

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	237
Land:	Aserbajdsjan
Kilde:	Europarådet
Titel:	New restrictions on NGO activities in Council of Europe member States
Udgivet:	7. juni 2018
Optaget på baggrundsmaterialet:	5. november 2018



Doc. 14570

07 June 2018

New restrictions on NGO activities in Council of Europe member States

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Yves CRUCHTEN, Luxembourg, Socialists, Democrats and Greens Group

Summary

The Committee on Legal Affairs and Human Rights has taken stock of the developments which have occurred between 2016 and 2018 and is concerned about new legislative restrictions imposed on the activities of NGOs and by the increasingly hostile climate towards them. In Azerbaijan and in the Russian Federation, the working conditions of NGOs continue to deteriorate as a result of the implementation of laws restricting their foreign financing. In Hungary, a new law on the transparency of organisations receiving support from abroad came into force and the government proposed a "Stop Soros" package of laws aimed at restricting the activities of NGOs assisting migrants. In Romania and Ukraine, draft laws imposing additional financial reporting obligations on NGOs are currently before parliament.

The committee is particularly concerned about the situation in Turkey, where, following the introduction of the state of emergency, almost 1 600 associations and foundations have been closed down.

The Council of Europe member States are called upon to fully respect the right to freedom of association and to consult civil society on the relevant draft laws. The Council of Europe should establish a mechanism for receiving alerts on restrictions imposed on NGOs and strengthen its co-operation with them.

1. Reference to committee: Bureau decision, Reference 4205 of 22 April 2016.



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A. Draft resolution²

1. The Parliamentary Assembly recalls its [Resolution 2096 \(2016\)](#) and [Recommendation 2086 \(2016\)](#) on “How can inappropriate restrictions on NGO activities in Europe be prevented?”, its previous [Resolutions 1660 \(2009\)](#), [1891 \(2012\)](#) and [2095 \(2016\)](#) and [Recommendation 2095 \(2016\)](#) on the situation of human rights defenders in Council of Europe member States, as well as [Resolution 2060 \(2015\)](#), [Recommendation 2073 \(2015\)](#), [Resolution 1729 \(2010\)](#) and [Recommendation 1916 \(2010\)](#) on the protection of “whistle-blowers”.
2. The Assembly reiterates the importance of non-governmental organisations (NGOs) for the development and realisation of democracy, the rule of law and human rights, in particular through the promotion of public awareness, participation in public life and by securing the transparency and accountability of public authorities and contributing to the cultural life and social well-being of democratic societies. It pays tribute to all NGOs, whose work has strengthened human rights, democracy and the rule of law in the member States of the Council of Europe.
3. The Assembly recalls that by adhering to the European Convention on Human Rights (ETS No. 5), the member States of the Council of Europe have agreed to ensure, without discrimination, respect for freedom of assembly and association as well as the freedom of expression, which are inextricably linked to one another and are vital to the proper functioning of civil society. Any restriction of the above rights shall be “prescribed by law”, “necessary in a democratic society” and proportionate to the envisaged legitimate aim.
4. The Assembly notes with concern that in several Council of Europe member States the space for civil society has been shrinking over the last few years, especially in respect of NGOs working in the area of human rights. This has been mainly due to: restrictive laws and regulations concerning registration requirements or funding; administrative harassment; smear campaigns against certain groups; and threats and intimidation against NGO leaders and activists.
5. The Assembly recalls its [Resolution 2184 \(2017\)](#) on the functioning of democratic institutions in Azerbaijan and [Resolution 2185 \(2017\)](#) “Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?” and condemns the lack of a conducive environment for the activities of NGOs and reprisals against civil society activists in Azerbaijan. It calls on Azerbaijan to amend its legislation on NGOs in accordance with the case law of the European Court of Human Rights and the recommendations of the European Commission for Democracy through Law (Venice Commission) (Opinions Nos. 636/2011 and 787/2014).
6. Recalling its [Resolution 2162 \(2017\)](#) “Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University”, the Assembly expresses concern about the entry into force of the Law on the transparency of organisations receiving support from abroad and calls on Hungary to repeal those of its provisions that are not in line with the Venice Commission’s recommendations (Opinion No. 889/2017). It is also alarmed by the proposed “Stop-Soros” package of laws, which would restrict the freedoms of NGOs working for refugees’ and migrants’ rights and their members, and calls on Hungary to refrain from its adoption.
7. The Assembly remains concerned about the implementation of the so-called “foreign agents law” and the “law on undesirable organisations”, which has led to the closure of dozens of domestic NGOs that received foreign funding and major international and foreign NGOs that worked in the Russian Federation. The Assembly reiterates its calls on the Russian Federation to amend the legislation on NGOs in accordance with the Venice Commission Opinions Nos. 716/2013 and 717/2013.
8. Recalling its [Resolutions 2156 \(2017\)](#) on the functioning of democratic institutions in Turkey and [2209 \(2018\)](#) “State of emergency: proportionality issues under Article 15 of the European Convention on Human Rights”, the Assembly is particularly worried about the high number of associations and foundations (nearly 1 600) closed on the basis of state of emergency measures. It calls on Turkey to lift the state of emergency as soon as possible and to ensure that the closed NGOs dispose of an effective remedy against the decision concerning their definitive closure and to reconsider the necessity and proportionality of the measures restricting the freedom of association, assembly and expression, in light of the case law of the European Court of Human Rights and the recommendations of the Venice Commission (Opinion No. 865/2016).
9. The Assembly calls on Romania and Ukraine to reject the recently proposed draft laws imposing additional financial reporting obligations on NGOs unless they are amended according to the recommendations of the Venice Commission and the Office for Democratic Institutions and Human Rights of

2. Draft resolution adopted by the committee on 22 May 2018.

the Organization for Security and Co-operation in Europe (OSCE/ODIHR) (see, respectively, Opinions Nos. 914/2017 and 912/2018) and to submit them to broad public consultations. It also calls on Ukraine to repeal as soon as possible the e-declaration requirements for anti-corruption activists introduced by Law No. 1975-VIII of 23 March 2017.

10. The Assembly calls on all member States to:

10.1. fully implement Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;

10.2. review and repeal or amend legislation that impedes the free and independent work of NGOs and ensure that this legislation is in conformity with international human rights instruments regarding the rights to freedom of association, assembly and expression, by making use of the expertise of the Council of Europe, and in particular of the Venice Commission and the Conference of International Non-Governmental Organisations;

10.3. refrain from adopting new laws which would result in unnecessary and disproportionate restrictions or financial burdens on NGO activities;

10.4. ensure that NGOs can seek, receive and use transparent funding and other resources, whether domestic or foreign, without discrimination or undue impediments;

10.5. ensure that NGOs are effectively involved in the consultation process concerning new legislation which concerns them and other issues of particular importance to society, such as the protection of human rights;

10.6. ensure an enabling environment for civil society, in particular by refraining from any harassment (judicial, administrative or tax-related), negative public discourse, smear campaigns against NGOs and intimidation of civil society activists.

11. The Assembly, mindful of the shrinking space of civil society in many member States of the Council of the Europe, resolves to remain seized of the matter.

B. Draft recommendation³

1. Referring to its Resolution ... (2018) on new restrictions on NGO activities in Council of Europe member States, the Parliamentary Assembly recommends that the Committee of Ministers:

- 1.1. call again on member States of the Council of Europe to implement its Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and continue to take stock of progress made to this end;
- 1.2. continue its thematic debates on the “role and functioning of NGOs in the Council of Europe” and its exchanges with the Conference of International Non-Governmental Organisations (INGOs) on a regular basis;
- 1.3. strengthen its interaction with civil society representatives through a more developed framework for dialogue with them, including the holding of regular meetings open to the public;
- 1.4. continue to promote European and international standards relevant for the creation and maintenance of a safe and enabling environment for civil society as well as to exchange good practices in this area;
- 1.5. in this respect, continue to strengthen synergies, within the Council of Europe, between all the stakeholders concerned, in particular the Secretary General, the Commissioner for Human Rights, the Conference of INGOs and the Assembly;
- 1.6. establish a mechanism aimed at receiving, analysing and reacting to alerts on possible new restrictions on the right to freedom of association in Council of Europe member States.

3. Draft recommendation adopted unanimously by the committee on 22 May 2018.

C. Explanatory memorandum by Mr Yves Cruchten, rapporteur

1. Introduction

1.1. Procedure

1. In its [Resolution 2096 \(2016\)](#) “How can inappropriate restrictions on NGO activities in Europe be prevented?” adopted on 28 January 2016, the Assembly “mindful of the precarious situation of civil society in the Council of Europe area” resolved “to remain seized of the matter and to continue to give it priority, in view of the urgent need to monitor respect for freedom of association, of assembly and of expression” (paragraph 8). Following the Bureau of the Assembly’s decision of 22 April 2016, this issue was referred to the Committee on Legal Affairs and Human Rights. At its meeting on 21 June 2016, the committee appointed Ms Aleksandra Djurović (Serbia, EPP/CD) as rapporteur. Following her subsequent departure from the Assembly, the committee appointed me as rapporteur on this subject at its meeting on 13 November 2017. At its meeting on 12 December 2017, the committee authorised me to undertake a fact-finding visit to Turkey. On 23 January 2018, it held a hearing with the participation of Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Ms Anna Rurka, President of the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe, and Mr Konstantin Baranov, member of the board of the International Youth Human Rights Movement, Russia. The hearing was also held in the framework of the work on the report on “Protecting human rights defenders in Council of Europe member States” (rapporteur: Mr Egidijus Vareikis, Lithuania, EPP/CD). On 5 and 6 April 2018, I undertook a fact-finding visit to Ankara (Turkey).

1.2. Issues at stake

2. The issue of inappropriate restrictions on activities of non-governmental organisations (NGOs) in Council of Europe member States has already been the subject of a report, of which I was the author.⁴ On the basis of that report, the Assembly adopted the above-mentioned [Resolution 2096 \(2016\)](#) and [Recommendation 2086 \(2016\)](#).

3. As recalled in [Resolution 2096 \(2016\)](#), NGOs are a key component of an open and democratic civil society and make an essential contribution to the defence of human rights and to the strengthening of democracy and the rule of law. By adhering to the European Convention on Human Rights (ETS No. 5, “the Convention”), member States of the Council of Europe have agreed to ensure respect for freedom of assembly and association (Article 11 of the Convention) and freedom of expression (Article 10), which are inextricably linked to one another and are vital to the proper functioning of civil society. These freedoms are also enshrined in Articles 19 and 20 of the International Covenant on Civil and Political Rights. They are not absolute, as the Convention provides clear criteria allowing their restriction (in paragraph 2 of Articles 10 and 11). Such restrictions must be prescribed by law and be “necessary in a democratic society”, which presupposes the existence of a “pressing social need”, and respect for the principle of proportionality.⁵ They must pursue at least one of the legitimate aims listed in the Convention, such as national security, public safety, the prevention of disorder or crime and the protection of health or morals. The rights enshrined in Article 11 may also be restricted for “the protection of the rights and freedoms of others” and those guaranteed in Article 10 also in the interests of territorial integrity or “the protection of the reputation or rights of others, preventing the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary”. On many occasions, the European Court of Human Rights (“the Court”) has stressed that, along with the press, NGOs play the role of “watchdog” in a democratic society.⁶ When examining a large number of applications concerning dissolution of or refusals to register NGOs and political parties that aim at reversing the constitutional and institutional order of their States, the Court stressed that “any organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles ... The mere fact that an organisation demands such changes cannot automatically justify interferences with its members’ freedoms of association and assembly”.⁷

4. [Doc. 13940](#) of 8 January 2016.

5. For example, European Court of Human Rights, *Chassagnou and Others v. France*, Application No. 25088/94 and others, judgment of 29 April 1999 (Grand Chamber), paragraphs 104ff.

6. *Vides Aizsardzības Klubs v. Latvia*, Application No. 57829/00, judgment of 27 May 2004, paragraph 42, and *Radio Twist, A.S. v. Slovakia*, Application No. 62202/00, judgment of 19 December 2006, paragraphs 48-50.

4. The Council of Europe fully supports the existence of a dynamic civil society and co-operates with NGOs on a structural, permanent basis through one of its institutions – the Conference of International Non-governmental Organisations, which has been gradually established by the Committee of Ministers since the 1970s⁸ and is composed of over 400 NGOs holding participatory status. In its Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe, the Committee of Ministers acknowledged the role of such organisations and gave national legislators clear guidelines as to the proper content of legislation on NGOs. This recommendation defines NGOs as “voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members”, which are not political parties (Principle I.1). It also contains guidelines as to their objectives, formation and membership, legal personality, management, fundraising, property and public support, accountability and participation in decision-making. According to its Principle 50, NGOs “should be free to solicit and receive funding ... not only from public bodies in their own State but also from institutional or individual donors ...”. They should be able to take part in “dialogue and consultation on public policy objectives and decisions” and be consulted during the drafting of primary and secondary legislation concerning their status (Principles 76 and 77). The changing nature of the environment in which NGOs operate due to the development of media and the information society has been recognised in Committee of Ministers [Recommendation CM/Rec\(2016\)5 on Internet freedom](#) of 13 April 2016. On 27 September 2017, the Committee of Ministers adopted [Guidelines for civil participation in political decision-making](#). Further guidelines on this issue are contained in the “[Joint guidelines on freedom of association](#)” of the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) of 17 December 2014.

5. In its [Resolution 2096 \(2016\)](#), the Assembly expressed concern about the deterioration over the last few years of the situation of civil society in certain Council of Europe member States, especially in Azerbaijan and the Russian Federation. It noted that this was due, in particular, to the adoption of restrictive laws and regulations, amounting to various impediments to the registration, functioning and financing of numerous NGOs, and to their stigmatisation. Similar concerns were expressed in [Resolution 2095 \(2016\)](#) on strengthening the protection and role of human rights defenders in Council of Europe member States, adopted on the same day.⁹ Moreover, my report of 2015 also pointed out some negative trends in Turkey and Hungary. In his report on “[The state of democracy, human rights and the rule of law. Populism – How strong are Europe’s checks and balances?](#)”, of 2017, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, concluded that in some member States “NGOs are effectively prevented from carrying out their work by legal and regulatory obstacles to their creation, activities and funding”. These obstacles include in particular “cumbersome and lengthy registration procedures, excessive administrative requirements and obstacles to accessing financial resources, particularly foreign funding”. According to the Secretary General, “[i]n the last few years a few countries have seen a continuous deterioration in the environment in which NGOs operate, through stigmatisation, smear campaigns and judicial, administrative or fiscal harassment”.¹⁰ In April 2017, the Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks, noted “a clear trend of backsliding in several European countries in the area of freedom of association, particularly in respect of human rights organisations and defenders”.¹¹ In his 6 February 2018 Statement to mark the 10th anniversary of the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, he stressed that “a growing number of European governments are narrowing the space for the work of independent civil society and human rights organisations”. Furthermore, the Council of Europe’s Advisory Council on Youth (CCJ) has informed me about the increasing difficulties encountered by youth organisations in their work and especially in accessing financial support. According to the European Union’s Fundamental Rights Agency (FRA), NGOs active in the field of human rights consider that it has become harder for them to contribute to the protection, promotion and fulfilment of human rights across the European Union. The FRA, which conducted research focusing on the period from

7. *Zhechev v. Bulgaria*, Application No. 57045/00, judgment of 21 June 2007, paragraphs 47-48; *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, Application No. 59489/00, judgment of 20 October 2005, paragraphs 59 and 61, or *Yazar and Others v. Turkey*, Applications Nos. 22723/93, 22724/93 and 22725/93, judgment of 9 April 2002, paragraph 49.

8. See, in particular, Committee of Ministers [Resolution \(72\) 35](#) on relations between the Council of Europe and International non-governmental organisations. Rules for Consultative Status, [Resolution \(93\) 38](#) on relations between the Council of Europe and International non-governmental organisations and [Resolution \(2003\) 8](#) on participatory status for international non-governmental organisations with the Council of Europe.

9. See the report by our former Committee colleague Ms Mailis Reps (Estonia, ALDE), [Doc. 13943](#).

10. Secretary General’s report, pp. 8 and 71-75.

11. Commissioner for Human Rights, Human Rights Comment of 4 April 2017, “[The Shrinking Space for Human Rights Organisations](#)”.

2011 to 2017, has found several challenges affecting the work of civil society: disadvantageous changes in legislation or inadequate implementation of laws; hurdles to accessing financial resources and ensuring their sustainability; difficulties in accessing decision-makers and feeding into law- and policy-making; and attacks on and harassment of human rights defenders, including negative discourse aimed at delegitimising and stigmatising NGOs.¹² It also notes the lack of reliable and comparable data on attacks against civil society organisations across the European Union and of information concerning available funding schemes and expenditure for organisations working for the field of human rights. Concerns about shrinking civil society space worldwide have also been expressed by United Nations bodies.¹³

6. Against this background, I intend to take stock of recent developments in the countries which were examined in my previous report, namely the Russian Federation, Azerbaijan, Turkey and Hungary (listed in the order of that report). Nonetheless I will also take account of the developments (mainly legislative) that have occurred in other Council of Europe member States between 2016 and 2018. The choice of the countries is based on information and documents of the Assembly, other organs and institutions of the Council of Europe, other international organisations, prominent NGOs working for the protection of human rights and human rights defenders.

2. Recent developments concerning the situation of civil society in selected member States

2.1. The Russian Federation

7. In its [Resolution 2096 \(2016\)](#), the Assembly expressed concerns about the so-called “foreign agents law” modifying the Russian legislation on non-commercial organisations to the effect that NGOs receiving foreign funding were obliged to register as “foreign agents” (a term considered in the Soviet Union as a synonym for “traitor” or “spy”); this law had been criticised by the Venice Commission.¹⁴ The Assembly was also worried about the adoption, in May 2015, of the “law on undesirable organisations” allowing the authorities to ban certain international NGOs.

8. Since the adoption of [Resolution 2096 \(2016\)](#), new developments have taken place as far as the implementation of these pieces of legislation is concerned. In May 2016, the “foreign agents law” was amended, expanding the definition of “political activity” used in the context of defining “NGOs performing the functions of a foreign agent”. The register of “foreign agents” currently includes 79 organisations (including four which have registered voluntarily) working mainly on human rights, the environment, lesbian, gay, bisexual, transgender and intersex (LGBTI) issues, health and social issues.¹⁵ In all, the Minister of Justice is reported to have added 158 NGOs to this list. Over 40 NGOs were added in 2016 alone (including the Moscow-based Levada Analytical Centre, which carries out sociological research and surveys, and Memorial, an international association that focuses on historical issues, education, human rights and charitable works and is well-known for its research and documentation on the persecutions that took place under the Soviet regime). Nonetheless, the Minister of Justice is said to have removed from this list more than 20 NGOs after determining that they had stopped receiving foreign funds. More than 30 NGOs preferred to cease their activities rather than be officially designated as “foreign agents”. Others have been wound up following court rulings, such as the Kazan-based organisation Agora, which worked to protect human rights (especially in the case of the punk rock group Pussy Riot). On 22 March 2017, the European Court of Human Rights communicated to the Russian Government 49 complaints from 61 NGOs concerning the application of the “foreign agents law”. In July 2017, the Commissioner for Human Rights presented his observations in this case,¹⁶ emphasising once again that, in his opinion, this law was incompatible with international human rights standards and that its application had had “a chilling effect” on the work of Russian civil society. The Levada Centre recently also filed an application with the Court.

9. As far as the “law on undesirable organisations” is concerned, on 10 June 2016, the Venice Commission issued its opinion, in which it found that this law interfered with several rights guaranteed under the Convention, including those enshrined in Articles 10 and 11. The Venice Commission criticised, in particular, the vague definitions (including the definition of NGO) and the blanket prohibitions and sanctions

12. FRA, [Challenges facing civil society organisations working on human rights in the EU](#), report, January 2018, pp. 7-13.

13. See, in particular, report by the United Nations High Commissioner for Human Rights, A/HRC/32/20, 11 April 2016.

14. Venice Commission, Opinions Nos. 716-717/2014, [CDL-AD\(2014\)025](#) of 27 June 2014.

15. According to Human Rights Watch, as at 6 March 2018, <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

16. European Court of Human Rights, *ECODEFENCE and others v. Russia and 48 other applications*, Application No. 9988/13. See also [Article No. 319005](#), RAPS/Russia, 29 March 2017, and Commissioner for Human Rights, [Third party intervention. The Russian Federation's Law on Foreign Agents contravenes human rights](#), 13 July 2017.

contained in the law.¹⁷ To date, the registry of “undesirable organisations” includes 14 NGOs.¹⁸ It should also be noted that some activists and NGOs have taken legal action on the basis of the Code of Administrative Offences for having “been involved” in activities carried out by “undesirable organisations”. For example, in November 2017 the Andrey Rylkov Foundation (which works to bring about a responsible drugs policy) was issued a fine of 50 000 roubles (approximately €720) by a court of first instance because one of the organisation’s websites, dating from 2011, contained a link to a publication of the Open Society Foundations, currently considered an “undesirable organisation”. Similarly, in September 2017 the SOVA think tank, which works on issues to do with freedom of religion, nationalism and forms of extremism, and its director Alexander Verkhovsky were informed by the public prosecutor that they had broken the law because their organisation’s website contained links to former donors that were “undesirable organisations”, including the National Endowment for Democracy and the Open Society Foundations.¹⁹ Moreover, in November 2017 a new law came into force that enables the Minister of Justice to register as “foreign agents” media that either directly or indirectly receive funds from abroad.

10. Since the Russian Parliament has decided not to send its representatives to the Assembly for this session, it is regrettable that the committee and I as rapporteur have been unable to listen to their views and to obtain more information on the present situation of civil society in the Russian Federation.

2.2. Azerbaijan

11. In its [Resolution 2096 \(2016\)](#), the Assembly condemned once again the deterioration of the working conditions for Azerbaijani NGOs and human rights activists, following changes to the legislation on NGOs imposing inappropriate restrictions on their activities. It called on Azerbaijan to, *inter alia*, amend its legislation in accordance with the recommendations of the Venice Commission (Opinions Nos. 636/2011²⁰ and 787/2014).²¹ The question of the reform of legislation on NGOs and the situation of civil society in Azerbaijan was subsequently taken up by the Monitoring Committee’s co-rapporteurs on Azerbaijan and by the former Chair of our committee, Mr Alain Destexhe (Belgium), who drew up a report on “Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?”.²² Accordingly, in order to avoid any duplication, I will confine myself to reiterating briefly the most relevant facts and issues.

12. Since January 2016, further changes to the Azerbaijani legislation on NGOs have been made. On 28 December 2015, the Ministry of Justice adopted new “rules on studying the activities of NGOs, branches or representative offices of foreign NGOs”. They came into force in February 2016 and have granted the minister broad powers to conduct “regular” or “extraordinary” inspections of NGOs. Moreover, the President of the Republic signed a decree on 21 October 2016 facilitating grants by foreign donors to NGOs and establishing a “one-stop shop” (or “single window”) for this procedure as of 1 January 2017.²³ The aim of the decree is to simplify the procedure for obtaining an opinion on the financial and economic expediency of grants and to ensure the implementation of the grant at the request of both the foreign donor and the recipient. However, the NGOs that receive funds from abroad and their donors are also subject to the obligation to obtain authorisations from the authorities. According to some NGOs, the procedures involved remain cumbersome and their outcome arbitrary.

13. In October 2016, having previously downgraded Azerbaijan’s status, the Extractive Industries Transparency Initiative (EITI), a coalition of governments, companies and non-governmental groups promoting better governance of resource-rich countries, which requires governments to foster “an enabling

17. Venice Commission, Opinion No. 814/2015, [CDL-AD\(2016\)020](#) of 13 June 2016, paragraph 62.

18. As at 16 April 2018, <http://minjust.ru/ru/activity/nko/unwanted>.

19. Human Rights Watch, T. Lokshina, [A Hyperlink to Absurdity](#), 15 November 2017, and [Russia: Independent Think Tank Faces Charges](#), 8 September 2017.

20. Venice Commission, Opinion No. 636/2011 of 19 October 2011, [CDL-AD\(2011\)035](#). It concerns a law that obliges international NGOs to conclude a special agreement with the Minister of Justice before registering and opening an office.

21. Venice Commission, Opinion No. 787/2014 of 15 December 2014, [CDL-AD\(2014\)043](#). It concerns the legislation on the obligation to declare grants.

22. Monitoring Committee, “The functioning of democratic institutions in Azerbaijan”, [Doc. 14403](#) of 25 September 2017 (co-rapporteurs: Mr Stefan Schennach, Austria, SOC, and Mr Cezar Florin Preda, Romania, EPP/CD), and for the report of Mr Destexhe, [Doc. 14397](#) of 18 September 2017.

23. Human Rights Watch, *Harassed, Imprisoned, Exiled. Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers and Civil Society*, October 2016, and information note on a fact-finding visit to Baku (12-14 January 2017) by the Monitoring Committee’s co-rapporteurs, Messrs Schennach and Preda – AS/Mon (2017) 06 declassified, 19 February 2017, see Part II.

environment for civil society”, gave Azerbaijan four months to eliminate legal and bureaucratic obstacles to the activities of civil society. However, in response to this, the Azerbaijani Government decided to withdraw from EITI.²⁴

14. In its judgment in *Rasul Jafarov v. Azerbaijan*, concerning the arrest and detention of the prominent human rights activist and chairperson of the Human Rights Club in 2014 due to his failure to register grants, the European Court of Human Rights found several violations of the Convention (of Articles 5.1, 5.4, 18 in conjunction with Article 5, and 34). The Court observed in particular that the legislative environment regarding the operation of NGOs had forced some of them to operate on the fringes of the law and had grown “increasingly harsh and restrictive”, with additional registration and reporting procedures and heavy penalties.²⁵

15. On 11 October 2017, the Assembly, in its [Resolutions 2184 \(2017\)](#) and [2185 \(2017\)](#), reiterated that the legislative framework for the activities of NGOs did not comply with European standards and expressed its concern in view of the legal proceedings brought against NGO leaders and the fact that some of them continue to be held in custody. It called on the authorities to put an end to the reprisals against activists, create an environment conducive to the activities of NGOs and repeal all laws restricting freedom of association.

2.3. Turkey

16. Although the situation of civil society in Turkey did not raise any serious concern at the time when my previous report was finalised (except for the use of anti-terrorist legislation against some human rights organisations and their activists), the circumstances have changed dramatically since the failed *coup d'état* attempt of 15 July 2016. On 20 July 2016, the government declared a State emergency, which has already been prolonged seven times, and under which the government has been given extraordinary powers. On 21 July 2016, Turkey announced that it would derogate from certain obligations under the European Convention on Human Rights, in line with Article 15 of the Convention. This issue is examined in Assembly [Resolution 2209 \(2018\)](#) “State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights”, based on the report by our fellow committee member Mr Raphaël Comte (Switzerland, ALDE);²⁶ in this resolution, the Assembly reiterated its concerns about, *inter alia*, the situation of human rights defenders, civil society and the media. It should be recalled that, in its [Resolution 2156 \(2017\)](#), the Assembly voted to establish a procedure to monitor the functioning of democratic institutions in Turkey, a decision based on its concerns over the emergency measures and their impact.

17. Numerous measures taken under this emergency regime on the basis of legislative decrees, including massive dismissals in the judiciary, prosecution services, academia (including over 500 “Academics for peace”, criticising the military operations in the Southeast), police, security and armed forces, and other State institutions, and closures of television stations, newspapers and other media, raise concern as to their compatibility with human rights, democracy and the rule of law and are addressed in [Resolution 2209 \(2018\)](#) and continue to be followed by the Monitoring Committee and its co-rapporteurs on Turkey. In its “[Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. January – December 2017](#)” published on 20 March 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded that “the prolonged state of emergency has led to a continued erosion of the rule of law and deterioration of the human rights situation” in the country and noted that “the deterioration of the domestic human rights situation and the shrinking of the political and civic space require immediate steps for Turkey to be compliant with its obligations under international human rights law”.²⁷ The situation of civil society is worrying.²⁸ During my fact-finding visit to Ankara, I discussed this issue with members of the Grand Assembly, the deputy Ombudsman responsible for human rights issues, high officials from the Ministry of Justice and the Ministry of the Interior, the Director General for Foundations and a large number of representatives of NGOs and public employees’ trade unions.

24. Human Rights Watch, Giorgi Gogia, [Azerbaijan Suspended Over Rights Crackdown](#), 10 March 2017, and <https://eiti.org/news/azerbaijan-withdraws-from-eiti>.

25. Application No. 69981/14, judgment of 17 March 2016, paragraphs 120 and 159.

26. [Doc. 14506](#) of 27 February 2018.

27. Paragraphs 116 and 121.

28. In its resolution of 8 February 2018 on the current human rights situation in Turkey (2018/2527(RSP)), the European Parliament (2018/2527(RSP)) was “very concerned at the massive crackdown against Turkey’s civil society organisations ...”, paragraph 9.

18. Legislative Decree No. 667 of 22 July 2016 calls for the winding up of organisations “affiliated to FETÖ/PDY²⁹ or having a link to or contact with it”, including associations and foundations, and orders the assets (money, movable objects, real estate, business files, etc.) of the entities concerned to be transferred to the State without any kind of compensation. On the basis of Article 2 of this decree, 1 125 associations and 104 foundations which were alleged to have had links with the FETÖ/PDY and had been listed in the Appendix to the decree were immediately dissolved and their assets confiscated. Following the simplified administrative procedure for the further dissolution of NGOs set out in this provision (giving such powers to relevant ministries), additional associations and foundations have been dissolved.³⁰ In [Resolution 2209 \(2018\)](#), the Assembly considered that the overall impact of emergency measures on such bodies had been excessive, both in scope and in being indiscriminate as to the degree of alleged culpability and permanent in effect. The individuals and legal entities affected by these measures can lodge appeals with a special commission charged, *inter alia*, with ruling on appeals against measures taken directly by the legislative decrees enacted under the state of emergency. The Inquiry Commission for State of Emergency Measures began to receive appeals on 17 July 2017 and its decisions can subsequently be subject to judicial review. As at 28 February 2018, the commission had received 107 076 applications and had rejected 1 126 of them. In only 100 cases, did the commission rule in favour of the applicants. In [Resolution 2209 \(2018\)](#), the Assembly was critical of the delays in providing a timely, effective remedy, which had unduly prolonged the impact of emergency measures on persons who may have been wrongly affected, and called for the Inquiry Commission to expedite its examination of outstanding applications. Unfortunately, during my visit to Ankara, I did not have the opportunity to meet with the members of the Commission, as our meeting was cancelled at short notice.

19. According to a recent report by the Turkish Human Rights Joint Platform (IHOP),³¹ as at 20 March 2018, the number of closed associations amounted to 1 419. In the case of 188 associations which lodged administrative complaints, closure decisions had been revoked (out of 1 607 associations closed by emergency decrees Nos. 667, 677, 679, 689 and 695); during my visit to Ankara, the authorities confirmed the figures for closures and revocations of closures. IHOP’s report also indicates that, as of 28 February 2018, closure decisions had been revoked for 23 out of 168 foundations closed by emergency decrees Nos. 667, 689 and 695; therefore the total number of closed foundations amounted to 145. According to the authorities, the closed associations and foundations operated in various areas of life, including social affairs, tourism, culture, media or education and the geographical scope of their activities was not limited to a specific area (whilst a higher number of NGOs had been closed in big cities like Ankara and Istanbul); they had been established and/or infiltrated by terrorist organisations and were closed on the basis of information received from intelligence services and local governors. The majority of them have not applied to the Inquiry Commission (only around 150 out of over 1 400 closed associations). None of them have complained to the Ombudsman. If a decision on closure has been revoked, the assets of the association/foundations have been returned. In total, there are currently nearly 113 000 associations and over 5 000 foundations in Turkey.

20. According to the Venice Commission, the liquidation of associations and foundations for having alleged connections or contact with FETÖ/PDY on the basis of emergency decree No. 667 constitutes “a far-reaching interference” with several rights provided by the European Convention on Human Rights, namely the right to freedom of association (Article 11) and the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention (ETS No. 9)). The Venice Commission also regrets the fact that the associations have been dissolved instead of having been temporarily suspended.³² These measures have also been roundly criticised by the Commissioner for Human Rights, the Conference of INGOs³³ and the Assembly itself. The latter, in its [Resolution 2156 \(2017\)](#), called on the Turkish authorities to “refrain from applying sweeping measures, including against ... NGOs, on the basis of vague criteria of alleged ‘connection’ to a terrorist organisation without evidentiary grounds and in the absence of judicial decisions” (paragraph 27.4).

29. In the Turkish official documents, the “Gülenist” network is referred to by the term FETÖ/PDY (acronym for “Fethullah Terror Organisation/Parallel State Structure”).

30. INGOs Conference, Expert Council on NGO Law, Conf/Exp(2017)2, Opinion on the impact of the state of emergency on freedom of association in Turkey, 30 November 2017, paragraphs 38-40.

31. IHOP, 21 July 2016-20 March 2018, State of Emergency in Turkey: Updated Situation Report, 25 March 2018.

32. Opinion No. 865/2016, [CDL-AD\(2016\)037](#), Turkey – Opinion on Emergency Decree Laws Nos. 667-676 adopted following the failed coup of 15 July 2016. See in particular paragraphs 178-180.

33. CommDH(2016)35, “Memorandum on the human rights implications of the measures taken under state of emergency in Turkey”, 7 October 2016, and Resolution CONF/PLE(2017)RES1, “Protecting the freedoms of association and expression in Turkey under the State of Emergency”, adopted on 27 January 2017.

21. Furthermore, cases of judicial harassment or arbitrary arrests³⁴ of some human rights defenders and journalists have been reported on several occasions. Legal proceedings have been brought against the heads of the Turkish section of Amnesty International. On 6 June 2017, its chairperson, Taner Kiliç, was arrested by the police and was charged with “belonging to the Fethullah Gülen group” for allegedly downloading ByLock, a messaging application used by the “Gülenists”. On 31 January 2018, an Istanbul court ordered his conditional release, but following the prosecutor’s appeal the decision was reversed by another court. Therefore, he is still in pretrial detention despite several interventions by international bodies³⁵ and is in danger of being sentenced to a long term in prison. On 5 July 2017, the Director of Amnesty International, Idil Eser, was arrested together with seven other Turkish human rights defenders and two trainers (a Swede and a German) at a seminar being held on the island of Büyükada, on the ground that they had allegedly committed a crime on behalf of a “terrorist organisation” without being a member of it. All ten were released on bail on 25 October 2017. Cases of harassment of members of other NGOs have also been reported. On 30 January 2018, police searched the homes and workplaces and arrested 11 members of the Central Council of the Turkish Medical Association (TTB) on the basis of anti-terror law provisions. This event took place a few days after the TTB publicly criticised the Turkish military’s “Operation Olive Branch” in Afrin, northern Syria. Although the TTB members were released after seven days, they are still under criminal investigation. Moreover, at the end of January 2018, several members of the Human Rights Association, whose directors had already been subject to an investigation launched on the basis of anti-terror law provisions, were arrested and detained in reaction to their social media posts criticising the operation in Afrin.³⁶ As I learned during my visit to Ankara, the activities of LGBTI associations – such as Kaos GL and Pinklife – have been restricted following the Ankara local governor’s decision to prohibit them from organising public events. In Istanbul, they were forbidden to organise the annual gay and trans pride march. In general, almost all NGO interlocutors complained about the shrinking space for civil society, due to the high number of closed NGOs (in their view, especially those working mainly for the protection of children’s or women’s rights or on humanitarian issues in the Southeast and human rights lawyers’ groups), lengthy audits launched against some of them and investigations started into their members. They stressed that numerous activists had been detained (mainly for taking part in peaceful protests and for their critical posts on social media) and are now subject to travel bans. In their view, there is no effective remedy against the measures taken under the state of emergency. Those who were dismissed under the state of emergency measures complain about their “civil death”, as they can find a job neither in the country nor abroad (due to travel bans) and are denied other basic rights, and their freedom of expression has been restricted.

2.4. Hungary

22. Although the Assembly expressed no criticism about the situation of Hungarian civil society in [Resolution 2096 \(2016\)](#), my report of 2015 pointed out some problems, such as “a general and mutual mistrust between NGOs and the authorities”, smear campaigns in the media, and searches and legal proceedings launched against the NGOs running the “NGO Fund” programme, financed by the European Economic Area, and some NGOs receiving grants from this scheme.³⁷ Since then, while most of the proceedings brought against these NGOs were set aside or terminated in early 2016, further critical statements have been made by certain Hungarian politicians, including Prime Minister Viktor Orbán, in the media on the subject of NGOs working to protect human rights. The Open Society Foundations, founded by the billionaire financier George Soros, have been the target of a particularly vicious campaign, including a virulent poster campaign financed by Orbán’s Fidesz party.³⁸ According to the report of the United Nations Special Rapporteur, Mr Michel Forst, Hungarian human rights organisations are forced to operate in an increasingly polarised and politicised environment, while the State attempts to discredit their work with fabricated criminal proceedings.³⁹ Moreover, on 13 June 2017 the parliament passed a law – the “Law on the transparency of organisations receiving support from abroad”, which obliges NGOs receiving funds from

34. See in particular FIDH, [Turkey: Ongoing judicial harassment of Ms Şebnem Korur Fincancı, Mr Erol Önderoğlu and Mr Ahmet Nesin](#), appeal of 24 March 2017, and [Provisional release of Raci Bilici, Vice-President of the Human Rights Association \(IHD\) and Chairperson of IHD Diyarbakır](#), appeal of 24 March 2017.

35. Amnesty International article: [“Chair of Amnesty International Turkey swept up in post-coup purge”](#), 6 June 2017 and the press release of the Monitoring Committee’s co-rapporteurs of 27 October 2017.

36. Turkey: [Ten human rights defenders indicted on trumped-up terrorism charges; six remain in pre-trial detention](#), OMCT, 18 July 2017, the press release of the Monitoring Committee’s co-rapporteurs of 13 October 2017 and IHOP, *supra* note 31, pp. 10 and 19.

37. See my previous report, *supra* note 4, paragraphs 58-63. For the follow-up given to these investigations see www.helsinki.hu/wp-content/uploads/Norway_Grants_Gov_attacks_communication_brief_ENG.pdf.

38. www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_short_17112017.pdf. and <https://www.politico.eu/article/hungary-fidesz-to-distribute-book-targeting-george-soros/>.

39. See his [statement](#) of 16 February 2016.

abroad (associations and foundations) to reveal their exact amount if this support exceeds 7.2 million forints (nearly €24 000) and to register as “organisations receiving support from abroad” or else face a fine of up to approx. €3 000, be dissolved or struck off. This law came into force on 27 June 2017, despite criticism voiced by several Council of Europe bodies, including the Venice Commission, the Commissioner for Human Rights, the Conference of INGOs and the Assembly itself.⁴⁰ Moreover, on 13 July 2017, the European Commission opened infringement proceedings, considering that this legislation is in breach of European Union law, and on 7 December 2017 it referred the case to the European Court of Justice. Twenty-three NGOs (including Amnesty International)⁴¹ have filed an application with the Hungarian Constitutional Court and over 200 refuse to comply with the law. In December 2018, 14 NGOs lodged an application to the European Court of Human Rights, invoking the right to respect for private and family life, freedom of expression, freedom of association and the prohibition of discrimination.

23. Ahead of the general election of 8 April 2018, on 13 February 2018, the government submitted a package of three draft laws called the “Stop Soros Package” (T/19774, T/19775 and T/19776), which they justified by claiming that mass migration poses a severe security risk to Hungary. The package is aimed at restricting the work of NGOs working on asylum and migration issues. If adopted, it would require NGOs that receive funding from abroad and allegedly “propagate mass migration” or “support illegal migration” to, *inter alia*, register at court acknowledging such “illegal” activity and make this information public (on their website and on every publication). Their activity would need to be approved by the Minister of Immigration and Refugee Affairs, who could deny permission in case of “national security risk”. Any foreign revenue given to such organisations would be subjected to a 25% tax and would need to be transferred to a separate bank account, which would be monitored by the Prosecutor’s Office and the Central Bank. Non-compliance with the rules may lead to the imposition of a fine of 200% of the foreign revenue or dissolution of the organisation. NGOs would be also required to disclose to the authorities the personal data of any person to whom they make payments (staff, contractors or partners). Moreover, the new legislation would empower the authorities to bar foreigners working on migration and refugee issues from the country and to ban Hungarian activists from approaching border areas. This legislative package raises several concerns as to its compatibility with international human rights standards, in particular with the right to freedom of expression and association, the right to freedom of movement and the prohibition of discrimination. Criticism in this respect has been voiced by the United Nations Human Rights Committee, the UN High Commissioner for Refugees, the Council of Europe Commissioner for Human Rights, the President of the INGO Conference and a large number of international NGOs.⁴² At its meeting in Paris on 14 March 2018, this committee agreed to seize the Venice Commission for an opinion on the compatibility of the government’s “Stop Soros Package” with international human rights standards. The Venice Commission plans to adopt its opinion during its June 2018 plenary session.

2.5. Other Council of Europe member States

24. Over the last two years, the situation of civil society in some other member States has given cause for concern, especially with regard to certain recent changes in the law, its interpretation, or attempts to make legislative changes aimed at introducing more State control over the funding of NGOs. In November 2017, Amnesty International in **Ireland** was ordered to pay back a grant of €137 000 received from the Open Society Foundations a year earlier. The Irish Government’s regulatory body – the Standards in Public Office Commission (SIPOC) – reversed its previous position and considered that the organisation had broken the 1997 Electoral Law by accepting a grant from an international donor for “political purposes”, i.e. a campaign for reforming abortion laws. In June 2017, in the **Republic of Moldova**, the Minister of Justice drew up amendments to the draft law on non-commercial organisations with the aim of imposing several new obligations on NGOs that obtain funding from abroad and are engaged in “political activities”. Since most

40. See Venice Commission, Opinion No. 889/2010 on the Draft Law on the Transparency of Organisations receiving support from abroad, [CDL-AD\(2017\)015](#), 20 June 2017; Commissioner for Human Rights’ letter of 3 May 2017 to the Hungarian National Assembly; INGO Conference, [study](#) published by its Expert Council on 24 April 2017; and Assembly’s [Resolution 2162 \(2017\)](#) “Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the Central European University”, and the report on this subject by the Committee on Political Affairs and Democracy (rapporteur: Mr Mogens Jensen, Denmark, SOC), [Doc. 14298](#) of 25 April 2017.

41. [Amnesty International, Hungary Amnesty International will not comply with repressive new NGO law](#), 28 June 2017.

42. United Nations, Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, CCPR/C/HUN/CO/6, 5 April 2018, paragraphs 55-56; [Hungary: UNHCR dismayed over further border restrictions and draft law targeting NGOs working with asylum-seekers and refugees](#), press release of 16 February 2018; [Commissioner concerned about proposed additional restrictions to the work of NGOs in Hungary](#), statement of 15 February 2018; [Hungary: Conference of INGOs concerned about “Stop Soros package”](#), statement of 14 February 2018, and [“We stand in solidarity with civil society in Hungary”](#), joint letter of 19 February 2018 signed by over 250 NGOs.

Moldovan NGOs receive grants from abroad, this proposal was fiercely criticised by the NGOs. It seems that this proposal was abandoned in September 2017. In **Poland**, on 15 September 2017 the parliament passed a law creating an official body – the National Freedom Institute (NFI) – Centre for the Development of Civil Society – one of whose tasks will consist in distributing public funds to NGOs. This body will report to the Prime Minister's office and be overseen by another new body, the Committee on Activities of Public Benefit, made up of senior officials from several ministries. According to the OSCE/ODIHR, the law should have provided more safeguards against potential government interference in the NFI's work and could lead to centralisation of the distribution of public funds to civil society organisations. Moreover, the government initially wanted the NFI to distribute funds originating from the EEA, but the Norwegian Government was opposed to this and a compromise solution seems to have been found in October 2017.⁴³

25. In **Romania**, a draft law to amend Ordinance No. 26/2000 on associations and foundations (L140/2017 of 21 March 2017) was initiated by two members of parliament in March 2017. On 21 November 2017, it was tacitly adopted by the Senate and is now pending before the Chamber of Deputies. Although it focuses mainly on public utility associations, foundations and federations, it also introduces additional financial reporting obligations on all such entities. Under the draft law, any association, foundation or federation would be obliged to declare its income and expenditure biannually, on pain of suspension of the activities for a period of 30 days and in case of continuous non-compliance, immediate dissolution proceedings. This raised criticism by the Government of Romania, which issued a negative opinion on the draft law, and of 70 Romanian NGOs, which addressed an open letter to the leadership of the Social Democratic Party (the governing party) in November 2017. On 11 December 2017, the Expert Council of the Conference of INGOs of the Council of Europe issued a critical opinion on Draft Law 140/2017.⁴⁴ Moreover, following the committee's request in December 2017, the Venice Commission, jointly with the OSCE/ODIHR, issued an opinion at its March 2018 plenary session. It concluded that the proposed financial reporting obligations and the sanctions for their non-respect were clearly unnecessary and disproportionate in light of Article 11 of the European Convention on Human Rights and should be repealed. They also posed dangers for the privacy rights of the donors. The opinion criticised the exhaustive and rigid list of activities that rendered associations/foundations eligible for public utility status and which excluded democracy, human rights, the rule of law and the fight against corruption. It also concluded that the ban on engaging in political activities for associations/foundations with public utility was too broad and that the draft law should be submitted to broad public consultations.⁴⁵

26. In **Ukraine**, the adoption, on 23 March 2017, of Law No. 1975-VIII amending the Law on Prevention of Corruption led to an outcry as it obliges activists working in this field to submit electronic declarations of their assets in the same way as government officials or civil servants, even if they receive no public funding. These provisions have been criticised in particular by the Commissioner for Human Rights.⁴⁶ They entered into force on 1 April 2018. Moreover, in July 2017, the presidential administration submitted to the parliament two draft laws (Nos. 6674 and 6675) amending certain laws and the Tax Code with the aim of ensuring the transparency of the funding of civil society organisations. These draft laws impose onerous asset-reporting obligations on all "public associations" (whose number amounts to over 77 000) and some of their employees. According to the authorities, this would be necessary in order to enhance the publicity of information on the financing of "public associations". In March 2018, the Venice Commission and the OSCE/ODIHR adopted an opinion, in which they found that the new financial disclosure regime would conflict with human rights and fundamental freedoms, in particular with the freedom of association, the right to respect for private life and the prohibition of discrimination.⁴⁷ They noted, *inter alia*, that associations would be required to submit more reports than businesses, charitable organisations, foundations or professional organisations. The new reporting obligations would concern specifically international and not domestic donors and would not respect their desire to remain anonymous. Sanctions foreseen for non-respect of the new obligations – namely the loss of non-profit institution status, coupled with tax penalties and fines – were too severe. Thus, the Venice Commission and the OSCE/ODIHR called on the Ukrainian authorities to reconsider them in their entirety or,

43. Amnesty International, [Ireland: Human rights organisations under threat from draconian law as Amnesty could face criminal charges](#), press release of 8 December 2017; Moldova: Last-minute changes to draft NGO law risk stifling civil society", article of 11 August 2017; OSCE/ODIHR Opinion on the Draft Act of Poland on the National Freedom Institute – Centre for the Development of Civil Society, NGO-POL/303/2017[AIC], 22 August 2017, paragraphs 12, 22 and 25; <https://euobserver.com/nordic/137726> and <https://euobserver.com/nordic/139490>.

44. INGO Conference, Expert Council on NGO Law, CONF/EXP(2017)3, 11 December 2017.

45. Opinion No. 914/2017, CDL-AD(2018)004, adopted by the Venice Commission at its 114th plenary session (Venice, 16-17 March 2018).

46. [Commissioner calls on Ukrainian authorities to revise the anti-corruption legislation that might negatively affect NGOs and journalists](#), letter to the Ukrainian authorities of 2 May 2017.

47. CDL-AD(2018)006, joint opinion (No. 912/2018) adopted at the 114th plenary session of the Venice Commission (Venice, 16-17 March 2018), see in particular Section III, paragraphs 43-49.

at least, to narrow them substantially to ensure their legitimacy and proportionality and to “conduct inclusive and effective consultations” with civil society and the general public. The Venice Commission and the OSCE/ODIHR also called on the authorities to cancel the e-declaration requirements for anti-corruption activists as a matter of urgency. The authorities announced that they would cancel these provisions.

27. Furthermore, the offices of some Ukrainian NGOs were searched in October 2017 on the ground that these organisations were involved in the activities of “Kremlin agents”. On 11 October 2017 in particular, the offices of the charity Patients of Ukraine were searched and their documents seized, even though no audit had ever brought to light any misappropriation of funds in that organisation. Its managers were suspected of financing the self-proclaimed “popular republics” Donetsk and Luhansk.

28. Other problematic cases were reported by the Expert Council on NGO Law of the INGO Conference in Greece (due to the delays in registration of associations of groups claiming minority group status), the Republic of Moldova (delays or non-registration of certain associations, including religious ones) and the United Kingdom (due to a variety of measures resulting in the closing of space for civil society, namely anti-terrorist measures affecting the work of certain charities). According to the then Commissioner for Human Rights, certain NGOs were the target of negative official rhetoric in Bulgaria, Hungary, Poland, Romania, Serbia, the Slovak Republic and “the former Yugoslav Republic of Macedonia”.⁴⁸ More examples concerning European Union member States can be found in the above-mentioned report of FRA.

3. Council of Europe follow-up to Assembly Recommendation 2086 (2016)

29. In its [reply of 23 November 2016 to Assembly Recommendation 2086 \(2016\)](#), the Committee of Ministers reacted positively to most of the Assembly’s proposals concerning the reaction to new threats to the functioning of independent civil societies. However, it regretted that although a study on the implementation of Recommendation CM/Rec(2007)14 had been embarked upon in 2010 by the European Committee on Legal Co-operation (CDCJ), only a few member States took part in it. Nevertheless, the CDCJ intended to undertake a new review of the Committee of Ministers recommendation’s implementation. In addition, in 2014 and 2015, the Committee of Ministers held thematic debates on freedom of assembly and association. Following the 2014 debate, the Rapporteur Group on Democracy (GR-DEM) examined the Assembly’s proposal to strengthen interaction with NGOs and concluded that this could be achieved in compliance with the rules in force, in particular by enhancing its co-operation with the INGO Conference. On 6 July 2016, the Committee of Ministers adopted Resolution [CM/Res\(2016\)3](#) on the participatory status of international non-governmental organisations with the Council of Europe, defining more clearly the criteria for obtaining such status and ways of strengthening co-operation with the Organisation. The INGO Conference has recently proposed a project aimed at providing a better-researched, systematic, transparent and upstream response to situations of potential concern. If implemented, it will introduce a special mechanism for NGOs to communicate rapidly information to the INGO Conference, including on State practice and legislation, and concerns regarding the freedom of association. The Expert Council will then assess the information and will make its evaluation public.

30. The Committee of Ministers is also examining the proposal presented in the report by the Secretary General on “[The state of democracy, human rights and the rule of law: a security imperative for Europe](#)” of 2016 to prepare a study on the standards applied to foreign funding of NGOs in the member States and, on the basis of the findings of this study, to consider the need for new Committee of Ministers guidelines.⁴⁹ Moreover, the Council of Europe’s Steering Committee for Human Rights (CDDH) has drawn up a report entitled “Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, Human Rights defenders and national institutions for the promotion and protection of Human Rights”.⁵⁰

48. Expert Council on NGO Law, Non-governmental organisations: Review of Developments in Standards, Mechanisms and Case Law 2015-2017 (prepared by Mr Jeremy McBride), CONF/EXP(2017)4, December 2017. Concerning the United Kingdom, see the report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/35/28/Add.1, 8 June 2017, and *supra* note 13.

49. Secretary General’s report, p. 68.

50. Ibid. See also CDDH-INST(2017)R87.

4. Conclusion

31. The space for civil society in the Council of Europe geographical area has been shrinking over the past two years. It has not only been the case in the four Council of Europe member States analysed in my previous report (Azerbaijan, Hungary, the Russian Federation and Turkey), but also in other States. In Azerbaijan and Russia, new legislative and regulatory provisions adopted between 2009 and 2016 have become applicable, despite the criticism of the Venice Commission and other international expert bodies, and their application has led to the cessation of operation of numerous NGOs. In Hungary, the Law on the transparency of organisations receiving support from abroad adopted in June 2017 has also entered into force, despite the fact that it was criticised by the Venice Commission and despite the legal actions brought against it at the domestic and European level. Moreover, the “Stop-Soros package”, which is to be soon examined by the Venice Commission, has raised additional concerns. In Turkey, nearly 1 600 associations and foundations have been closed on the basis of state of emergency decrees or administrative measures taken on the basis of the latter. It has not yet been shown that they have an effective legal remedy against such decisions. The number of closed NGOs, the procedure used to close them and the overall atmosphere prevailing after the failed coup are worrying. The Turkish authorities invoke the national security argument, and namely the fight against terrorism, but in my view such arguments are often used against any critic of the government. I find the excessive use of such arguments counterproductive not only for the good functioning of a democratic society but also for the fight against terrorism. Moreover, some other member States – like Romania and Ukraine – have been trying to take legislative measures imposing burdensome financial reporting obligations on associations. In Poland, the creation of the NFI distributing public funds to NGOs has been criticised for centralising and politicising the process. In many countries, NGOs face difficulties in obtaining registration and funds for their activities. Their leaders are subjected to judicial or administration harassment or are victims of serious human rights violations, such as ill-treatment or arbitrary arrests; the latter issue is examined in detail in the report on “Protecting human rights defenders in Council of Europe member States”.⁵¹

32. Against this background, I would like to recall the recommendations of the United Nations High Commissioner for Human Rights, who stressed in 2016 that there were five essential elements to “create and maintain a safe and enabling environment for civil society: a robust legal framework that is compliant with international standards as well as a strong national human rights protection system that safeguards public freedoms and ensures effective access to justice; a political environment conducive to civil society work; access to information; avenues for participation by civil society in decision-making processes; and a long-term support and resources for civil society”.⁵² These recommendations were backed by the United Nations Human Rights Council in its Resolution on “Civil society space” of 1 July 2016.⁵³ I am fully convinced that the Assembly should support them as well and call on Council of Europe member States to adopt the necessary measures for their implementation.

33. As regards the legal framework affecting NGO work, the examples mentioned in this report show that there is a growing tendency to propose and even adopt laws which are not compliant with international human rights standards. Some of these laws are discriminatory, as they are aimed at restricting foreign funding of NGOs, which might have a very detrimental effect on their overall activities. As regards access to information and to decision-making processes, there have been cases in which NGOs have not been consulted on the proposed legislation affecting their status. Finally, as regards a political environment conducive to civil society, smear campaigns in the media and the use of terminology delegitimising civil society actors (such as “foreign agents” or “undesirable organisations” in Russia, “terrorists” or “gülenists” in Turkey or the “anti-Soros” speeches and posters in Hungary) increase negative public opinion of civil society and discourage the latter from exercising its fundamental freedoms. The availability of funding is an important issue in this context. Let us be honest: without access to funding, no serious NGO work is possible. The examples listed above show that laws curtailing civil society activities and funding have been proposed and/or enacted in several member States of the Council of Europe. This demonstrates a worrying trend that should be closely monitored by the competent bodies of the Organisation and raises the question of whether and to what extent NGOs should (also) be financed by public funds in order to remain “independent”, i.e. to be able to fully enjoy their rights and freedoms stemming from Articles 10 and 11 of the European Convention on Human Rights. In any case, private donors should not be intimidated or otherwise discouraged.

51. [Doc. 14567](#) (rapporteur: Mr Egidijus Vareikis, Lithuania, EPP/CD).

52. Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned, Report by the UN High Commissioner for Human Rights, A/HRC/32/20, 11 April 2016, paragraph 83.

53. *Ibid.* See also A/HRC/RES/32/31, 1 July 2016.

34. To conclude, the situation of NGOs in Council of Europe member States requires further attention from the Assembly. I make proposals to this end in the draft resolution and draft recommendation.