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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

**Summary of the discussions
at the Conference on the Protection and Promotion of Civil Society Space
in Europe held at the opening of the 100th meeting of the CDDH
on June 25, 2024**

1. Introduction

The CDDH organised and hosted a [Conference on the Protection and Promotion of Civil Society Space in Europe](#) at the opening of its 100th meeting, on June 25, 2024. This half-day event aimed to evaluate progress since the adoption of [CM/Rec\(2018\)11](#) and foster dialogue on the protection and promotion of civil society space across Europe.

The speakers and panellists were:

Welcome Address

- David Milner, Secretary of the CDDH, Head of the Human Rights Intergovernmental Co-operation Division, DGI Human Rights and Rule of Law on behalf of Christos Giakoumopoulos, Director General, DGI Human Rights and Rule of Law

Keynote Speech

- Michael O'Flaherty, Council of Europe Commissioner for Human Rights

First Panel

- Marie Struthers, Director, Eastern Europe and Central Asia Regional Office, Amnesty International
- Phil Lynch, Executive Director, International Service for Human Rights
- Jeremy McBride, President, Expert Council on NGO Law, Council of Europe Conference of International NGOs

Moderator: Antoine Buyse, Professor, Utrecht University School of Law.

Second Panel

- Gerhard Ermischer, President, Council of Europe Conference of International NGOs.
- Katrien Meuwissen, Human Rights Team Leader, European Network of National Human Rights Institutions (ENNHRI)
- Andreas Accardo, Head of Unit, EU Fundamental Rights Agency

Moderator: Carla Ferstman, Professor, University of Essex Law Faculty.

Third Panel

- Marja Ruotanen, Director General, DGII Democracy and Human Dignity.
- Niklas Wilhelmsson, Member of the Steering Committee on Democracy

Closing Remarks

- Krista Oinonen, CDDH Chairperson

2. Summary of discussions

Key points made by David Milner on behalf of Christos GIAKOUMOPOULOS

- The Council of Europe (CoE) has a long history of collaboration with and support for civil society, from the creation of consultative status for NGOs in 1952, through the "Helsinki Process" on civil society space that was launched at the Ministerial Session in 2019 and which influenced the 2023 Reykjavik Declaration. It was followed by the Secretary General issued Roadmap for enhancing civil society engagement, especially with youth organisations.
- The Helsinki Process and the relevant parts of the Reykjavik Declaration build on the 2018 Committee of Ministers Recommendation on civil society space, which was drafted by the CDDH.

- The 2018 Recommendation on civil society space responded to deep concerns about the shrinking space for civil society. Progress has been made since the 2018 Recommendation, but challenges like democratic backsliding and restrictions on civil society activity, as noted in various reports and judgments, persist and new challenges such as arose during the Covid-19 pandemic need addressing.

Key points made by Michael O'FLAHERTY

- Civil society is essential to upholding the rule of law, democracy, and human rights. Foundational human rights concepts originated within civil society and organisations. Civil society organisations also played key roles in shaping international human rights treaties.
- They not only generate ideas and provide expertise but also act as service providers, they act as the human rights monitor and critic also proposing corrections. Civil society is a source of hope, contributing to a future where human rights are fully respected.
- There are five key concerns regarding the pressures on civil society today:
 - The misuse of laws in certain countries, particularly foreign funding laws and restrictions on the rights of expression, assembly, and association, especially in the context of conflict.
 - The instrumentalization of major crises, such as the COVID-19 pandemic, to increase pressure on civil society.
 - The alarming rise in hate speech directed at civil society, both online and offline, and which disproportionately affects women human rights defenders, women members of civil society.
 - The inadequacy of systems across Europe to provide aid and asylum to human rights defenders from other countries, particularly those from Russia and Belarus, who urgently need protection.
 - The challenge of defining who constitutes civil society and human rights defenders today, particularly in the context of human rights being invoked to suppress the rights of others, necessitating careful reflection to navigate this issue ethically.

Key points made by Marie STRUTHERS

- Four main human rights trends and challenges were outlined, with recommendations for further implementation of CM/Rec(2018)11.
 - Enabling Environment for Human Rights Defenders: Human rights defenders face increased stigmatisation, hindrance, insecurity, and violence. Concrete measures are needed to create a secure and robust environment for defenders. The Council of Europe should adopt a holistic approach, ensuring the implementation of European Court of Human Rights judgments, and recommendations from various CoE bodies, Strengthening the independence of national judiciaries, countering gender backlash, and recognising the right to a healthy environment are crucial. The Council of Europe should also include the protection and promotion of human rights defenders into Committee of Ministers' Action Plans and into Cooperation Programmes with member states.
 - Authoritarian Trajectories: Russia's suppression of civic space serves as a warning of the dangers of shrinking civic space. The Council of Europe must curb human rights backsliding across the region and support Russian and Belarusian civil society. Member states should facilitate humanitarian visas, relocation, and infrastructure assistance for civil society from these countries. The Council of

Europe must maintain support for NGOs working in conflict zones and ensure cooperation with monitoring mechanisms.

- Shrinking Civic Space and Judicial Independence: The erosion of judicial independence and the crackdown on human rights defenders are mutually reinforcing. National judiciaries should guarantee against arbitrary interference by public authorities, and the Council of Europe must take steps to ensure their independence and impartiality, including by strengthening the position of lawyers. Regular exchanges between the Secretary General and civil society on national-level challenges are essential.
- Chilling Trends Against Human Rights Defenders: Increasing restrictions and detentions for ulterior motives were highlighted. High-level efforts are needed to ensure the implementation of Court judgments. The Council of Europe should strengthen local offices to counter stigmatisation of defenders and ensure meaningful implementation of the Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs). Strengthening the Secretary General's private office procedure on alleged reprisals and creating a platform for human rights defenders akin to the platform for the safety of journalists are recommended.
- Additional recommendations included adopting an additional protocol to the European Convention on Human Rights to recognise the right to a clean, healthy, and sustainable environment, to enable the work of NGOs on environmental issues.

Key points made by Phil LYNCH

- Five key challenges for civil society actors, particularly human rights defenders, in Europe were highlighted.
 - Crisis of Confidence in Human Rights Laws and Mechanisms: There is a profound and potentially long-term erosion of confidence among civil society actors in human rights law and justice mechanisms at international, regional, and national levels. The selective and inconsistent application of human rights law by States, especially in Europe, undermines the legitimacy of these frameworks.
 - Lack of Specific Laws or Mechanisms on the Recognition and Protection of Human Rights Defenders: Twenty-five years after the adoption of the UN Declaration on Human Rights Defenders, no European State has fully enshrined the Declaration in national law, unlike several states in Africa, Asia, and Latin America. The European Court of Human Rights has yet to recognize an autonomous right to defend human rights, as seen in the Inter-American Court's *CAJAR v Colombia*¹ case. European States are urged to develop and enact specific laws on human rights defenders and establish a comprehensive regional protection mechanism.
 - Restriction and Criminalisation of Protest: Increasing restrictions and criminalisation of peaceful assemblies and protests, particularly those expressing solidarity with Palestine and protecting the environment, are significant challenges. European States have used laws related to countering terrorism, hate speech, or national security to impose undue restrictions on civil society actors and protesters. Peaceful civil disobedience should be recognized as a legitimate exercise of rights.
 - Restriction and Criminalisation of Humanitarian Assistance to People on the Move: The continued restriction and criminalisation of humanitarian aid to migrants,

¹ Members of the Corporation Lawyers Collective "José Alvear Restrepo" (CAJAR) v Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 506, 18 October 2023, paras 972-980.

especially near European borders, is worsening. Migrant rights defenders in Europe face smears, surveillance, prosecution, and imprisonment. ISHR advocates for an independent international mechanism to investigate human rights violations against people in transit and the criminalisation of those providing aid.

- Transnational Repression: The worsening trend of transnational repression against human rights defenders and civil society actors, often emanating from outside Europe, is the fifth key challenge. This includes actions by states or their proxies to prevent or punish dissent and human rights advocacy from abroad, targeting activists or their associates.

Key points made by Jeremy MCBRIDE

- The European Court of Human Rights should prioritise cases involving civil society due to their significance for democratic functioning.
- Despite member States' involvement in developing standards within the Council of Europe, there is still an issue with national adoption. The study "[The legal space for non-governmental organisations in Europe](#)" reveals that these standards are not well-known or implemented by authorities in many member states. It is also likely that Recommendation CM/Rec(2018)11, similarly to CM/Rec(2007)14 on the legal status of non-governmental organisations is rarely utilized to ensure conformity with international human rights law.
- Increased demands for transparency and the characterization of NGO activities as lobbying are also problematic. While limited transparency requirements have been established, there is a need for clearer guidance on regulating NGO advocacy activities without imposing excessive burdens. Specific registration and reporting requirements often duplicate existing ones, leading to unnecessary bureaucracy. Overly stringent transparency requirements, especially those disclosing personal information about NGO board members and donors, can dissuade participation in civil society activities. Transparency measures should be justified and not merely for their own sake. Foreign agent laws, targeting NGOs based on their funding sources, are particularly oppressive and have been condemned by the Council of Europe and the European Union.
- Implementation of standards on money laundering and terrorist financing often lacks proper risk assessment, targeting NGOs unnecessarily. Regulatory measures should be proportionate and not hinder the enabling environment for NGOs. The European Court of Human Rights in [Ecodefence and Others v. Russia](#) highlighted the need to address funding problems for NGOs avoiding foreign sources to escape being labelled as foreign agents.
- Access to funding is a perennial issue for NGOs, exacerbated by restrictions on foreign sources. Recommendation CM/Rec(2018)11 encourages stable funding for civil society organisations but lacks specificity. Direct public funding for NGOs should not curtail their freedom to engage in public advocacy, as service providers often identify issues requiring attention.
- The shift to online operations for NGOs, accelerated by the COVID-19 pandemic, needs better recognition. Member States should allow NGOs to hold governing body meetings online and create an enabling online environment for their interactions with members and public authorities. Recognition of entirely virtual entities might also be necessary.
- Many NGOs operate across borders. Recommendation CM/Rec(2007)14 and the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations need broader adoption and promotion to facilitate pan-European NGO operations. NGOs relocated due to the war in Ukraine, and repression in Belarus and Russia, face operational challenges. Ad hoc responses are inadequate.

There is a need for coherent and consistent support for temporarily relocated NGOs to facilitate their operations in host countries.

Key points made by Gerhard ERMISCHER

- Democracies become more resilient through a vibrant civil society that serves as the bedrock of democratic rights. However, this civil society requires protection, which must be provided by both an independent judiciary and a free, independent press. Building a strong civil society culture is long-term and deeply connected to education, as demonstrated by successful Council of Europe programmes in Bosnia and Herzegovina.
- Fair elections are of pivotal importance. Civil society's efforts must ultimately be upheld in courts and through electoral processes. The judiciary's adaptability during crises, such as COVID-19, exemplifies how it can safeguard democratic rights. The Austrian Constitutional Court's decision to review pandemic-related measures, even after they were no longer in place, serves as an example of judicial responsibility in learning from crises and fostering societal reconciliation.
- The Council of Europe plays a crucial role in setting standards and supporting civil society across Europe, but it must better connect with grassroots organisations. Efforts to engage more closely with these organisations through field visits and reforms have shown promise, offering a more grounded approach to support civil society.

Key points made by Katrien MEUWISSEN

- Since 2020, the European Network of National Human Rights Institutions (ENNHRI) has conducted joint reporting on the rule of law, including civil society and human rights defenders (HRDs), identifying regional trends and complex challenges. Deeper, context-specific monitoring is crucial for early warning and addressing new threats. National Human Rights Institutions (NHRIs), with their official mandates, are well-positioned for this task.
- ENNHRI's annual reports highlight insufficient engagement with HRDs and CSOs by lawmakers, with some laws and policies undermining their work. Despite negative trends, good practices exist, such as Moldova's law on child human rights defenders and Croatia's efforts to develop a National Plan for Civil Society Development.
- Prizes and awards, such as those in Georgia and Denmark, help promote HRDs. Stable funding is crucial, yet trends show limited and conditional funding. NHRIs in Croatia and Ireland have also supported CSOs' access to funds.
- NHRIs report increasing threats to HRDs, particularly those working on issues such as defending reproductive rights, LGBTI rights, migrants' rights or the environment. It is essential to address defamation and hate speech and ensure the independence of the judiciary for HRD protection. Good examples include Belgium's NHRI prioritising inclusion and Armenia's NHRI deploying rapid response teams during demonstrations. Some member States, like Germany and Finland, have developed protection programs for HRDs. These efforts should be expanded and interlinked with other national and regional mechanisms to strengthen HRD protection.
- The review of the Recommendation should drive momentum to enhance national and regional HRD protection mechanisms, ensuring better support and coordination. Actions based on the Secretary General's Roadmap on Civil Society engagement with the Council of Europe are vital and should remain a priority.

Key points made by Andreas ACCARDO

- The legal framework often hampers civic space, with challenges for freedom of association, assembly, expression, including in areas such as lobby laws, transparency laws, charity laws, and tax laws. Positive measures, however, have been taken in various Member States to modernise rules, ease bureaucratic requirements, and improve the registration systems and public benefit status of civil society organisations (CSOs).
- Hate crime and illegal hate speech remain widespread. Several Member States have amended laws to align with the EU Framework Decision on Racism and Xenophobia and improve access to justice for hate crime victims.
- Participation in decision-making, both in development of laws and policies, remains inconsistent. Despite challenges, there have been positive developments, particularly during crises like the COVID-19 pandemic and the war in Ukraine. At the EU level, the European Commission's recommendation on participation, the Conference on the Future of Europe, and the Better Regulation Agenda have been significant initiatives.
- NHRIs play a crucial role in protecting human rights and promoting civic space. While many Member States have well-functioning NHRIs, some still lack accredited institutions. Recent updates show positive developments in several member States NHRIs tasks are developing in several areas relevant to civil society space.
- Protection of human rights defenders from third countries through temporary or permanent relocation is also a noteworthy issue. So far only 12 EU member States have dedicated national initiatives.
- Access to resources remains a significant concern. Funding needs to support both human rights activities and the organisational strength of CSOs. Good practices include the European Commission's Citizens, Equality, Rights and Values Fund (CERV), which funds participation, litigation, and advocacy, and the EEA and Norway Grants focusing on civil society support. Private donors like the Ford Foundation's BUILD initiative and the Civil Liberties Union for Europe's training programs are also vital.
- Beyond a conducive legal framework, an overall enabling environment is essential. Good practices include the Open Government Partnership's Participation and Co-Creation Standards and the OECD's civic space scans.

Discussion

- Luxembourg highlighted the importance of integrating civil society into the justice system.
- There was concern about the misuse of human rights to suppress others' rights, with examples such as the use of freedom of assembly during COVID-19 to oppose vaccination efforts. The importance of avoiding violence in activism, particularly in contexts involving women's rights and transgender issues, was stressed.
- Austria raised concerns about cross-border actions and the recognition of legal status for migrant civil society organisations. It was noted that mutual recognition of legal status across borders is desirable, but setting up new organisations can be difficult due to varying national regulations and limited resources. The discussion also covered the challenges faced by human rights defenders in exile, noting that current relocation schemes are limited in duration. Participants emphasized the need for long-term, flexible support for these defenders.
- The representative of the Advisory Council of Youth and other participants discussed the specific challenges faced by youth organisations, particularly regarding funding

dependency on public sources. The need for improved participation and support for youth was highlighted, with examples of funding losses impacting youth organisations.

- Financial sustainability was identified as a critical issue, with recommendations for tax deductibility and long-term, flexible support from states.
- Concerns were raised about the increasing challenges faced by women human rights defenders, including gender-based violence and anti-rights narratives.