosure requirements for associations, media outlets and individuals receiving "foreign support", including the related administrative and criminal sanctions.

176. In the alternative, it called on them to thoroughly revise not only the most recent amendments but the entire body of its "foreign agent" legislation by significantly narrowing the legal definition of a "foreign agent" in order to serve the stated aim of transparency. Specifically, it considered that the notions of "political activities" and "foreign support" should be abandoned in favour of indicators that would reliably track objectionable forms of foreign interference. Furthermore, at a minimum, the stigmatising and misleading "foreign agent" label should be abandoned in favour of a more neutral and accurate designation. This new designation should not be used as a criterion for banning individuals from entering public service. Likewise, non-commercial organisations ("NCOs") and media outlets so designated should not be prohibited from participating in campaign activities. Finally, it stated that criminal sanctions, including especially compulsory labour and the deprivation of liberty, should not be applied to breaches of registration, reporting and public disclosure requirements for "foreign agents", even under the narrow definition of that designation. Further, the penalty of liquidation of NCOs should be reserved for extreme cases of violations threatening democracy.

177. An Opinion to similar effect was also adopted by the Expert Council.

178. In a Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations imposing registration and reporting requirements on such organisations who receive foreign funding and prohibiting them from undertaking "political activities", ODIHR/OSCE and the Venice Commission found that the rationale for developing the Draft Law was unclear and appeared not to be based on any risk assessment or consultation with associations and others potentially affected. Moreover, the many broadly framed terms in it were regarded as likely to fall afoul of the requirement that any restriction on the right to freedom of association must be prescribed by law, which entails being foreseeable. Furthermore, the new reporting obligations would mean that NPOs would be obliged to report all funding received, regardless of the amount, even minor sums, which would entail a significant burden for them. Also there was no clear definition of the kind of information or documents that may be required from NPOs by the competent inspection body and there were no safeguards to prevent the potential risk of abuse of the regulations or against discriminatory measures that may lead to harassment. In addition, there was considered to be a strong risk that the provisions regarding the ban of the work of NPOs due to acts contrary to its provisions, irrespective

of their seriousness, could be applied without regard to the principle of proportionality and that the potential fines that could be imposed seemed disproportionate. Finally, it was considered that there was a lack of provisions guaranteeing access to effective remedies in order to challenge or seek review of decisions taken in the context of the Draft Law's implementation that might infringe the right to freedom of association and expression.

179. Opinions on the Law on Transparency of Foreign Influence of the Republic of Georgia have been issued by the Expert Council, ODIHR/OSCE and the Venice Commission. These opinions have concluded that the provisions of this Law - which created a registration requirement for organisations "pursuing the interest of a foreign power" and entailed other requirements related to the transparency of the activities of such organisations - imposed restrictions on the rights to freedom of expression, freedom of association and privacy did not meet the requirements of legality, legitimacy, necessity in a democratic society and proportionality, as well as with the principle of non-discrimination set out in the relevant provisions of the ECHR and the International Covenant on Civil and Political Rights.

D. CASE LAW

180. The cases noted in this section also deal with a wide range of issues concerning NGOs, namely, their objectives, registration, capacities; membership; activities, symbols, funding and resources, protection, dissolution and victim status.

181. Most of the cases are ones determined by the ECtHR in respect of rights under the ECHR. However, certain judgments of the IACtHR and the courts of the EU are also noted.

182. The cases are concerned not only with the exercise of the right to freedom of association but also the enjoyment of a wide range of rights (respect for private life,, freedom of religion. Freedom of expression, freedom of assembly, an effective remedy and the prohibition of discrimination), demonstrating the significant impact of restrictions imposed on NGOs.

183. On the whole the rulings follow established case law but there are some important developments relating to funding and the designation of NGOs as extremist.

Objectives

184. The cases under this heading concern measures treating inadmissible objectives of a religious or ethnic nature or that should be pursued by a political party.

Religion

185. Without determining whether the objectives of a proposed entity were inadmissible, the ECtHR expressed serious doubts in *Yordanovi v. Bulgaria*, no. 11157/11, 3 September 2020 about the use of criminal sanctions in respect of the alleged attempt to set up a political party on a religious basis. In its view, a criminal conviction represented one of the most serious forms of interference with the right to freedom of expression and this was also true for the right to freedom of association, one of whose objectives was the protection of opinions and the freedom to express them, especially where – as in this case - political parties were concerned.

186. However, in finding the criminal proceedings against the applicants for attempting to set up a political party on a religious basis was not necessary in a democratic society and had thus entailed a violation of Article 11 of the ECHR, the ECtHR observed firstly that they had not pursued until completion the requisite procedure for registering a political party. The legal consequence of that failure was that the party could neither exist nor engage in any activity. Thus, the result sought by the authorities – namely the peaceful coexistence of ethnic and religious groups in Bulgaria – could be fulfilled through such a procedure, in this case by refusing to register the would-be political party. Furthermore, the Court noted that the authorities had the possibility of dissolving a party if it was declared unconstitutional by the constitutional court. As a result, It did not see any reason why, in the circumstances of the case, criminal proceedings were necessary in addition to the other options.

187. Also relevant to this conclusion was the fact that the objective of the criminal provision relied upon, which the ECtHR explained, had not been - when adopted in the Communist era – to prevent a religious community from using democratic institutions to rise to power to the detriment of others, but rather to rule out any possible reappearance of so-called "capitalist" parties, and so was not intended to defend religious and ethnic tolerance in Bulgaria.[1]

Ethnic affiliation

188. Referring to the two preceding cases the ECtHR in *Savenko and Others v. Russia*, no. 13918/06, 14 September 2021 accepted that a refusal to register the applicant political party on account its ethnic affiliation prohibited under domestic law corresponded to the legitimate aims of preventing disorder and protecting the rights and freedoms of others. However, it considered that the refusal was not sufficiently justified as the political programme of the party did not refer exclusively to the protection of rights of ethnically Russian population, but also mentioned protection of rights of all Russian-speaking

[1] Judge Raycheva dissented on the basis that, even in the context of the restricted margin of appreciation left to the Contracting States, the sanction imposed could be justified as the courts had produced a measured, detailed and reasoned judgment and had carried out a thorough and exhaustive analysis of the factors which had motivated its imposition. Thus, the case could be seen as having given rise to a proper balancing exercise.

people, that is to say many other ethnicities so that there was a failure to demonstrate any appearance of ethnic discrimination or risks to peaceful democratic coexistence of ethnic communities which the political party allegedly represented. Furthermore, although there were alleged to be breaches of the formal requirements related to the registration process, the ECtHR did not consider that compliance with them would in any way have changed the outcome of the domestic proceedings so as to preclude a finding of a violation of Article 11 of the ECHR on account of the refusal of registration of the applicant political party.

Political

189. The refusals of registration in *Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria*, no. 67197/13, 28 May 2020 and *Vasilev and Society of the Repressed Macedonians in Bulgaria Victims of the Communist Terror v. Bulgaria*, no. 23702/15, 28 May 2020 on the basis that the grounds invoked – namely, that the associations concerned advocated the idea that there existed a Macedonian ethnic minority in Bulgaria or (in the second case) an oppressed one and their goals were in both cases political and hence only capable of being pursued by a political party – were ones that the ECtHR had already found to be insufficient to justify a refusal to register similar associations.

Registration

190. A good number of cases have been concerned with refusals to register associations and churches, with the latter being more generally relevant in that the guarantee of freedom of religion in Article 9 of the ECHR is read in the light of the guarantee of freedom of association in Article 11.

191. The issues raised in these cases have concerned: alleged procedural failings; the name chosen; alleged conduct; and the form or status sought.

192. However, it should also be noted that an application relating to the refusal by a court to order the applicant church's registration as a religious organisation following the finding by the ECtHR of a violation of Articles 9 and 11 of the ECHR was rejected by the ECtHR in *Sultanov and Church of Scientology Nizhnekamsk v. Russia* (dec.), no. 59470/11, 11 May 2021 as incompatible *ratione materiae* with the provisions of the Convention. It did so on the basis that the refusal was not based on relevant new grounds capable of giving rise to a fresh violation since the applicants did not engage in any new registration proceedings and it was the role of the Committee of Ministers to supervise the execution of the ECtHR's judgments.[2]

193. See also *Objectives* above.

[2] There was a similar ruling in *Church of Scientology St. Petersburg and Others v. Russia* (dec.), no. 47871/17, 23 November 2021.

Alleged procedural failings

194. In both *Abdullayev and Others v. Azerbaijan*, no. 69466/14, 20 May 2021 and *Mehman Aliyev and Others v. Azerbaijan*, no. 46930/10, 20 May 2021, the ministry of justice was found by the ECtHR not to have complied with the requirements of domestic law concerning the registration procedure – namely, by identifying all the alleged deficiencies in one review and explicitly providing the applicants with a twenty-day rectification period – and so the refusal by the national authorities to register the associations in question had been unlawful, meaning that there was no need to consider compliance with the other requirements of Article 11(2) of the ECHR (i.e., legitimate aim and necessity of the interference).

195. A similar finding of a violation of Article 11 was made in *Election Monitoring Centre and Others v. Azerbaijan*, no. 64733/09, 2 December 2021. However, in that case, the ECtHR also reaffirmed its previous rejection of the argument that domestic law had not prevented NGOs from functioning properly without registration.

196. In addition, having regard to the manner in which the authorities treated the requests to register the applicant association in the present case, the ECtHR considered it necessary to add that the government had not convincingly shown that the repeated *de facto* refusals to register the association had aimed at ensuring compliance with the law and therefore of "prevention of disorder". Furthermore, it held that it had not been shown that those refusals pursued any of the other aims that could justify an interference under Article 11 of the ECHR. As a result, the European ECtHR took the unusual step of also finding that the interference with the applicants' right under that provision resulting from the protracted registration process did not pursue a legitimate aim.

197. Subsequently, in *Election Monitoring and Democracy Education Centre and Others v. Azerbaijan*, no. 70981/11, 12 January 2023, the ECtHR again found a violation of Article 11 in respect of the refusal to register the applicant association. In this case, it considered that, even assuming that there were factual and legal grounds for finding that the registration documents contained the deficiencies alleged by the ministry of justice, none of those deficiencies concerned substantive issues related to the existence or activities of the applicant association, and they could only be characterised as alleged shortcomings of a procedural or even technical nature. The ECtHR concluded that it was not clear why the domestic authorities chose not to treat them as "rectifiable deficiencies".

198. Indeed, by applying the relevant legislative provision to any, even the slightest, failure to comply with a particular domestic norm – irrespective of the substantiveness of the matter regulated by the norm in question – the ECtHR regarded the domestic authorities as having adopted an unforeseeably broad interpretation of that provision Thus, it found that the manner in which the domestic law was interpreted and applied in the present case did not afford the applicants protection against arbitrary interferences so that the refusal to register the applicant association was arbitrary and not "prescribed by law" within the meaning of Article 11(2) of the ECHR.

199. Furthermore, the refusal to register the applicants' organisation in *Mariya Alekhina and Others v. Russia (No. 2)*, no. 10299/15, 28 November 2023 because of the failure to bring its registration documents into conformity with the existing legislation on non-profit organisations was held by the ECtHR to amount to a violation of Article 11 of the ECHR. Although considering that it was open to doubt whether the repeated refusals of registration aimed at ensuring compliance with the law and therefore at "prevention of disorder" or pursued any of the other aims that could justify an interference under Article 11, the ECtHR proceeded on the assumption that the impugned interference pursued the abovementioned aim.

200. The grounds for refusal were: the absence of any reference to the nature of the organisation's activities in its name; the scope of the organisation's activity had not been specified; the absence of certain provisions dealing with decision-making; and the inclusion of a provision for its termination upon reorganisation. These grounds were, however, viewed by the ECtHR as unfounded since: the articles of association submitted for registration clearly designated the organisation as a human rights public association, as indicated by its full name "Moscow Regional Human Rights Public Association 'The Zone of Law'"; there was no explicit obligation to include an exhaustive list of activities in an organisation's constitutional documents; the allegation with respect to decision-making was not supported by the facts but, in view of the apparent lack of more detailed guidelines on this point, could not constitute sufficient reason to deny registration; and, as the articles provided that termination on reorganisation had to be conducted according to the law of the Russian Federation, it was unclear why the alleged omission could not have been remedied without dismissal of the request for registration. Furthermore, the ECtHR considered that in view of the absence of a clear explanation or an opportunity to correct the alleged defects, the obliging of the applicants to repeat the registration procedure imposed too great a burden on them, especially as the law allowed them to remedy any irregularities in the first application for registration.

201. In a concurring opinion, Judge Pavli stated that "In this day and age, the ECtHR should not easily grant the benefit of *prima facie* legitimacy to restrictions of fundamental rights that deserve no such label. It is time to stop making assumptions about "legitimate aims"."

202. The refusal to register an association as a religious community was held in *Föderation der Aleviten Gemeinden in Österreich v. Austria*, no. 64220/19, 5 March 2024 to be a violation of the right to freedom of religion under Article 9 of the ECHR. Although the ECTHR was not convinced that the domestic court had based its reasoning on the consideration that there had not been compliance with the requirement to have a distinct religious doctrine, It did not consider that shortcomings in the association's concept of membership- which was asserted to be too vague - were sufficient to deny it the status of a registered religious community. As this point was only raised at a late stage and given that the legislation did not specify how much detail should be included in the provisions concerning the start and termination of membership, the ECtHR considered that the

association should have been given a realistic opportunity to remedy the alleged shortcoming. Moreover, the reasoning of the refusal failed to refer to the association's argument that it had already changed its name in order to avoid any risk of confusion with another religious community.[3] However, the ECtHR did not consider that registration as a religious community constituted a civil right under the scope of Article 6(1) of the ECHR, noting that the association did have legal personality and was able to operate and that no property claims or non-pecuniary claims, such as its reputation, were at stake.

Name

203. In *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, no. 56751/13, 20 April 2021, the refusal to register the applicant church as a religious denomination on account of its name being considered in effect the same as that of the Bulgarian Orthodox Church was regarded by the ECtHR, in principle, a justified limitation on its right freely to choose its name. However, it found a breach of Article 9 of the ECHR read in the light of Article 11 since; the names of the two churches were not identical, the applicant church's name being sufficiently distinguished by the words "Old Calendar"; it was well known that Old Calendarist churches were distinct from those Eastern Orthodox churches – such as the Bulgarian Orthodox Church – which have adopted the Revised Julian calendar; nothing suggested that the applicant church wished to identify itself with the Bulgarian Orthodox Church; any overlap between the beliefs and practices of the two churches was also a bar to registration as such an approach would have the consequences of only permitting the existence of a single institution per religious denomination and of compelling believers to turn to that institution, which would be hard to reconcile with the effective exercise of the rights guaranteed by Articles 9 and 11 of the ECHR; and, following settled case law, the State did not need to ensure that religious communities remained under a unified leadership, which was not altered by the fact that the applicant church had been created by people who had seceded from the Bulgarian Orthodox Church.[4]

204. Furthermore, in the course of finding a violation also of Article 13 of the ECHR, the European Court considered that the possibility for the applicants to re-apply for the registration of the applicant church could not be seen as an effective remedy for the purposes of Article 13 as that might erect a permanent barrier to bringing such matters before the ECtHR, because a refusal to register did not preclude the possibility of seeking registration an indefinite number of times. Moreover, the possibility of registering the applicant church as an association could not be seen as a remedy for the refusal to register it as a religious denomination as that would not would have not been a proper substitute for its registration as a religious denomination.

[3] Judge Vehabović dissented. In his view, Article 9 did not confer any right to a specific legal status but merely required that religious groups have the possibility of acquiring legal personality under civil law. Furthermore, as there is already a registered religious community of Alevis in Austria, it seemed to him that the registration of a new religious community almost identical in wording and in terms of religious doctrine did not provide any added value to the right to freedom of religion under Article 9 of the Convention.

[4] There was a similar ruling as regards Articles 9 and 11 in *Independent Orthodox Church and Zahariev v. Bulgaria*, no. 76620/14, 20 April 2021.

205. Finally, given that the breach of Article 9 read in the light of Article 11 of the ECHR flowed chiefly from the manner in which the Bulgarian courts have consistently interpreted the relevant legislation, the ECtHR held that the general measures required to abide by the present judgment should include either an amendment of those provisions or a revised interpretation of them. In addition, it held that the individual measures required in relation to the applicant church might involve either granting a renewed request for its registration as a religious denomination, or a reopening of the registration proceedings.

206. However, the refusal to register a religious community, which was founded by the Reverend Moon and whose teachings were a mixture of features from eastern religions with elements of Christianity, was held by the ECtHR in *Ilyin and Others v. Ukraine*, no. 74852/14, 17 November 2022 to be sufficiently justified on account of its initial name containing references to the unification of world Christianity being capable of creating the impression that it was an oecumenical Christian association, which became clear when it changed its name and adopted its more commonly used title of "Unification Church". In doing so, the Court reiterated that the mere fact of a State requiring a religious organisation which is seeking registration to take on a name which is not liable to mislead believers and the general public and which enables it to be distinguished from already existing organisations could in principle be seen as a justified limitation on its right to choose its name freely.[5] As a result the ECtHR did not find the refusal to constitute a violation of Article 9 read in the light of Article 11 of the ECHR. However, other grounds for refusal – the community's alleged destructive influence and alleged failure to cooperate in investigating them, its alleged efforts to establish influence within business circles, NGOs and political parties and its practices relating to marriage – were considered either not to have been substantiated or subject to scrutiny.

207. Nonetheless, the ECtHR did agree that a religious community's refusal to allow the authorities to take appropriate measures to investigate any credible complaints of abusive practices occurring at its events could in principle be grounds for refusal of registration

Alleged conduct

208. The grounds for refusal to register the applicant as a religious organisation was held by the ECtHR in *Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, no. 41817/10, 22 March 2022 to protect public safety and the interests of national security, the State and the population. However, they were not considered by it to be supported by "relevant and sufficient" reasons that could preclude a finding of a violation of Article 9 of the ECHR read in the light of Article 11.

209. The grounds relied upon were an expert opinion containing findings that the applicant's ministers used methods of psychological influence on believers, that Jehovah's Witnesses were engaged in "soul hunting" ("religion hunting") and that the applicant was not a Christian organisation, as well the refusal of its members to perform military service. The

[5] A fresh application for registration in the new name was, at the time, still pending before the domestic courts.

ECtHR considered the objectivity of the expert opinion and the credibility of its findings to be questionable given that it had been prepared by a minister who had openly showed his negative predisposition towards the applicant. Moreover, the expert opinion had not mentioned the name of a single individual who had allegedly fallen victim to the techniques of psychological manipulation indicated nor was there any specific evidence to support the allegation of improper proselytism within the meaning of the Court's case-law. As a result, it considered that the findings of the expert opinion were based on conjecture uncorroborated by fact. Moreover, the ECtHR considered it striking that acts motivated or inspired by a religion or belief other than that of the Armenian Apostolic Church were to be regarded as "soul hunting" ("religion hunting") and that the conclusion that Jehovah's Witnesses were "far from being a Christian organisation" was founded on the applicant not accepting the Nicene Creed. In this connection, the ECtHR reiterated its position that the State's duty of neutrality and impartiality was incompatible with any power on its part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed and that only the highest spiritual authorities of a religious community, and not the State (or even the national courts), may determine to which faith that community belongs.

210. Moreover, with regard to the refusal to perform military service, the ECtHR emphasised that the fact that Article 9(2) did not allow restrictions on the ground of national security was far from accidental omission since its non-inclusion reflected the primordial importance of religious pluralism as "one of the foundations of a 'democratic society' within the meaning of the Convention" and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs. Furthermore, it underlined that it was now settled case-law that opposition to military service, where motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 .

211. On the other hand, the refusal to grant an application for a political group to be registered on the list of political parties was held in *Ignatencu and the Romanian Communist Party v. Romania*, no. 78635/13, 5 May 2020 not to be in violation of Article 11 of the ECHR given that the reason for doing so was the desire to prevent a political group which had seriously abused its position over a long period by establishing a totalitarian regime from misusing its rights in the future, and thus to avoid attacks on State security or the foundations of a democratic society. In its view, the reasons linked to the content of the second applicant's founding texts raised by the national courts against the latter's registration were relevant and sufficient and proportionate to the legitimate aim pursued.[6] Furthermore, following established case law, the complaint that the proceedings were unfair and thus in violation of Article 6(1) was incompatible *ratione materiae* with the provisions of the ECHR as the

[6] There was a similar finding in *Committee for the organisation and for the registration of the Romanian Communist Party v. Romania* (dec.), no. 20401/15, 30 November 2021.

proceedings in issue did not concern a dispute over the applicants' civil rights and obligations or a criminal charge against them but concerned the second applicant's right to be registered as a political party and to carry out his political activities as such which was, par excellence, a right of a political nature.

Form or status sought

212. An application in respect of the refusal in *Sager and Others v. Austria* (dec.), no. 61827/19, 22 November 2022 to register the "Church of the Flying Spaghetti Monster" (or "Pastafarianism", a movement critical of the influence and privileged position afforded to established religion, which expresses this criticism by parodying aspects of those religions) as a religious community was held inadmissible as be incompatible *ratione materiae* with the ECHR by the ECtHR, following its case law that Pastafarianism is not a "religion" or "belief" within the meaning of Article 9. In doing so, it reaffirmed that the right to freedom of thought, conscience and religion denotes only those views that attain a certain level of cogency, seriousness, cohesion and importance.

213. Furthermore, a complaint under Article 11, alone and in conjunction with Article 9, that the applicants had been prevented from freely associating as a religious community was held to be manifestly ill-founded, with the ECtHR reiterating that there was no right under Article 11 of the ECHR for associations to have a specific legal status and emphasising that, as Pastafarianism did not qualify as a religion within the meaning of its case law, no right to the status of religious community could be derived from Article 11 of the ECHR. However, the applicants did in fact successfully establish an association under Austrian law.

214. Finally, applications in *Melekhin v. Russia* (dec.), no. 34196/05, 11 February 2020 and *Panarin v. Russia* (dec.), no. 43472/06, 11 February 2020 complaining about the refusal to register certain entities on the ground that the domestic law did not provide the Cossacks with the right to form an ethnic-cultural autonomy were dismissed by the ECtHR as manifestly ill-founded. In doing so, it reaffirmed that Article 11 of the ECHR did not guarantee the right to form a particular type of association and noted that domestic law did not provide the Cossacks with the right to form an ethnic-cultural autonomy. Furthermore, it observed that, under the domestic law, the Cossacks could form Cossack associations but the applicants had not provided it with any evidence that they had applied to form such associations, nor did they provide any argument as to why such a form would be inadequate for their purposes.

Capacities

215. There have been several cases concerned with the inability of NGOs to bring certain legal proceedings, with a negative ruling being given in most instances.

216. The refusal to recognise the same rights as a national professional association of military personnel ("APNM") for an association composed of active military personnel and other natural or legal persons who have adhered to the statutes and are up to date with their contributions was held in *Adefdromil v. France* (dec.), no. 20536/17, 1 February 2024 not to have infringed the very essence of the applicant's freedom of association as ,guaranteed by Article 11 of the ECHR.

217. In so finding, the ECtHR, firstly, saw no serious reason to call into question the legitimacy of the objective of requiring ANPMs, the only associations admissible for challenges before the administrative court, to be composed exclusively of active military personnel. In its view, this sought to reconcile the competing interests attached, on the one hand, to freedom of association and, on the other hand, to the preservation of the specificity of the statutory obligations and specific missions imposed on active military personnel. In addition, it noted that the interference in question no longer consisted of an absolute ban on all military personnel joining a trade union group, but only of an obligation to join an APNM, a sui generis association open only to active military personnel, the purpose of which is to defend the military condition. Moreover, it was not disputed that the statutes of the applicant association did not limit membership just to active military personnel. Furthermore, retired military personnel and members of the families of active military personnel (as well as the latter) could, for their part, join associations in order to assert their own rights or interests other than those attached to military status. The ECtHR thus concluded that the inadmissibility raised by the Council of State against the applications for annulment submitted by the applicant on the grounds that it could not be regarded as an APNM, through which active military personnel alone may challenge a decision relating to military status, was based on relevant and sufficient grounds and had not infringed the very essence of the applicant's freedom of association as guaranteed by Article 11 of the ECHR.

218. No violation of Article 11 of the ECHR was considered in *Association of Civil Servants and Union for Collective Bargaining and Others v. Germany*, no. 815/18, 5 July 2022 to have resulted from legislation regulating conflicts that arise if there are several collective agreements in one "business unit" of a company, which prescribed that, in the event of such a conflict, the collective agreement of the trade union which has fewer members in the business unit is no longer applicable. In concluding that there had been no disproportionate restriction on the rights of the three applicant trade unions, the ECtHR reiterated that the right to collective bargaining as guaranteed under Article 11 did not include a "right" to a collective agreement. In its view, what was essential was that trade unions could make representations to and be heard by employers.

219. The ECtHR observed that the main restriction brought about by the legislation in issue had concerned the rights of trade unions which had fewer members within the "business unit" of the company concerned. It considered that those minority trade unions did not lose the right as such to bargain collectively and to take industrial action if necessary. It emphasised that they also retained considerable other rights: to adopt the majority

union's collective agreement; present claims; and make representations to employers for the protection of their members. Most importantly, the ECtHR considered that the legislation was intended to ensure the fair and proper functioning of the system of collective bargaining, notably by preventing trade unions representing employees in key positions from negotiating collective agreements separately to the detriment of other employees, and also to facilitate an overall compromise. Indeed, it noted that several other States also had systems restricting in one way or another collective agreements to larger or more representative unions. Furthermore, it stated that the respondent State was to be given leeway as regards the restriction on trade union freedom in this case, and all the more so given the sensitive policy choices involved in balancing the respective interests of labour – including trade unions – and management.[7]

220. Three associations and a foundation representing European judges were held by the General Court of the EU in Cases T-530/22-T-533/22, *Magistrats européens pour la démocratie et les libertés (Medel) and Others v. Council of the European Union,* 4 June 2024, not to be entitled to bring proceedings to challenge as too flexible the milestones in the Council decision approving the recovery and resilience plan for Poland insofar as they related to the reform of the judicial system.

221. However, the Court of Justice of the EU has held in Case C-873/19 *Deutsche Umwelthilfe eV v. Bundesrepublik Deutschland*, 8 November 2022 that Article 9(3) of the Aarhus Convention,[8] read in conjunction with the right to an effective remedy in Article 47 of the Charter of Fundamental Rights of the EU, must be interpreted as precluding a situation where an environmental association, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an administrative decision granting or amending EC type-approval of vehicles equipped with "defeat devices" which may be contrary to Article 5(2) of Regulation No 715/2007.

Membership

222. The cases have concerned eligibility to belong, the exercise of choice over admission, the requirement to disclosure of details about those belonging, the imposition of sanctions on members on account of belonging and on associations on account of the conduct of their members and reliance on membership to substantiate unrelated criminal liability.

[7] Judges Serghides and Zünd dissented, considering that the means employed by the impugned interferences were entirely disproportionate to their legitimate aim, namely, the prevention of conflicting collective agreements as: (a) they impaired the core or very essence of the applicants' right under Article 11(1), rendering it ineffective; and (b) despite the fact that less intrusive means could have been employed in order to achieve the same legitimate aim, including negotiation and arbitration.

[8] "In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment".

Eligibility to belong

223. The Court of Justice of the EU has held in Case C-808/21, *European Commission v. Czech Republic*, 19 November 2024, that the Czech Republic, by denying EU citizens who are not Czech nationals but who reside in the Czech Republic the right to become a member of a political party or political movement, had failed to fulfil its obligations under Article 22 of the Treaty on the Functioning of the European Union ("TFEU"). In its view, allowing such EU citizens to become members of a political party or political movement in their Member State of residence so as to implement in full the principles of democracy and equal treatment could not be regarded as undermining the national identity of that Member State. Furthermore, it considered that Article 22 TFEU, interpreted in the light inter alia of the right to freedom of association in Article 12 of the Charter of Fundamental Rights of the EU, required that, if EU citizens residing in a Member State of which they are not nationals were to be able to exercise effectively their right to vote and to stand as a candidate in municipal and European Parliament elections in that Member State, they must be afforded equal access to the means available to nationals of that Member State for the purpose of exercising those rights effectively.

224. However, a ban on prisoners from setting up or joining trade unions was held in *Yakut Republican Trade-Union Federation v. Russia*, no. 29582/09, 7 December 2021 not to constitute a violation of Article 11 of the ECHR. In so ruling, the ECtHR agreed with the Government that prison work could not be equated with employment, noting that it served the primary aim of rehabilitation and resocialisation, was aimed at reintegration and was obligatory. It suggested that developments in the field of detention might at some point in future necessitate the extension of trade union freedom to working inmates, especially if they work for a private employer, and acknowledged that Article 11(2) did not exclude any occupational group from the scope of that Article. However, having regard to the current practice of the member States of the Council of Europe, it appeared that there is not a sufficient consensus to interpret Article 11 in the manner advocated by the applicant federation. The ECtHR thus concluded that the order to the federation to expel the union of working inmates did not exceed the margin of appreciation available to the national authorities in this sphere, and that the restriction complained of was therefore necessary in a democratic society within the meaning of the second paragraph of Article 11.[9]

Admission

[9] Judges Lemmens and Serghides dissented. While accepting that the competent authorities were entitled to regulate the activities of associations formed by inmates, such as by prohibiting collective actions that might seriously jeopardise security or order in prisons, they considered that the government had failed to satisfy the burden of providing sufficient justification for the ECtHR to come to the conclusion that the impugned ban was "necessary".

225. The applicant's criminal conviction for not admitting new members to the union at the relevant time whilst acting as the trade union representative amounted to an interference with Article 11 of the ECHR was held in *Vlahov v. Croatia*, no. 31163/13, 5 May 2022 to be an interference with the right of trade unions – as associations formed by people – to control their membership that was not necessary in a democratic society. The ECtHR reached this conclusion in view of the lack of reasoning in the domestic courts' decisions, including their procedural failure to examine all the relevant circumstances of the case and in the absence of any identifiable hardship suffered by the would-be members since there was no closed shop and they were free to join another union or any discriminatory motive in the applicant's actions. Furthermore, it had not been alleged that the rules or the Statute of the union were wholly unreasonable or arbitrary, there was nothing to suggest that at the relevant time the applicant did not represent the interests of the union or other members of the branch concerned and the applicant's actions, according to him, were intended not to deny their admission as such but to delay the decision on the extension of the membership until an upcoming ordinary annual assembly of the union.

Disclosure of details

226. The issuing of a written warning to a political party in connection with its refusal to submit individual applications for membership was held in *Sverdlovsk Regional Branch of Russian Labour Party v. Russia* (dec.), no. 43724/05, 3 March 2020 to be an interference with freedom of association that was proportionate to the legitimate aim of protecting the rights of others, namely, to prevent parties from registering as its members people who never expressed such a wish, so as, on the one hand, to ensure voluntary membership in a political party and, on the other hand, to prevent a party's unlawful participation in election. The ECtHR assumed that there was an interference with the applicant's right under Article 11 of the ECHR notwithstanding that there had been no suspension of its activity, which had not yet been sought for the failure to submit the applications concerned. It accepted the view of the domestic courts that the information was required to ensure the accuracy of the registration journal and emphasised that there were sufficient safeguards against the further divulgence of such information as it could not be divulged without the consent of the party members concerned. Furthermore, the ECtHR emphasised that, unlike in *Republican Party of Russia v. Russia* not only was the applicant branch not dissolved but the warning it received was not followed up by a request to suspend its activities and the applicant branch had made no complaints in relation to other inspections, if any, that it might have had to undergo so that it could not be found that it was subjected to frequent and comprehensive checks and a constant threat of dissolution on formal grounds.

Sanctions

227. A violation of Article 14 of the ECHR taken together with Article 11 was found in *Zakharova and Others v. Russia*, no. 12736/10, 8 March 2022 on account of a prima facie case of discrimination against the applicants on the grounds of their trade union membership and related activities not being examined. The ECtHR underlined that a general statement by the domestic court that their allegations of discrimination were unsubstantiated was

insufficient to discharge the State authorities from the obligation requiring the rebuttal of an arguable allegation of discrimination. It observed that, given that two new people were hired at the same time as the applicants were dismissed it was doubtful that their dismissal was indeed caused by the need to reduce staff as a result of underfunding. Furthermore, it stated that the need to reduce staff alone did not explain why it was the three applicants who had been (repeatedly) dismissed, by contrast to other employees, especially, as claimed by the applicants in view of the special protection provided by the national law, for instance, to single parents of underage children, full-time employees and trade union members involved in ongoing collective negotiations with their employer. As a result, the ECtHR concluded that the State had failed to fulfil its positive obligations to ensure effective and clear judicial protection against discrimination on the grounds of trade union membership.

228. A violation of Article 14 of the ECHR taken in conjunction with Articles 10 and 11 was found in *Bakradze v. Georgia*, no. 20592/21, 7 November 2024 as the applicant – a judicial candidate - could justifiably perceive as discriminatory the choice of the high council of justice ("the HCJ") to devote a significant part of the interviews to fill a vacant position to the activities of an association which had actively criticised the HCJ and whose member she was, instead of testing her integrity – if that was the aim of the questions concerned – in a more neutral manner. In doing so, it considered that statistical data provided by the applicant warranted a thorough examination in conjunction with other elements suggesting that leading members of the association were specifically targeted as a group in judicial competitions. Furthermore, the questions related to association took more than two-thirds of the time during the first interview and about half of the time during the second interview and it was also obvious that judicial competence and integrity could have been tested by putting questions about other hypothetical or real situations in which a judge might be required to be careful in expressing his or her views. Moreover, the ECtHR considered that, while it was legitimate that some questions concerning the compatibility of public statements made by an association of judges with the judicial duty of restraint be asked, this could not explain the time devoted to questions related to the association. This, together with other evidence submitted by the applicant, was sufficient to make a *prima facie* case for having been treated differently during the judicial competitions on account of her role in the association. As a result, the HCJ should have had to demonstrate that the alleged difference in treatment had an objective and reasonable justification but the domestic courts found the applicant's allegations of discrimination unsubstantiated and refused to shift the burden of proof onto it. It emphasised that a thorough examination of the above mentioned issues in the discrimination proceedings was essential in the circumstances of the present case, where the HCJ decisions refusing to re-appoint the applicant contained no reasons and were moreover not subject to judicial review but there had been insufficient judicial review by the judicial authorities of the applicant's allegations.

229. The ECtHR held that there was no violation of the ECHR in *Hoppen and trade union of AB Amber Grid employees v. Lithuania*, no. 976/20, 17 January 2023. The ECtHR considered

that the domestic legal system provided the applicants with real and effective protection against alleged discrimination on the grounds of trade union activities (in respect of the first applicant) and the alleged violation of the right to freedom of association (in respect of the second applicant).

230. In the ECtHR's view, Article 11 of the ECHR could not be interpreted as requiring the Contracting States to provide in their domestic law that a member or a leader of a trade union cannot be dismissed unless that trade union grants its consent. Furthermore, it considered that the fact that the various issues relating to the first applicant's dismissal were examined in two sets of domestic proceedings was not *per se* incompatible with the requirements of the ECHR, as long as it did not unnecessarily prolong the proceedings and did not preclude the applicants' main arguments from being duly examined by the courts. In addition, it was satisfied that the administrative courts had thoroughly addressed the applicants' main arguments concerning alleged discrimination and provided relevant and sufficient reasons for rejecting them. Also, the ECtHR was of the view that neither the individual circumstances of the first applicant's dismissal nor the company's general attitude towards the applicant union and its members were such that an independent observer could reasonably draw an inference that the first applicant's trade union activities could have played a principal role in his employer's decision to dismiss him. It therefore concluded that the applicants failed to establish a prima facie case of discrimination against the first applicant on the grounds of his trade union membership and related activities. Finally, the ECtHR was satisfied that the domestic courts carried out an adequate assessment of the reasons provided by the company for the first applicant's dismissal and that their decisions were not arbitrary or manifestly unreasonable. Accordingly, there was found to have been no violation of the first applicant's rights under Article 14 of the ECHR read in conjunction with Article 11 and no violation of the second applicant's rights under Article 11 of the ECHR.

231. The basis for the dissolution of an association was found in *Yefimov and Youth Human Rights Group v. Russia*, no. 12385/15, 7 December 2021 not to be sufficiently foreseeable to meet the "quality of law" requirement. This measure was based at the junction of two provisions, namely, the prohibition on persons suspected of extremist offences from participating in an association and a procedure for dissolution of an association which failed to eliminate "indicators of extremist activities". The ECtHR found firstly that the provisions, which make the exercise of the fundamental right to freedom of association dependent on an investigator's decision to declare a person a suspect of an extremist offence, did not meet the "quality of law" criterion in so far as they give unfettered discretion to the investigative authorities and offer no protection against abuse. Furthermore, it found that the dissolution of the association did not have a clear and foreseeable legal basis since it was dissolved not for any "indicators of extremist activities" in its own conduct – because it was not claimed that there had been any – but for the fact that its founder was suspected of an extremist offence and (a) there was no ascertainable manner in which a distinction could be made between "extremist activities" as such and the conduct that did not amount to such activities but contained their "indicators", (b) the

decision to hold it responsible for the allegedly unlawful conduct of its founder was arbitrary given that the association's engagement in any "extremist activities" had not been shown and no indicators of such activities had been identified in its own conduct, (c) the legislation appeared to have been imprecise in terms of how such activities should be imputed to various actors and (d) the dissolution was a direct consequence of conferring unchecked discretion on the investigative authorities capable of producing such far-reaching legal effects without judicial control and without due regard for the presumption of innocence.

Substantiating criminal liability

232. The reliance by judicial authorities, in the bill of indictment for the applicant's alleged membership of an armed terrorist organisation and in the judgments convicting him, on his membership of a trade union and association, even if only as a source of corroboration, was held by the ECtHR in *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023 to be sufficient to constitute an interference with his rights under Article 11 of the ECHR. Furthermore, it considered that that interference was not justified as the scope of the offence of which he had been convicted had been extended in a manner which could not have been foreseen to include the applicant's membership of a trade union and an association as indications of criminal conduct, even though both had been operating lawfully before the attempted coup d'état which the terrorist organisation was considered to be behind, and was not therefore "prescribed by law", in violation of Article 11.

233. In addition, as concerned the applicant's complaint under Article 11 from the standpoint of Article 15, the ECtHR considered that the government had not explained whether the specific use made by the courts of the applicant's membership of the trade union and association as corroborating evidence to convict him had been strictly required by the exigencies of the situation and had not pointed to any domestic judgments where such assessment had been undertaken, in the context of the applicant's case or elsewhere. As a result, it had not been demonstrated that the interference with the applicant's rights protected under Article 11 of the ECHR could be regarded as being strictly required by the exigencies of the situation under Article 15 pursuant to the derogation notified following the attempted coup d'état.

Activities

234. The cases concerned with NGO activities have dealt with the designation of some of them as "undesirable" on account of their activities, as well as with the use of boycotts, refusal of medical treatment, expression and assemblies, strikes and the imposition of sanctions for allegedly taking part in their activities.

Undesirable

235. The designation by the government of the four applicant organisations as "undesirable" and the prosecution of individuals for engaging in activities with other organisations which had likewise been declared "undesirable" was held in *Andrey Rylkov Foundation and Others v. Russia*, no. 37949/18, 18 June 2024 a violation of Article 11 of the ECHR interpreted in the light of Article 10 (freedom of expression) in respect of the four organisations and a violation of Article 10 and Article 11 in respect of all applicants who had been convicted for their involvement with "undesirable organisations". In the ECtHR's view, designating an organisation as "undesirable" had had legal and practical consequences resulting in a comprehensive ban on the organisation's operation in Russia. These consequences had amounted to an interference with the rights under Article 11 but also Article 10, in so far as the ban had been imposed in connection with the organisation's public statements and forms of expression.

236. The ECtHR noted that the four organisations in question had been sanctioned for a wide range of activities that the authorities had deemed unacceptable, including association with foreign officials or organisations that had been previously designated as "undesirable" or "foreign agents". Moreover, in terms of actions that led to the designation, they included seminar reports critical of the Russian authorities, training activists, and support for the "European model of democracy".

237. The ECtHR observed that the authorities did not allege that those activities had broken any laws and no accusations of inciting violence, undermining democratic principles or interfering with the integrity of elections had been levelled at the organisations. The ECtHR held that the legal provisions on undesirable organisations had not been formulated with sufficient precision to enable the organisations to foresee that their otherwise lawful actions would result in their designation as "undesirable" and a prohibition on their activities in Russia. Furthermore, judicial reviews initiated by the applicants had not provided adequate safeguards against the essentially unrestricted discretion given to the executive authorities. The Court thus concluded that the interference with the organisations' rights had failed to satisfy the "prescribed by law" criterion.

238. As regards the prosecution and conviction of the applicants for their involvement in the activities of organisations designated as "undesirable", the ECtHR noted the applicants had not engaged in any conduct that would have been otherwise prohibited under Russian law, were it not for their alleged association with an organisation designated as "undesirable". Rather, they had exercised their legitimate ECHR rights to freedom of expression, assembly and association by sharing content on social media, campaigning for social and political causes, and participating in events and forums. Since the law under which the applicants had been convicted had failed to specify what had constituted "involvement" in the activities of "undesirable organisations" that could result in a conviction, the ECtHR considered that the relevant provision also did not meet the "quality of law" requirement.

239. Furthermore, it noted that the domestic authorities failed to convincingly establish the identity of the prohibited British organisation Open Russia and the eponymous Russian movement and had penalised the applicants for sharing hyperlinks to websites of "undesirable organisations" that had been posted many years before their designation. The ECtHR considered that imposing a responsibility on the applicants to foresee future designations or to review their websites to ensure that previously shared material had not been retrospectively classified as linking to an "undesirable" organisation constituted a disproportionate "chilling effect" on their freedom of expression.

Boycotts

240. A ruling that a proposed boycott organised by a union of a shipping firm that employed dockworkers outside of a collective framework agreement was unlawful was held in *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway,* no. 45487/17, 10 June 2021 not to constitute a violation of Article 11 of the ECHR. In so doing, the ECtHR considered that the domestic court had engaged in an assessment of the fundamental right to collective action relied on by the applicant unions and the economic freedom under European Economic Area ("EEA") law on which the employer had relied and had ruled that the boycott had to be - among other things - reconciled with the rights that follow from the EEA Agreement and a fair balance had to be struck between these rights. The ECtHR noted that it was clear from the domestic court's factual characterisation of the boycott – a means to compel acceptance of a right of priority engagement and notably with the desired effect being to limit the access of other operators to the market for loading and unloading services – had been central to its finding that such a fair balance had, in the particular circumstances of that case, been struck. The ECtHR considered that the domestic court had acted within the margin of appreciation afforded to it in this area when declaring the boycott unlawful.

241. Although the ECtHR accepted that protecting the rights of others granted to them by way of EEA law could justify restrictions on rights under Article 11 of the ECHR, it emphasised that - when implementing their obligations under EU or EEA law - the Contracting Parties had to ensure that restrictions imposed on Article 11 rights did not affect the essential elements of trade union freedom, without which that freedom would become devoid of substance. Furthermore, it added that while it was primarily for the national courts to interpret and apply domestic law, if necessary in conformity with EU or EEA law, EEA freedom of establishment was not a counterbalancing fundamental right to freedom of association but rather one element, albeit an important one, to be taken into consideration in the assessment of proportionality under Article 11.

Refusal of medical treatment

242. The banning of the activity of a group which induced its followers to refuse medical assistance was held in *Milshteyn v. Russia*, no. 1377/14, 31 January 2023 to be a violation of Article 9 of the ECHR, interpreted in the light of Article 11 of the ECHR. In so holding, the ECtHR reiterated that the freedom to refuse specific medical treatment or to select an alternative form of treatment was vital to the principles of self-determination and

personal autonomy. In its view, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others. It noted that the domestic courts, while having regard to the statements by family members of a few of the group's followers and to findings of experts in medicine, had not considered that the refusal of treatment had been formulated by adult followers of the movement having the capacity to make medical decisions for themselves.

243. The ECtHR emphasised that the crucial legal test in such cases was whether the refusal was an expression of the person's authentic will or whether the degree of external influence brought to bear on the persons concerned had been such as to persuade them to depart from their own wishes. It found no evidence of coercion or undue pressure being put on any members of the group and that, in the absence of evidence of improper pressure, the domestic courts did not convincingly establish a "pressing social need" for banning the Elle-Ayat group.

Expression and assemblies

244. Measures taken against an air-traffic controller and chair of her trade union for statements made regarding safety in a letter to the State officials overseeing her State-owned employer on behalf of the union were held in *Straume v. Latvia*, no. 59402/14, 2 June 2022 not to be proportionate to the legitimate aim of protecting the rights of her employer, and had thus not been "necessary in a democratic society" and constituted a violation of Article 11 of the ECHR, read in the light of Article 10. The measures concerned were the disciplinary investigation, her suspension, "idle standing" and ultimately her dismissal. The ECtHR found that the domestic courts had failed to assess whether inferences made in the letter had had a sufficient factual basis and thus had in fact been acceptable criticism and had also not verified the stated facts that had formed the basis for those inferences, instead checking only whether the claimed potential consequences had already occurred. The ECtHR asserted that the letter had been a professional assessment of the potential impact of the identified deficiencies that had had a sufficient factual basis, and could not be seen as a gratuitous attack on the employer. In its view, the repercussions for the applicant had been exceptionally harsh, and could very well have a chilling effect on trade union members. Furthermore, the ECtHR judged that many of the actions of the employer - such as requiring them to sign statements under the threat of suspension, pressuring them to distance themselves from the letter and the applicant, and calling for the union's leadership to be changed - had been clearly aimed at exerting pressure on those members.

245. In the course of finding in *Gökhan Gökmen v. Türkiye*, no. 67465/12, 10 October 2023 that the applicant's conviction in connection with his participation, inter alia, in several demonstrations was a violation of the right to freedom of peaceful assembly under Article 11 of the ECHR, the ECtHR reiterated its concerns about the conviction of a person for membership of an illegal organisation for an act which may be deemed to coincide with the aims or instructions of such organisation. The ECtHR observed in that respect that

there was no justification in the national courts' judgments for the conclusion that when the applicant participated in those demonstrations he had been acting for the PKK or on its behalf upon its specific instructions to him.

246. The imposition of the disciplinary measure of "non-punitive warning" taken against certain civil servants for having set up a promotional stand for a trade union at the university where they worked in order to distribute leaflets was held in *Kaymak and Others v. Türkiye*, no. 62239/12, 20 June 2023 to be a violation of Article 11 of the ECHR. In so holding, the ECtHR observed that neither the administrative court nor the council of state had considered it possible to examine the merits of the case despite the applicants having argued in support of their appeals that (a) the case was aimed at intimidating union members, (b) the disciplinary penalty imposed was important in their personal files with regard to future promotions, appointments and advancements and in the event of any other disciplinary proceedings, and (c) the fact that the letter of sanction stated that criminal proceedings would be brought if the unruly behaviour continued was likely to cause them hesitation and dissuade them from participating in future union activities and actions or other democratic actions. These bodies had failed to do so, considering that no action could be brought against administrative acts which were not final and not enforceable and which did not directly affect the rights and interests of the person to whom they were addressed; and concluded that the absence of negative disciplinary effects produced by the impugned administrative act precluded an examination of the merits of the action for annulment brought against that act. However, the ECtHR observed that since the domestic courts had failed to weigh up the various interests involved, they could not be regarded as having applied the relevant rules in a manner consistent with the principles enshrined in Article 11 or as having based their decisions on an acceptable assessment of the relevant facts.

247. In *Ukraine v. Russia (re Crimea)* [GC], no. 20958/14, 25 June 2024, the European Court found a violation of Articles 10 and 11 of the ECHR on account of an administrative practice of unlawful deprivation of liberty, prosecution and conviction of "Ukrainian political prisoners" for exercising their freedom of expression, and of peaceful assembly and association.

248. The refusal – pursuant to a provision regulating the representation of political parties throughout the territory - to allow a political party to hold local party conferences in three cities on the grounds that it did not have branches in at least one third of the municipalities of those cities was held in *Yeşiller ve Sol Gelecek Partisi v. Turkey*, no. 41955/14, 10 May 2022 not to constitute a violation of Article 11 of the ECHR. In doing so, the ECtHR reiterated that, in the absence of arbitrariness as regards the application of the national law relevant to the applicant's situation, it was not its task to replace the domestic courts and that it was primarily for the national authorities, in particular the courts and tribunals, to interpret and apply domestic law. In its view, it was not for the ECtHR to rule on the appropriateness of the techniques chosen by the legislature of a

respondent State to regulate a particular area; its role was limited to verifying whether the methods adopted and the consequences they entail are in conformity with the ECHR.

Strikes

249. The European Court held in *Ateş and Others v. Türkiye* (dec.), no. 52051/17, 28 February 2023 that the applicants, who had left their trade union prior to the strike action for which they had been dismissed, could not rely on the right to form and join trade unions protected by Article 11 as strike action is – which was, in principle, protected by Article 11 - only in so far as it is initiated by trade union organisations and considered as being effectively – and not merely presumed to be – part of trade-union activity. Furthermore, it found that the applicants were also not dismissed for having left a specific trade union or for having decided not to join a specific trade union or owing to any pressure of the employer in that regard. Their application was, therefore, incompatible *ratione materiae* with the provisions of the ECHR.[10]

250. The imposition of fines as disciplinary sanctions on teachers with civil servant status for having participated, during their working hours, in strikes organised by their trade union in order to protest against worsening working conditions for teachers was held in *Humpert and Others v. Germany* [GC], no. 59433/18, 14 December 2023 not to be a violation of Article 11 of the ECHR.

251. In so holding, the ECtHR – which had to date left open whether a prohibition on strikes affected an essential element of trade-union freedom – indicated that, even where a prohibition on strikes did not affect an essential element of trade-union freedom in a given context, it would affect a core trade-union activity if it concerned direct industrial action. In each case, it stated that the margin of appreciation allowed to the State was limited. The Court also observed that the prohibition on strikes by civil servants, including teachers with that status, was absolute, and could be qualified as a "severe" restriction. In its view, a general ban on strikes for all civil servants did raise specific issues under the ECHR. However, notwithstanding that strike action was an important part of trade union activity, it was not the only means for trade unions and their members to protect the relevant interests. In particular, German civil servants could form and join trade unions, and many civil servants, including the applicants, availed themselves of that right and the civil service trade unions had a statutory right to participate when civil service regulations were drawn up.

252. The ECtHR observed that none of the other Contracting Parties provided for comparable rights of trade union participation in the process of fixing working conditions as a means of compensating for a prohibition on strikes by the workers concerned. Furthermore, it noted that civil servants had a constitutional right to be provided with "adequate maintenance", commensurate with the civil servant's grade and responsibilities and in

[10] There was a similar ruling in *Ekelik and Others v. Türkiye* (dec.), no. 46183/12, 28 February 2023.

keeping with the development of the prevailing economic and financial circumstances and the general standard of living (the "principle of alimentation"), which they could enforce in court. In the ECtHR's view, the variety of different institutional safeguards, in their totality, enabled civil servants' trade unions and civil servants themselves to effectively defend their relevant interests. It considered that the high unionisation rate among German civil servants illustrated the effectiveness in practice of trade union rights as they were secured to civil servants and the prohibition on strikes did not render civil servants' trade union freedom devoid of substance.

253. Moreover, the ECtHR considered that the disciplinary measures taken against the applicants had not been severe, and they had pursued the important aim of ensuring the protection of rights enshrined in the ECHR through effective public administration (in the specific case, the right of others to education), and the domestic courts had cited relevant and sufficient reasons to justify those measures, while weighing up the competing interests and having regard to the ECtHR's case law throughout the domestic proceedings. Furthermore, the actual employment conditions of teachers with civil servant status in Germany further militated in favour of the proportionality of the impugned measures in the present case, as did the possibility of working as State school teachers under contractual State employee status with a right to strike.

254. The ECtHR thus concluded that the measures taken against the applicants had not exceeded the discretion of the State and they had been proportionate to the important legitimate aims pursued.[11]

Sanctions

255. The ECtHR reiterated in *Gönen and Others v. Türkiye* (dec.), no. 80669/12, 16 April 2024 that there was a positive obligation on the authorities to provide protection against dismissal by private employers where the dismissal is motivated solely by the fact that an employee belongs to a particular association, or at least to provide the means whereby there can be an independent evaluation of the proportionality of such a dismissal in the light of all the circumstances of a given case. However, having regard to the conduct of the domestic proceedings and the absence of any evidence indicating that the applicants were dismissed due to their membership of the trade union which continued to operate within company concerned and remained a party to the collective agreement with it, the ECtHR concluded that there were no elements disclosing a breach by the State of its positive obligation to secure the applicants' trade-union freedom as protected by Article 11 of the ECHR.

[11] Judge Serghides dissented, considering that the right to strike was an essential element of the right to freedom of association and that the impugned measures could not be justified under the first sentence of Article 11(2) (the general limitation clause) because they were based on an absolute prohibition which does not have a place under this sentence, and they could not be justified under the second sentence of Article 11(2), because they do not concern members of any of the three groups specified therein (i.e., the armed forces, the police and the administration of the State).

256. In *Erenler and Others v. Türkiye*, no. 53310/10, 17 January 2023, the ECtHR considered that, when deciding to transfer the applicants and dismissing their objections, the national authorities did not adequately balance their right to freedom of association with the legitimate aims pursued – namely, the prevention of disorder and the protection of the rights of others - and in accordance with the criteria laid down in its case law. It therefore considered that the national authorities had failed to demonstrate that the measure complained of was a result of a "pressing social need", and as such "necessary in a democratic society" so that there had been a violation of Article 11 of the ECHR. In so ruling, it reiterated the observation in a previous case, raising a similar issue, that the compulsory transfer of a civil servant to another city on account of his trade union membership and activities did not fall within the scope of the proper running and management of the public service and constituted an unjustified interference

257. The transfer decision taken against the applicant, a public employee, was not considered in *Tütmez v. Türkiye* (dec.), no. 80858/12, 1 October 2024 to constitute an interference with his right to carry out trade union activities as he had not been transferred because he was a member of a trade union or had participated in an activity organised by the trade union or for having claimed professional rights in the context of the trade union's activities. The ECtHR noted in this context that his status provided, in principle, for the possibility of transfer to another department or to another town. Furthermore, it was not convinced that he would be prevented from carrying out trade union activities in his new post or place of transfer.[12]

Symbols

258. The ban on using the "HAMC Stuttgart" symbol in public by an association that – unlike other HAMC ("Hells Angels Motorcycle Club") local charters - was not banned because of its criminal activities was considered by the ECtHR in *Schelhorn v. Germany* (dec.), no. 10876/21, 8 October 2024 to be proportionate to the legitimate aim pursued – the prevention of disorder or crime and the protection of the rights of others and was thus necessary in a democratic society. In so holding, the ECtHR indicated that the use of the "HAMC" symbol with the suffix "Stuttgart" entailed at least some risk of confusion with other "HAMC" charters, including those that were banned. Moreover, it noted that the use of the "HAMC" symbol which was common to all "HAMC" charters emphasised the affiliation to other "HAMC" charters and that the applicants emphasised their affiliation to an overarching "Hells Angels" identity, which was also expressed in the use of uniform symbols. It therefore considered it somewhat contradictory if they deny that these uniform symbols – albeit used in combination with the name of a specific charter – also, due to their similarity, expressed a certain degree of identification with other charters of this movement, fourteen of which had been banned due to their criminal activities. Furthermore, the ECtHR noted that the aim of effectively implementing a ban on criminal

[12] There was a similar ruling in *Toprak v. Türkiye* (dec.), no. 56782/17, 6 June 2023.

associations – in the present case the ban on other "HAMC" charters operating in Germany, which itself was subject to stringent legal requirements under domestic law – carried great weight in a democratic society based on the rule of law. Without effective implementation mechanisms – such as the ban at hand – bans on criminal associations could easily be circumvented, and the primordial objectives pursued therewith could become unattainable in practice. Finally, the ECtHR emphasised that the proportionality of the ban at hand had been analysed in a thoroughly reasoned decision, taking due note of the applicants' arguments and balancing the competing interests in a comprehensive and transparent manner.

259. See also *Dissolution, Failure to compensate* below.

Funding and resources

260. These cases are concerned with the provision of public assistance and measures taken against those NGOs in receipt of funding from a foreign source.

Public assistance

261. The refusal to pay a political party public financial assistance for a particular year was held in *Demokrat Parti v. Turkey* (dec.), no. 8372/10, 7 September 2021 not to have subjected it to a difference in treatment in the exercise of its rights or political activities, within the meaning of Article 14 taken in conjunction with Article 11 of the ECHR, on account of there being no other political party in a similar or comparable situation to that of the applicant party which had received the payment of the public financial assistance that it stated had not been paid to it.

262. An application relating to the refusal to accept a political party's financial statement, which led to a requirement to reimburse the State Treasury and the reduction in its public funding by 75%, was held in *Nowoczesna v. Poland* (dec.), no. 38813/17, 14 March 2023 to be manifestly ill-founded. In so holding, the ECtHR noted that the scope of the financial consequences was due to the considerable amount improperly transferred by the party to its electoral committee and that it had not been completely deprived of public funding even though its financial report had to be rejected. Furthermore, the mistake made by the party had not been corrected as its financial report certified an untrue information. In the ECtHR's view, the expectation to fulfil the relevant requirements did not constitute an excessive burden for the party which should have been aware of the consequences, including financial ones, of its mistakes made in the transferring of financial means for its participation in the elections, as well as the omission to correct the mistakes as soon as discovered. As there were sufficient and convincing reasons for the refusal to accept the party's financial statement, the interference with Article 11 of the ECHR was proportionate to the legitimate aim pursued.

Foreign source

263. The requirement in an Act that the applicant NGOs register as "foreign agents" and to label their publications as originating from a "foreign agent" owing to their alleged "political activity" and receipt of "foreign funding", which was accompanied by unscheduled inspections, additional accounting, auditing and reporting requirements and which led to the imposition of fines for non-compliance and voluntary or enforced liquidation, was held in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022 to be a violation of Article 11 of the ECHR interpreted in the light of Article 10 both for the fact that the interference with their rights had been neither prescribed by law nor "necessary in a democratic society".

264. The ECtHR found that two key concepts of the Act – "political activities" and "foreign funding" - as formulated and interpreted in practice by the domestic courts fell short of the foreseeability requirement.

265. Thus, although certain fields of activity were explicitly excluded from the scope of "political activities" in the Act, the authorities and courts had interpreted the term "political activities" so widely that the usual activities of civil society organisations had been included, in particular those in environmental, cultural or social fields. Moreover, the authorities could label any activities which were in some way related to the normal functioning of a democratic society as "political", and accordingly order the relevant organisations to register as "foreign agents" or pay fines. In addition, any statements or positions by the directors of the applicant organisations had been routinely attributed to the organisations themselves, without establishing whether they had been made in a personal capacity or on behalf of the organisation. Furthermore, although the Act stated that the ultimate purpose of political activities was to influence the decision-making process of State bodies and State policy, in practice the authorities had dispensed with the requirement to show that the opinions expressed had potentially had an impact on their decisions.

266. Regarding the term "foreign funding" , the ECtHR considered that the fact that the Act did not contain any rules regarding the purpose of the funding or any requirement to establish a link between the funding and political activity had led to patently absurd consequences: (e.g., funding from a "foreign source" had included receipt of a refund from for overpayment for conference facilities and no distinction had been made between funds received by staff of an organisation taking part in an activity in a personal capacity and the organisation itself). In addition, the sources themselves had also not been "foreign" in any strict sense either, sometimes including Russian entities that had themselves received funding from abroad but had not necessarily been classified as a "foreign agent". This had obviously created huge uncertainty for organisations and the ECtHR considered that the NGOs could not have reasonably foreseen that such implausible and arbitrary connections would be established, leading to negative consequences.

267. The ECtHR accepted in principle that greater transparency in funding of civil society could serve the legitimate aim of protection of public order. As regards the term "foreign agent", it noted that the Act had introduced a concept of agency in which the control of the donor over the recipient of funds was effectively presumed rather than established on a case-by-case basis, even in a situation where the recipient organisation retained full managerial and operational independence in terms of defining its programmes, policies and priorities. This presumption was moreover unrebuttable because any evidence of operational independence of the grantee from the donor was legally irrelevant for designation of the targeted organisation as a "foreign agent", the mere fact of receiving any amount of money from "foreign sources" sufficed. The ECtHR accordingly considered that attaching the label of a "foreign agent" to any NGOs which had received any funds from foreign entities had been unjustified and prejudicial and also liable to have had a strong deterrent and stigmatising effect on their operation. In its view, that label had coloured them as being under foreign control in disregard of the fact that they saw themselves as members of national civil society working to uphold respect for human rights, the rule of law, and human development for the benefit of Russian society and the democratic system.

268. Furthermore, the ECtHR noted that restrictions on the activities of "foreign-agent" organisations had been extended far beyond politics, such as stopping the nomination of candidates to public monitoring bodies, or denying them the right to expose the potential for graft in draft legislation, thus undercutting oversight of the State in other areas. As regards the additional auditing and reporting requirements, the Court held that there had been a failure to put forward sufficient reasons for the new imposition and there did not seem to be any benefits to public transparency commensurate with the heavy burden placed on the NGOs. Although it acknowledged that States might have legitimate reasons to monitor financial operations with a view to preventing money laundering and financing of terrorism and extremism, the ability of an association to solicit, receive and use funding in order to be able to promote and defend its cause constituted an integral part of the right to freedom of association.

269. The ECtHR emphasised that having to choose between accepting foreign funding and soliciting domestic State funding represented a false alternative. Indeed, diversity of funding sources could enhance the independence of such organisations, which could benefit democracy. It noted that organisations closely aligned to the State had been most likely to receive State grants; it was not at all clear that the applicant NGOs could have accessed those grants and, without proper financing, they had been unable to carry out their core activities. Finally, the ECtHR noted that the fines had been set at 100,000 Russian roubles (RUB) to RUB 500,000 under the law, amounting to three years subsistence income and were not proportionate to the legitimate aim pursued.

270. The imposition of an administrative fine which the chair of the Turkish section of Amnesty International was ordered to pay for failing to comply with a statutory provision requiring associations to declare funds received from abroad to the authorities before making use of them was held in *Korkut and Amnesty International Türkiye v. Türkiye*, no. 61177/09, 9

May 2023 to be in violation of Article 11 of the ECHR as the requirement of foreseeability had not been satisfied.

271. The ECtHR observed that, at the relevant time, there had been no specific and clear provisions governing the receipt by an association comprising the national branch of an international organisation of funds originating from the organisation's headquarters or from national branches of the organisation located in other countries. Furthermore, it noted that the present case was the only example of an administrative fine being imposed on the national branch of an international organisation for failure to comply with the requirement in respect of foreign funds coming from the headquarters or from other national branches of the same organisation. The ECtHR considered that the ambiguities could have been resolved if the domestic courts had conducted a thorough judicial review but there was nothing to show that the judges dealing with the applicant's appeals had sought to weigh up the various interests at stake by assessing, in particular, the necessity of the measure complained of. It was therefore clear that the courts' review had not provided adequate and effective safeguards against the arbitrary and discriminatory exercise of the wide discretion left to the executive. It concluded that the applicants, who had declared to the local authorities the financial contributions which the applicant association had received from its international headquarters to cover current expenditure, had been unable to foresee at the relevant time whether those declarations would be regarded as out of time and result in an administrative fine.

272. In addition, by relying exclusively on the findings of the inspection report prepared by the authorities and by failing to reply to the applicants' arguments, the domestic courts had not given sufficient reasons for their decisions so that the ECtHR also found a violation of Article 6(1) of the Convention.

273. In *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, the ECtHR held that the legislative framework – including extensions up to 2022 that had not been addressed in the *Ecodefence* case - in Russia requiring many NGOs, media organisations and individuals to register as "foreign agents", with its repercussions on their activities and private life, to constitute violations of Articles 10 (freedom of expression) and 11 of the ECHR, as well as of Article 8 (right to respect for private and family life) as concerned the individual applicants.

274. The ECtHR considered that the designation of an applicant organisation or individual as a "foreign agent" had significantly hampered their activities, triggering additional accounting, auditing, reporting and labelling requirements and restricting their participation in the electoral process and/or organising public events. It also often resulted in sanctions, ranging from fines to dissolution. Furthermore, the ECtHR pointed out that the "foreign agent" legislative framework had evolved considerably since 2012 and this required analysis, even though its findings in *Ecodefence* remained relevant.

275. Thus, a far greater number of NGOs, media organisations and individuals were impacted and, instead of mitigating the previous legislation's shortcomings, the framework had moved even further from Convention standards. The ECtHR found in particular that the "foreign agent" label was both stigmatising and misleading. As to the stigmatising effect, it referred to opinion polls which suggested that the majority of the population associated the term "foreign agent" with "traitors", "spies" or "enemies of the people". Moreover, new restrictions, excluding "foreign agents" from holding public office, participating in election commissions, supporting political campaigns, educating minors and producing content for children, reinforced the stigma. In the ECtHR's view, the "foreign agent" label was also misleading in so far as the legislation presumed that support in any form – funding, consultation or guidance – amounted to foreign control. Such unlimited discretion to apply the label had led to dozens of examples of its misuse by the authorities. Thus, an independent election monitoring organisation, had been fined and liquidated for a donation of less than 3 euros from an allegedly foreign national, while another applicant had been designated for cashing his airline bonus miles with a non-Russian national. Indeed, the ECtHR noted that the authorities had provided no evidence to show that, in any of the 107 applications, the applicants had actually been under foreign control or acting in the interests of a foreign entity.

276. Nor did the ECtHR consider that there had there been any "pressing social need" for the legislation's additional restrictions. In coming to that conclusion, it specifically addressed the labelling or public disclosure requirements which had expanded over time to be applied indiscriminately and in an unpredictable manner. For example, one applicant had been fined for publishing an obituary without the "foreign agent" label. Other applicants were fined for not indicating that an online database of Soviet political repression or the banners at a memorial event had originated from a "foreign agent" organisation. Also, the ECtHR considered that the labelling requirements forced the applicants into communicating a message with which they disagreed – impinging upon their negative right - and effectively prevented them from making any meaningful use of social media, as the character limit on certain platforms was almost equal to the "foreign agent" label itself. The ECtHR found that such restrictions had been far-reaching and designed to punish rather than to address any alleged need for transparency or concerns over national security. Similarly, the severity and scope of the sanctions imposed on the applicants, ranging from professional and economic restrictions to financial penalties and even forced dissolution, had aimed to punish or silence rather than ensure transparency. They had been manifestly disproportionate. Overall, the legislation had a chilling effect on public debate and civic engagement, creating a climate of suspicion and distrust towards independent voices, which undermined the very foundations of a democratic society.

277. As regards repercussions for the applicants' social and professional lives and reputations, the ECtHR noted that designation did not require any evidence that the applicants had acted in the interests of a foreign entity or an individual assessment of conduct, for example when deciding to restrict the applicants' exercising certain professions such as teaching, writing for children or access to elected office and civil service. Furthermore, it

could not see how publication of the applicants' personal data and the obligation to submit frequent and detailed reports on their income and expenses had served any other purpose than to overburden and intimidate them. Moreover, in its view, barring the designated individuals from participation in entire professions, cutting them off from the entirety of the youth population, and depriving them of revenue from private advertisers did not pursue the stated aim of upholding national security or transparency and could not be justified as being necessary in a democratic society.[13]

Protection

278. Acts of violence against members, sympathisers and militants of a political party, formed after a peace process in Colombia, which were manifested through enforced disappearances, massacres, extrajudicial executions, threats, attacks, many acts of stigmatisation, prosecutions, torture and forced displacement, which were carried out with the participation of State agents and the tolerance and acquiescence of the authorities were held by the Inter-American Court of Human Rights ("IACtHR") in *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections,, Merits, Reparations and Costs,* Judgment of July 27, 2022, Series C No. 455, to violate political rights to personal integrity, freedom of thought and expression and freedom of association. In particular, the IACtHR stated that the physical and psychological integrity of the members and militants of the party were affected by the stigmatisation created by their membership in that political group and that the actions and omissions in the duty of protection by the State created a climate of victimisation and stigma against them.

279. Violations were also found of the rights to juridical personality, life, personal integrity, personal liberty and freedom of movement and residence, as well as of the rights of the child and the rights enshrined in the Inter-American Convention on Forced Disappearance of Persons. In addition, the IACtHR found that the right to honor and dignity was violated due to statements made by public officials which had content that caused an intimidating effect on the members of the party, making their participation in democracy an obstacle. Furthermore, it concluded that the State had violated the rights to judicial guarantees, to judicial protection and the duty to investigate torture.

[13] In a concurring opinion, Judge Serghides reflected upon the negative aspect of freedom of expression and of association, emphasising that the dual aspect of these freedoms reflected "the autonomy of the right-holders, allowing them the freedom to decide whether or not to exercise the right. The enjoyment of the exercise of freedom of expression and freedom of association implies and presupposes a choice either to exercise it (a positive right) or not to exercise it (a negative right). If freedom of expression and freedom of association were to encompass only a positive aspect and not a negative one, it would constitute a severe limitation on freedom of expression and freedom of association, and one which, in any case, is not included in the list of legitimate restrictions enumerated in paragraph 10 § 2 and paragraph 11 § 2 of the Convention, respectively".

Dissolution

280. The cases relating to dissolution concerned the failure to provide compensation where this had been held to be unjustified, as well as one where this measure was taken on account of the NGO's name, its aims, defects in its documentation, reporting failures, bankruptcy, inability to achieve objects and activities. In most instances, the dissolutions concerned were found to be in violation of the ECHR, not only because this was not justified by the circumstances relied upon but often also because a less draconian measure had not been pursued.

281. See also *Membership, Disclosure of details* and *Sanction*s above

Failure to compensate

282. The failure to award compensation following the quashing of the banning of the applicant organisations' symbol – which included a swastika - and their dissolution on account of this being in breach of their rights under Articles 9 and 11 of the ECHR was held in *A.O. Falun Dafa and Others v. the Republic of Moldova*, no. 29458/15, 29 June 2021 to constitute a violation of those two Articles of the ECHR as there had not yet been full compliance with the judgments concerned.

Aims

283. The dissolution of the applicant party, whose aims specifically included "a democratic transformation of the country" and "building of a democratic society based on the principles of pluralism, real sovereignty of the people and guaranteed individual rights" and which was never accused of any attempts to undermine democracy or Russia's territorial integrity, on the purely formal ground of not having complied with a procedure for election of its management and audit bodies, as well as for failure to comply with the requirements of minimum membership and regional representation was found by the ECtHR in *Conservative Party of Russia and Others*, no. 7602/06, 24 March 2020 to be disproportionate to the legitimate aim cited – namely, to ensure the accuracy of the information concerning the number of the applicant party's members and regional branches and its compliance with the domestic legislation so as to prevent its unlawful participation in election - and could not be considered "necessary in a democratic society".

Name

284. The dissolution of an association and the ordering of its liquidation was held in Association of People of Silesian Nationality (in liquidation) v. Poland, no. 26821/17, 14 March 2024 to have a legitimate aim, namely, the furtherance of the prevention of disorder and the protection of the rights of others, especially as its name would be misleading to the public since it was linked to a non-existent nation and would entail serious consequences for the unity and integrity of the Polish State.

285. However, the ECtHR considered that, the absence of any concrete evidence to demonstrate that in choosing to call itself "the Association of People of Silesian Nationality", the association had opted for a policy that represented a real threat to public order or to a democratic society, the submission based on the association's name and the wording of two provisions of its memorandum of association which referred to "Silesian nationality" could not, by itself, justify its dissolution. As the reasons relied on by the authorities for dissolving the association were not relevant and sufficient, it had not been demonstrated that the restrictions applied in the present case pursued a "pressing social need" and the measure infringed Article 11 of the ECHR.

Defects in documentation

286. In *Church of Scientology Moscow and Others v. Russia*, no. 37508/12, 14 December 2021, the ECtHR found the involuntary dissolution of the applicant church to be a violation of Article 11 of the ECHR read in the light of Article 9. In doing so, it found unjustified the grounds cited for taking this measure, namely, the applicant church's alleged failure to eliminate numerous defects in the documents found by the ministry of justice in the course of re-registration proceedings, an allegedly non-religious nature of the applicant church's activities and the ban of its literature as extremist.

287. As regards the first ground, due account should have been taken of its attempts to rectify the defects in the documents, which mostly concerned omission of some information or incorrect data in the documents, and it should have been given a genuine chance to put matters right before being dissolved. Secondly, up until at least 2014, the authorities had not denied the religious nature of the applicant church, which had been officially recognised as a religious organisation since 1994 and its religious nature had not been challenged for several years even after initial unsuccessful attempts to re-register between 1998 and 2000s. Moreover, during the entire period of its lawful existence, the applicant church and individual members had never been found responsible for any criminal offence or dangerous conduct and there was no evidence that the nature of the applicant church's activities had changed since that time. Furthermore, the conclusion of the authorities as to the non-religious nature of the applicant church – which had been accepted by the courts at their face value - had relied upon an expert opinion prepared by an expert panel and no account seemed to have been taken of any alternative expert opinions. Thirdly, the ECtHR had already held that the decision to ban Scientology materials was not "necessary in a democratic society".

288. Finally, reaffirming that the dissolution of an association was an extremely severe measure entailing significant consequences which could only be tolerated in very serious circumstances, the ECtHR considered that the forced dissolution of the applicant church in absence of any alternative sanctions constituted a drastic measure disproportionate to the legitimate aim pursued.

289. Similarly, it was held in *Tyumen Regional Branch of all-Russia Movement 'for Human Rights' and Others v. Russia*, no. 18490/09, 22 February 2022 that the first applicant's dissolution had not shown to be was "necessary in a democratic society". In so concluding, the ECtHR observed that the registration authority had applied for dissolution without giving the organisation an opportunity to correct the shortcomings or considering its explicit intent to do so and the domestic courts focused their analysis on the legality of the dissolution, without assessing its proportionality in a meaningful manner. In particular, it noted that the latter did not examine whether the first applicant had a history of administrative offences, whether the alleged breaches had been committed in bad faith, or whether it was possible to rectify them. Moreover, they had not explained why the legitimate aim pursed by the dissolution could not have been reached with other means which would interfere less seriously with the freedom concerned.

290. Furthermore, technical defects in a church's documentation were considered in *Bryansk-Tula Diocese of the Russian Orthodox Free Church v. Russia*, no. 32895/13, 12 July 2022 to be insufficient to justify the dissolution of a long-standing religious organisation. The ECtHR emphasised that, considering that the issue at stake was the church's legal existence, the State had only a narrow margin of appreciation in limiting the right to freedom of religion and association, and only convincing and compelling reasons could justify such restriction. In addition, it observed that the national courts had not applied the relevant ECHR standards in that their decision-making did not include an analysis of the impact of the church's dissolution on the fundamental rights of its parishioners. The ECtHR was thus of the view that the dissolution of the church was not necessary in a democratic society and that there had been a violation of Article 9 of the ECHR interpreted in the light of Article 11. It also reaffirmed that, according to its well-established practice, dissolution of the church before the lodging of its application did not deprive it of *locus standi* before the ECtHR.

Reporting failures

291. The dissolution of an association for its failures to submit annual activity reports and to bring its name in conformity with the recently amended legislation on associations by removing the word "party" was held in *Savenko and Others v. Russia*, no. 13918/06, 14 September 2021 to be disproportionate to the legitimate aim of protecting the rights of others, notwithstanding that the legal formalities with which the association had to comply were reasonable. In the ECtHR's view, the former failures were mitigated by repeated submission of various applications to the registration authority which contained information relevant to annual activity reports and problem relating to the change of name occurred at the registration stage when its efforts in that regard were to no avail.

292. The ECtHR also observed that, while in the context of Article 11 it had often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of

democracy. In its view, pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. It considered that the harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. Thus, the Court stated that it was only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.[14]

293. Also, in *Vladimir Regional Public Association of Refugees and Displaced Persons 'Sodeystviye' v. Russia*, no. 53097/08, 9 November 2021, the ECtHR found a violation of Article 11 of the ECHR where the applicant association had been dissolved for violations committed by it which were purely formal and did not relate to the essence of its activity. The ECtHR considered that it had not been shown that the association had acted in bad faith or deliberately concealed the information required and it had not received any requests or reminders from the registration authority for many years. Furthermore, when that authority disclosed that the association had failed to discharge its obligation, it immediately filed an action for dissolution and neither that authority nor the domestic courts considered the resort to other means which would interfere less seriously with the fundamental freedom concerned (for example, a formal warning, suspension of the organisation's activity, or administrative fine). Moreover, the ECtHR pointed out that they did not explain why the legitimate aim pursed by the dissolution could not have been reached otherwise.

294. Similarly, the ECtHR held in *Election Monitoring Centre and Others v. Azerbaijan*, no. 64733/09, 2 December 2021 that the dissolution of the first applicant for non-compliance with registration and other legislative requirements did not meet the lawfulness requirement of Article 11, only seemingly pursued a legitimate aim, and was not "necessary in a democratic society". In its view, it had not been demonstrated that, at the time of the lodging of the claim requesting dissolution, the applicants were actually in breach of any clearly foreseeable requirement prescribed by law in respect of what was found to be a third ground for dissolution.

295. Furthermore, none of the alleged breaches of law (the alleged failure to inform the ministry of justice about a change to the list of co-founders, a change of the legal address, or about establishment of the local representative offices) appeared to have amounted to engaging in any unlicensed activities, "activities prohibited by law", or systematic activities contrary to the aims set out in the first applicant's charter but, even assuming that there were factual and legal grounds for finding that the alleged breaches had been committed, those breaches clearly did not concern substantive issues related to its existence or activities and could only be characterised as alleged shortcomings or breaches of a

[14] Such an observation was also made in *Election Monitoring Centre and Others v. Azerbaijan*, no. 64733/09, 2 December 2021.

procedural nature so that they could be reasonably argued – as the applicants indeed argued – to have constituted rectifiable breaches not warranting dissolution.

296. As to whether the interference in the present case could be said to pursue a legitimate aim, the ECtHR observed that, even if the first applicant's dissolution could be said to be aimed at ensuring the well-functioning of the system of the State registration of NGOs and protecting State institutions and individuals from NGOs that might jeopardise them, it did not discern any threat to that system, or to the rights and interests of State institutions or individuals in that there had been an alleged failure to inform the Ministry of Justice of the change to the list of the co-founders, a change of the legal address and establishment of local representative offices, especially considering that the allegedly committed breaches were rectifiable.

297. Finally, the ECtHR considered that the domestic courts had failed to conduct a balancing exercise and to assess the necessity of the interference for the achievement of a clear and concrete legitimate aim. It noted in this regard that even if it were established that the allegations laid against the applicants were factually well-founded and based on applicable and foreseeable legal provisions – which was not the case – the domestic courts were required under the ECHR to assess the seriousness of that "misconduct", which they failed to do. As a result, they did not adduce "relevant and sufficient" reasons to justify the dissolution.

Bankruptcy

298. The dissolution of an association and the striking it off the register of associations was held in *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020 to have been in violation of Article 11 of the ECHR. The ECtHR, while acknowledging that dissolving an association on grounds of bankruptcy or prolonged inactivity might be regarded as pursuing one of the legitimate aims set out in Article 11(2), namely those relating to the prevention of disorder and the protection of the rights and freedoms of others, was not persuaded that this aim could not have been achieved by depriving the association of its status as a national sports federation and was therefore not convinced that it had not already been accomplished by the association's exclusion from the Croatian Olympic Committee.

299. Furthermore, the ECtHR noted that the domestic authorities applied the relevant legislative provisions mechanically as their conclusion that the association had ceased its activities was based on the mere fact that bankruptcy proceedings had been opened against it and its arguments to the contrary were not addressed. In its view, the decisions of the domestic authorities, and in particular their finding that the association had ceased its activities, were not based on an acceptable assessment of the relevant facts, let alone on compelling evidence. Lastly, the ECtHR noted that in the reorganisation plan it was agreed that all the creditors' claims should be satisfied by the end of 2023 but the

domestic authorities did not even consider that their decision to dissolve the applicant association had left its creditors without such possibility to satisfy their claims.

Inability to achieve objects

300. The dissolution by the cassation court of a foundation that relied almost exclusively on the report of the Directorate-General for Foundations which referred to the foundation's 1999 balance sheet noting its inability to achieve its objectives, was held in *Bilim Araştırma Vakfı and Others v. Turkey*, no. 13848/10, 9 February 2021 not to be proportionate to the legitimate aims pursued and so not necessary in a democratic society. In so doing, the ECtHR referred to findings of the trial court that: certain individuals and companies had made promises of donations for the coming years; foundations could have debts just as they could have assets and rights; if the foundation had the amount indicated as a debt in the report, this debt was to be settled in future years; the accountant's report for the year in question showed a positive balance sheet; and there was no obligation to take the report into account. Moreover, it observed that, despite these findings which the trial court made in order to demonstrate that the foundation was able to achieve its objectives, the cassation court appeared to have taken into account the period when, according to the report, the foundation was in debt.

301. Also, the ECtHR added that while States, by virtue of their right to review the conformity of the purpose and activities of a foundation with the rules laid down by law, might require a foundation to fulfil minimum financial criteria in order to preserve the effectiveness and credibility of the system of public-interest foundations, they must also, where they find that a foundation has failed to fulfil its commitments for a period, grant it a real opportunity to recover and show that it can continue its activities despite the difficulties of the moment. In addition, it observed that other, less stringent, measures had not been considered and dissolution had not been sufficiently demonstrated as the only option capable of achieving the aims pursued by the authorities. Finally, the ECtHR considered that the cassation court, in its interpretation and application of a national law of general application, did not draw sufficient inspiration from the principles which it had established in relation to freedom of association guaranteed by Article 11 of the ECHR.

302. Moreover, in this case, the government had submitted that the interference was aimed at protecting public order and safeguarding the public interest but the ECtHR noted that the protection of "public order" was not one of the legitimate aims explicitly provided for in Article 11(2) of the ECHR. It considered that in the present case the interference was aimed at protecting the rights and freedoms of others, more precisely at protecting the right of society to ensure the integrity of the non-profit sector as a whole.

Activities

303. The dissolution of an association for mutual aid and solidarity with the families of prisoners and convicts on the grounds of the illegal activities of certain members of the association's board of directors, while the judgments handed down in the proceedings

relating to those offences were not yet final was held in *Adana TAYAD v. Turkey*, no. 59835/10, 21 July 2020 to be interference with Article 11 of the ECHR that had not been shown to be necessary in a democratic society. In so concluding, the ECtHR, while acknowledging that the charges had been serious, considered that the civil courts should have carried out an independent assessment that did not simply reproduce the criminal courts' findings, especially since the convictions had not been final.

304. In the ECtHR's view, some of the facts on which the domestic court had based its findings could not of themselves constitute incitement to terrorism and it had not been explained convincingly how the content of a newspaper – which was the only act capable of amounting to a form of propaganda - constituted incitement to terrorism. It considered that, as the dissolution order had not been based on acceptable and convincing reasons, this was liable to have a chilling effect on the applicant association and its individual members, but also on human rights organisations generally. Furthermore, even assuming that the allegations had been proven, the ECtHR observed that the domestic courts had not considered less stringent measures and sufficient evidence had not been provided that the dissolution of the association had been the only option capable of achieving the authorities' aims.

305. However, no violations of Article 11 of the ECHR read in the light of Article 10 were found in *Ayoub and Others v. France*, no. 77400/14, 8 October 2020 with respect to the dissolution of three extreme right-wing entities: a de facto group (an association and its security squad) and two other associations. The ECtHR held that the dissolution of the de facto group had been aimed at ensuring public safety, preventing disorder and protecting the rights of others, all of which constituted legitimate aims for the purposes of Article 11(2) of the ECHR.

306. In view of the information on file and the context – the death of a student and a member of the anti-fascist movement, in a fight with skinheads – the Court accepted that the authorities had been justified in finding that there were relevant and sufficient reasons demonstrating a "pressing social need". In addition to this act of violence, the ECtHR noted that account had been taken of the previous activities of the association in the group as private militias, including its hierarchical structure, uniformed rallies and military-style parades and its recruitment of members on the basis of their ability to use physical force in the event of clashes. It pointed to its case law emphasising that paramilitary rallies were designed to engender fear and stressing the right of States to take preventive action to protect democracy. In the circumstances of the present case the ECtHR could not, therefore, regard as unreasonable or arbitrary the criteria applied in finding that the security squad constituted more than a conventional security squad for the association in the group. In its view, the authorities had had reason to fear that a group of this nature would promote a climate of violence and intimidation going beyond the existence of a group expressing offensive or disturbing ideas.

307. In addition, the ECtHR observed that the ideology in question had spilled over into numerous acts of violence, as demonstrated by the surveillance activity and by the criminal offences committed. And that, over time, this had led to a climate which posed a threat to the rights and freedoms of others and to public order. It observed that Mr Ayoub himself, as the president, had advocated political violence by inciting others to engage in combat and in physical attacks on anti-fascist movements and the law-enforcement agencies. The ECtHR considered that the security squad had enabled the association to attain goals that were in fact seditious, entailing recourse to violent actions such as those which had led to the student's death.

308. Furthermore, the ECtHR observed that one of the other two associations had pursued aims prohibited by Article 17 of the ECHR and had abused their right to freedom of association in a manner incompatible with the values of tolerance, social peace and non-discrimination underpinning the ECHR. In particular, they had called for a national revolution motivated by a general wish to get rid of "non-whites", "parasites" who were destroying France's sovereignty, expressed support for persons who had collaborated with Nazi Germany and paramilitary training camps had been organised in order to spread their ideology and train young militants as "political soldiers". The other association was the former's the youth wing and, as with it, the ECtHR considered it established that the youth wing's political programme contained aims that were based on hatred and discrimination towards Muslim immigrants and promoted antisemitism and violent hatred and discrimination towards homosexuals. It thus inferred from this that the applicants had sought to use their right to freedom of association to destroy the ideals and values of a democratic society and considered that their activities had been incompatible with the foundations of democracy.

309. On the other hand, the dissolution of an association, based on the conclusion of a prosecutor following the issuing of an indictment against certain of its members (including several leaders) for engaging in illegal activities, that its purpose had become illegal was held in *Association of Solidarity with the Oppressed v. Turkey*, no. 8064/13, 9 February 2021 not to be necessary in a democratic society. In so finding, the ECtHR did not see any convincing evidence to justify the dissolution since the court ordering it on the basis of this information did not in any way verify whether the facts alleged against the persons concerned were established or whether the conditions required by law for dissolution were met. Furthermore, it observed that the court did not consider whether and to what extent acts allegedly committed by the members of the association or by its directors could engage the liability of the association itself.

310. As a result, the ECtHR considered that the scope of the review which the court carried out was very limited and, as it did not rely on admissible and convincing reasons to justify the dissolution, may have a chilling effect on the applicant association, its members and, more generally, on organisations working to promote human rights. Moreover, there was no consideration as to whether other less severe measures, such as a fine or the suspension of the association's activities for a limited period, and it was not sufficiently demonstrated

that dissolution was the only option capable of achieving the aims pursued by the authorities.

311. Furthermore, the reasons invoked by the authorities for the dissolution of an organisation – namely, failure to comply with a warning and instruction to rectify certain breaches of law and the organisation of events in breach of the decision suspending its activities - were held in *Preobrazheniye Rossii and Others v. Russia*, no. 78607/11, 24 May 2022 not to be determined by any "pressing social need" and not to be "convincing and compelling" to justify such a restriction so that there had been a violation of Article 11 of the ECHR.

312. The ECtHR noted that the organisation had undertaken some actions to rectify a number of the breaches of law that had been identified and that relevant information on them had been submitted to the ministry of justice, which left those arguments unanswered and had not assisted the organisation in clarifying what else was required of it in order to ensure its compliance with its requirements. Moreover, it found that those arguments had also not been sufficiently addressed by the domestic court, which had not explained why it was not possible to achieve the legitimate aim pursued by means other than the dissolution. The ECtHR also noted that the domestic court had not examined the existence and extent of any harm caused by the identified breaches of law or the possibility of their rectification and had not analysed the impact of the dissolution on the organisation's socially important activities targeting vulnerable groups and the rights of its members. As a result, the authorities had failed to carry out a balancing exercise meeting the criteria laid down in the ECtHR's case law under Article 11 of the ECHR.[15]

313. Various violations of the ECHR were found by the ECtHR in *Taganrog LRO and Others v. Russia*, no. 32401/10, 7 June 2022 in respect of actions taken against Jehovah's Witnesses religious organisations in Russia over a ten-year span, including a requirement to re-register, amendments to anti-extremist legislation leading to the banning of their religious literature and international website and the revocation of their permit to distribute religious magazines, and eventually to a nation-wide ban on Jehovah's Witnesses religious organisations in Russia, the criminal prosecution of hundreds of individual Jehovah's Witnesses, and the confiscation of their property. Those relating to Article 9 read in the light of Article 11 were the forced dissolution of the Taganrog LRO and of the Administrative Centre and local religious organisations (LROs), while that relating to Articles 10 and 11 read in the light of Article 9 was the designation of Jehovah's Witnesses' publications as "extremist", and the prosecution of individual applicants and the forced dissolution of the Samara LRO for using those publications in their religious ministry.

314. With respect to the charges raised against the Taganrog LRO, the Court found that the authorities had failed to put forward any elements which warranted interference with its'

[15] There was a similar ruling in *Tsentr Prosvetitelnykh i Issledovatelskikh Programm v. Russia*, no. 61214/08, 14 December 2021.

rights to freedom of religion, expression or association and concluded that the interference was not "prescribed by law" in so far as it was based on the provisions of the Suppression of Extremism Act, which fell short of the lawfulness requirement with its overly broad definitions of "extremism" as, under it, any conduct, even if devoid of hatred or animosity, could be categorised as "extremist" and censured. In its view, the Act had been misused for the prosecution of believers or religious ministers on the basis of their beliefs alone. As regards the LROs. the ECtHR noted that the dissolution had stripped the organisations of their legal personality, preventing them from exercising a wide range of rights reserved under Russian law to registered religious organisations and had also deprived the individual members of the right to meet as a congregation and to carry out activities which were an integral part of their religious practice.

315. Furthermore, as regards the designation of Jehovah's Witnesses' publications as "extremist", and the prosecution of individual applicants and the forced dissolution of the Samara LRO for using those publications in their religious ministry, the Court found that the banning of the publications, even though they contained no statements advocating violence, hatred or intimidation, was only possible because the definition of "extremism" was overly broad and could be applied to entirely peaceful forms of expression. It held that peaceful and non-violent attempts to persuade others of the virtues of one's own religion and the flaws of others and to urge them to abandon "false religions" and join the "true one" was a legitimate form of freedom of religion and expression. The ECtHR also emphasised that it was permissible to seek to convince others to prefer alternative civilian service. It noted that it had previously identified a number of fundamental procedural flaws in the way in which Russian courts had categorised material as "extremist". The first flaw was that the courts simply endorsed conclusions drawn up by experts selected by the prosecutors and the police and made no attempt to conduct their own legal analysis. The second stemmed from the fact that Russian law did not allow affected parties to participate in the proceedings under the Act which meant that their arguments could not be heard. Thus, the applicants had been stripped of the procedural protection that they were entitled to enjoy under Article 10 of the ECHR. As regards those who were convicted on charges of "mass dissemination of extremist literature" for using the previously banned publications in religious ministry, the Court noted that all that it took to be incriminated was for somebody to have a copy of a publication that was on the Federal List of Extremist Material.

316. However, the dissolution and confiscation of the assets of an association whose activities supported charitable societies linked to a terrorist organisation was held in *Internationale Humanitäre Hilfsorganisation e.V. v. Germany*, no. 11214/19, 10 October 2023 to pursue legitimate aims under, notably, those of public safety, the prevention of disorder and the protection of the rights of others. Furthermore, the ECtHR considered that, while the association did not engage in violent conduct itself, the aims pursued by the prohibition of indirect support for terrorism as being contrary to the concept of international understanding were necessarily very weighty and States enjoyed a wider margin of appreciation in that regard. Moreover, in assessing the necessity and proportionality of

the measure complained of, it noted the specific circumstances of the present case, where it had been duly established that the association, while continuing to present its activities under the guise of humanitarian aid, knowingly supported international terrorism, directly or indirectly.

317. The ECtHR also stated that it could also not overlook the fact that the conduct of such an association was incompatible with core ECHR values and in the case at hand, neither in the national proceedings nor in its application to the ECtHR did the applicant association dissociate itself from Hamas's violent aims and actions. As a result, given the wider margin of appreciation in the specific circumstances of the present case and taking note of the comprehensive balancing exercise conducted by the national courts and the weighty interests at stake, the ECtHR was satisfied that the authorities put forward relevant and sufficient reasons and did not overstep their margin of appreciation. The interference with the applicant association's freedom of association was therefore found to be proportionate to the legitimate aims pursued and was thus "necessary in a democratic society".so that there had been no violation of Article 11 of the ECHR.

Victim status

318. The fact that a federation of trade unions representing media employees in the public and private sectors considered itself to be the guardian of the collective interests of its members — or even of the members of its members given that it unites trade unions— was held by the ECtHR in *Kalfagiannis and Pospert v. Greece* (dec.), no. 74435/14, 9 June 2020 not to suffice to make it a victim within the meaning of Article 34 of the ECHR of a decree closing a public service broadcaster and it found that it did not appear to have been "directly affected" by the measure in its own right.[16]

319. Moreover, an application brought by a federation of unions of the hospital public service concerning the lack of legal personality of the social establishment committees (CSEs) of the public service was regarded by the ECtHR in *Fédération Sud Santé Sociaux v. France* (dec.), no. 31034/23, 3 October 2024 as falling within the scope of *actio popularis* as the federation had not produced any reasonable and convincing evidence of the likelihood of a violation of Articles 11 and 14 of the ECHR which would concern it personally and directly. Indeed, the Court emphasised that the absence of any reference to the legal personality of the CSEs in the decree establishing them in no way hinders the possibility for the applicant, itself endowed with legal personality, to defend the professional interests of its members by collective action or to seek to persuade the employer to hear what it has to say on behalf of its members. Furthermore, the mere fact that the federation's standing to bring proceedings was not called into question during the

[16] There was a similar ruling in *Halkarın Demokratık Partısı v. Turkey* (dec.), no. 78850/16, 3 November 2020 in respect of an application submitted by a political party complaining about measures taken against its members, namely, the lifting of their parliamentary immunities and their pre-trial detention

domestic proceedings to challenge the decree was not sufficient to confer on it victim status in the context of its application lodged with the ECtHR.[17]

[17] Similarly, a private law company complaining of an infringement of freedom of association and of certain rights arising therefrom for trade unions was held in *Société Pages Jaunes v. France* (dec.), no. 5432/16, 20 October 2020 to be in reality exercising an *actio popularis* and could not validly claim to be a victim