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A Matter of Precaution - Watching the Shrinking Civic Space in Western Europe

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The global phenomenon of “closing” or “shrinking” space for civil society has been identified and increasingly analyzed since at least the beginning of the 2000s. In Europe, the focus has been on what has been happening in countries of Central and Eastern Europe or of the Balkans; by contrast, relatively little attention has been paid to developments in the continent’s older, established democracies. However, according to the NGO Civicus¹, civic space is now “narrowed” in 12 countries across the EU (Austria, Bulgaria, Croatia, France, Greece, Italy, Latvia, Poland, Romania, Slovakia, Spain, and the United Kingdom) and “obstructed” in one (Hungary).

Even if in Western Europe there is no close threat of a takeover of authoritarian or undemocratic political actors winning power, it

is nevertheless important to gauge the risk level in different countries and to watch out for any eventual links between restrictions on civil society and growing extremism or securitization of the public discourse on fundamental rights. This is necessary in order to stop violations of civic freedoms where they have started, and to anticipate and prevent them where possible. Furthermore, if external support to civil society has been a vital response to shrinking space globally, there is a question mark over who would play this helping role should such a situation start developing in Western European countries where many external supporters of civil society are themselves based.

Inasmuch as attention has been paid to the closing space for civil society in Western Europe, this has been more on a case-by-case basis, looking at specific measures or specific target groups in different countries, with limited understanding of how these might represent a general shrinking of civic space, connected to various areas of domestic everyday life as well as to the situation abroad.

By and large, the issue has not drawn wide attention outside of affected people and groups, experts, and the parts of the philanthropic sector that are touched directly or through their grantees. Generally, a comprehensive pan-European understanding of the phenomena is lacking and the matter certainly has not caught the eye of the general public.

Last November, a joint civil society statement² asked the EU to uphold the role civil society plays in respecting Article 2 of the Treaty on European Union, which sets out the EU's fundamental values, to secure space for civil society to operate, to document and monitor challenges civil society faces (including the extension of the scope of the Rule of Law Initiative of the Commission announced for this year), to protect civil society from attacks, and to defend the role of civil society organizations (CSOs) at the national level when endangered.

On March 2019, the European Economic and Social Committee—the EU's consultative institution in which the third sector is represented—adopted an opinion on “Resilient democracy through strong and diverse civil society.”³ Its recommendations include the preservation of EU funding for civil society and specific support to CSOs that see their national public funding cut for political reasons, the reduction of administrative burdens for civil society to access EU funding, and the introduction of tax incentives to support civil society, as well as a mechanism to monitor the state of democracy in the member states.

Detecting Early Signs of Closing Space

In addition to poor awareness of the problem, measuring the closing of civic space is difficult. It is a highly political enterprise as well as being context-dependent. There is also a lack of shared criteria for the comparison and measurement of justified legal and regulatory limitations on civil society action over time. As a result, it is particularly difficult to spot the first indications of shrinking space and to determine if restrictions are one-offs or the start of a trend. Yet, it is crucial to detect early warning signs and assess them carefully. Globally, including in some European cases, there was a failure to do so soon enough so as to prevent negative trends from developing.

To become aware of the risk of shrinking civic space, in Europe as elsewhere, one has to pay close attention to the many dimensions of the issue. These include the state of freedom of association, assembly, and expression; the legal use of the concept of general interest and its application; the extent to which the state creates an enabling and safe environment for civil society; the number and diversity of CSOs; whether restrictions concern only specific groups or the sector as a whole; the financial legal and regulatory environment; the level of administrative burdens on civil society; the behavior of law enforcement agencies and the instrumentalization of security arguments; the narratives about civil society, including smear campaigns and harassment; and the availability of channels for consultation with decision-makers.

Two factors make an accurate analysis of the situation in Western Europe particularly difficult. First, the conditions for civil society there are clearly good compared to most of the rest of the world. Nevertheless, the situation should be judged against the highest standards in the region rather than a global average. Second, pointing to actual and potential fissures in democracy can become a highly politicized subject in many countries. Any attempts to point to individual instances of civil society restriction will be rejected by at least some as partisan criticism rather than an effort to point to a changing reality.

German, French, and U.K. Examples

In Germany, Attac—an international movement for alternatives in the globalization process—lost its recognition of general interest, which is a legal concept of common good and a tax category for organizations that support societal and constitutional objectives, in 2019 after five years in court. The justification was that Attac is too “political,” with its activities going beyond political education and campaigning. Deutsche Umwelthilfe—an environmental monitoring, lobbying and education association and service provider to the government for monitoring corporate violations of environmental norms—has been criticized by some of those it has targeted for making money out of the court cases it initiates and its recognition of general interest is also at stake. If organizations lose their recognition of general interest because they are judged to be “political,” this puts the entire definition of what “general interest” is at stake. Many other

organizations might be affected if they also find themselves attacked for being “political.”

In France, after a state of emergency was in place in 2015–2017 following terrorist attacks, the government translated some emergency measures into regular anti-terrorist legislation. During the state of emergency France also decided not to apply parts of the European Convention on Human Rights⁴. Monitoring of the implementation these measures (as already seen during the state of emergency) has shown that the principle of equality for all has not been respected⁵ when it comes to compliance with and access to rights. During the 2015 United Nations Climate Change Conference in Paris, the authorities also used the state of emergency to justify forbidding demonstrations and some activists were preventively detained for security reasons. Decreasing state support for civil society adds to the problem when it comes to defending rights that might be violated by the anti-terrorist legislation.

Under France’s new real-estate tax legislation, the number of people and the amount of money to which tax incentives apply for donations to bodies with charitable status has been reduced significantly, something affecting many CSOs that rely on such gifts. And, in a case similar to that of Deutsche Umwelthilfe in Germany, the French government refused earlier this year the renewal of the accreditation of Sherpa—an anti-tax evasion and anti-corruption association—to act as civil party in corruption lawsuits.

In the case of the United Kingdom, in 2016, a comprehensive report (updated in 2017)⁶ by the Charities Aid Foundation and a note⁷ by the UN special rapporteur on the rights to freedom of peaceful assembly and of association voiced concern about the trend in measures affecting civil society. Of particular concern are the impact of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act of 2014, which has created uncertainty as to exactly what activities are allowed for CSOs and has discouraged charities from campaigning more than, say, corporations; the clauses introduced by the government in grant agreements in 2016 that prevent beneficiaries from criticizing the government; and the risk of anti-terrorist legislation limiting access by CSOs to financial services and donors.

Better Safe than Sorry

Any incipient trend toward a more restrictive state approach toward civil society in Western European countries will have repercussions globally—by further eroding their power of example and by undercutting their ability to protect and promote civil society abroad, including elsewhere in Europe. It is also important with regard to the safety of the grantees and the networks of Europe's

philanthropic institutions and other funders of civic actors globally. For example, if they have to communicate detailed information about their grantees as a result of new government rules, this can lead to a potential risk to human rights organizations and defenders around the world.

Equally important, while avoiding alarmism, is for societies in Western Europe to watch what is happening at home with regard to any potential shrinking of civic space, if only because “better safe than sorry” is a good precautionary principle. Western European countries do not have to look very far from their own doorsteps to see what can ensue if early warning signs about attempts to curtail civic freedoms are missed or ignored.

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www.observatorium.maecenata.eu

¹ <https://monitor.civicus.org/>

² https://civilsocietyeuropedoteu.files.wordpress.com/2018/11/joint-civil-society-statement_fundamental-rights-colloquium.pdf.

³ <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/resilient-democracy-through-strong-and-diverse-civil-society-own-initiative-opinion>

⁴ https://www.coe.int/fr/web/secretary-general/home/-/asset_publisher/oURUJmJo9jX9/content/france-informs-

[secretary-general-of-article-15-derogation-of-the-european-convention-on-human-rights](#)

⁵ https://antiterrorisme-droits-libertes.org/IMG/pdf/silt_analyse_juridique_mise_en_oeuvre_et_contenieux_annee_j_-2017_2018-3.pdf

⁶ <https://www.cafonline.org/about-us/publications/2017-publications/2017-update-do-as-i-say-not-as-i-do-uk-policy-and-the-global-closing-space-for-civil-society>

⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E>