

# RESISTING ILL DEMOCRACIES IN EUROPE

Understanding the playbook of illiberal governments to better resist them:  
A case-study of Croatia, Hungary, Poland and Serbia.

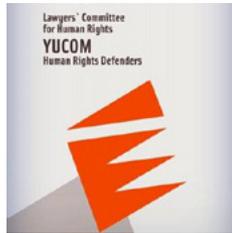




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Hungarian Helsinki Committee



Report published by Centre for Peace Studies (Croatia), Helsinki Foundation for Human Rights (Poland), Hungarian Civil Liberties Union, Hungarian Helsinki Committee, Yucom – Lawyers’ Committee for Human Rights (Serbia), Human Rights House Zagreb, and Human Rights House Foundation.

All endorsing NGOs include all member NGOs of HRH Belgrade (Belgrade Centre for Human Rights, Civic Initiatives, Helsinki Committee for Human Rights in Serbia, Yucom – Lawyers’ Committee for Human Rights, Policy Centre); as well as the following member NGOs of HRH Zagreb: B.a.B.e. Be active. Be emancipated., Center for Peace Studies; Croatian Platform for International Citizen Solidarity - CROSOL, and Documenta – Center for Dealing with the Past.

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Centre for Peace Studies is a member NGO of the Human Rights House Zagreb. The Centre grew out of various forms of direct peace-building in western Slavonia and was established in 1996. It has large experience in studying public policies and their impact on xenophobia, racism and ethnic exclusion, and human security, with a focus on empowering individuals and groups towards local community (and wider) peace-building through encouraging dialogue and promoting non-violence with a basic principle of social change through education.

## Helsinki Foundation for Human Rights

[www.hfhr.pl/en](http://www.hfhr.pl/en)

Founded in 1989, the Foundation promotes the development of a culture based on the respect of freedom and human rights in Poland and abroad. It runs education and law programmes, as well as the Human Rights in Film International Film Festival, Watch Docs. As part of its law programme, the Foundation runs a monitoring of the legislative process in the scope of justice system in Poland and an intensive legal intervention and strategic litigation.

## Hungarian Civil Liberties Union

[www.tasz.hu/en](http://www.tasz.hu/en)

The Union monitors legislation, pursues strategic litigation, conducts public education and launches awareness raising media campaigns. Active in protecting the rights of citizens against undue interference by those in position of public power, the Union focuses its work on issues related to patients' rights, right to self-determination, right to informational privacy, freedom of expression, political representation, as well as drug and HIV/AIDS policies.

## Hungarian Helsinki Committee

[www.helsinki.hu/en](http://www.helsinki.hu/en)

Founded in 1989, the Committee is a watchdog organisation that protects human dignity and the rule of law through legal and public advocacy methods. It focuses its work on the protection of the rule of law, of rights of refugees, monitoring law enforcement activities, and the protection of the rights of detainees.

# **Yucom – Lawyers’ Committee for Human Rights**

[en.yucom.org.rs](http://en.yucom.org.rs)

Yucom is a member NGO of the Human Rights House Belgrade. Founded in 1997 as an expert, voluntary, non-governmental organisation whose members are legal experts, the Committee engages in promoting and advocating rule of law and upholding human rights, raising public awareness, conceiving, designing and leading civic initiatives, rendering legal assistance to victims of human rights violation.

## **Human Rights House Zagreb**

[www.kucaljudskihprava.hr/en](http://www.kucaljudskihprava.hr/en)

Human Rights House Zagreb coordinated the present report. The House was established in 2008 by six NGOs, with the joint aim of protection and promotion of human rights and fundamental freedoms. The Human Rights House is involved in the protection, promotion, development and advancement of human rights and fundamental freedoms through research, monitoring, public advocacy and education in accordance with the international and regional instruments for the protection of human rights. Since 2012, the Human Rights House acts as a Knowledge Center for social development in the field of protection and promotion of human rights.

## **Human Rights House Foundation (HRHF)**

[www.humanrightshouse.org](http://www.humanrightshouse.org)

HRHF participated in coordinating and drafting this report and funded it, thanks to its donors. HRHF protects, empowers and supports human rights defenders and their organisations. To accomplish this, HRHF brings organisations together in Human Rights Houses, and unites the Houses in an international network. HRHF advocates with partner organisations to promote the freedoms of assembly, association, and expression, and the right to be a human rights defender – to ensure that individuals and organisations can work freely and openly to protect and advance human rights at home and abroad.

Today, independent human rights organisations work together in 15 Human Rights Houses in 12 countries. The Houses are located in Eastern & Western Europe, the Caucasus and the Balkans. HRHF is based in Oslo, with an office in Geneva and representation in Brussels and Tbilisi.

# Contents

<b>Countering illiberal usurpations of democracy</b>	6
<b>Traditional values and illiberal trends</b>	8
<b>A case study of illiberal governments</b>	12
<b>Human rights and the rule of law</b>	14
<b>Practices and strategies to inspire civil society</b>	40
<b>Laying foundations for civil society to resist</b>	53

# Countering illiberal usurpations of democracy

Foreword by Miklós Haraszti

In recent years, an epidemic of anti-civil society laws has been hitting many new democracies on several continents. These laws are made to tighten the conditions for government-independent citizen activities. The latest legislative fashion is unrolling internationally, based on models designed in the Kremlin. It punishes global networking of civil endeavours or international sponsoring for non-profit activism, by labelling its actors as “foreign agents.”

The spreading of these restrictive regulations

is a clear sign of the degradation of the freshly attained liberal constitutionalism toward illiberal or outright authoritarian governance. It is more than just a side-effect: the crusade against “unofficial” civil associations is basic household cleaning for illiberal regimes. They have set out to transform democracy from a cooperative and pluralistic enterprise into a disguise for a game where the winner sets the rules.

The illiberals have a reason. Civil activism is the nearest thing to the raw energy that fills and regenerates freedom in any society. Citizen activities are both the beginning and the finest fruits of a democracy. When we see them purposefully hindered, cynically vilified, and even criminalised, this is in fact done to stop them from reaching out to society or from monitoring the government.

as: the elimination of transparency in the use of public money; the subordination of all branches of power to the executive; the systematic thwarting of autonomies; the streamlining of the judiciary; and the curtailing of the rights to free assembly, association, and media pluralism.

I suggest we take the rage of the illiberals against independent civil society at surface value. When the illiberal rulers stamp NGOs as foreign agents, they do not simply seek to diminish criticism



Change could only come from the remaining unchecked, globally rooted social forces, the mercurial civil society.

We should remember that both these public roles are inherent to their independence.

Because populist power grabs are “democratically” justified (“we have elections, don’t we”), it is not immediately clear for the public just how central the assaults on civil society are for the illiberal outcome. The watchdogs need to be silenced so the illiberal actions can go on, such

using a nationalist ideology. The illiberals want the citizens to see the government not just as temporary and partial representatives of the nation – they want the government to be identified with the nation, and squeeze out independent activism as alien and even hostile to the nation.

So let’s react accordingly. Civil power, unhindered NGOs – just as a pluralistic media – are the ultimate frontiers in defending freedom in

society. Unfortunately, under illiberal regimes, the traditional political process is not anymore able to correct the systematic distortion of competition rules, or put checks and balances back to work. This is because the populist illiberals and autocrats have utilised those guarantees to first get to the top and then to eliminate the built-in barriers to absolute power.

Where can help come from, when the economy has been turned into a nepotistic fiefdom, political parties into parliamentary padding, and the media into mere decorations of preordained elections? Change could only come from the remaining unchecked, globally rooted social forces, the mercurial civil society, and its increasingly Internet-based communications strategies.

Importantly, the freedom of civil society and free media are growingly the same cause as connectivity becomes a fact of life. Can you tell apart what the illiberal rulers are angrier about: the fact-finding activities of the watchdog NGOs, or their communications-based ability to actually convey their findings to all citizens, despite that the rulers have occupied all traditional media? Russia's Alexei Navalny or Hungary's Márton Gulyás have practically reinvented public-service media as part of their civic activity, illuminating the way to a reinvented, post-illiberal democracy.

One main weapon of the illiberals is the slogan of "internal affairs," the notion of sovereignty utilised to push the management of global

developments back into a territorial matter. Think of the laws aimed to domesticate the global Internet or sometimes simply to stall the growing bandwidth.

The illiberal regimes wage a two-level battle against any form of international togetherness of worldwide civic aspirations. One is, paradoxically, through the established intergovernmental organisations and legal instances. In such fora, they perfectly team up with all other governments that want to send internationalism back to hell. But the words they internally use for mobilisation belie their elevated arguments. Domestically, the illiberal rulers are just plain nationalist populists. Their science consists of enhancing and weaponising the explosive force of age-old basic instincts: ethnic or religious exclusivism and xenophobia.

Therefore, all international friends of civic freedom have to remember what is at stake here: the fate of universal human rights and ultimately, the guarantees of peace. Immanuel Kant, the reclusive philosopher from Königsberg (today Kaliningrad), is right on target, more now than ever. His triple formula of "eternal peace" suggested that, for global peace to materialise, it is not sufficient to have democracies in all countries. Not even an international alliance of democracies will be enough to secure that goal. The final guarantee of peace must be, he said, the international enforceability of individual human rights.

See the new Berlin Wall erected: the "foreign agent" type anti-NGO regulations. This time, the divides are built of legal provisions, not concrete and steel. But their function is the same: to eliminate the indivisibility of human rights, proclaimed by the international community after WW2 – and in fact, the main lesson of WW2.

I hope this report will help us deeper cultivate the rationale for civil society: freedom in peace, at home and worldwide. And that it will make us more mindful in countering the illiberal usurpations of democracy, at home and worldwide.



*Miklós Haraszti*

Miklós Haraszti,

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Photo: Central European University

# Traditional values and illiberal trends

## Policies that make democracy ill

We want to live in a world where individuals and organisations can freely and openly work to protect and advance human rights at home and abroad.

During the “decade of hope” in the 1990s, space opened for civil society and human rights defenders. Many States supported this, establishing human rights sections within their foreign ministries and steering their foreign policies toward promoting human rights and supporting civil society.

Over the last several years, systematic violations of freedom of assembly and of association started to rise in several of the countries where Human Rights Houses exist, leading to what became a “global crackdown” on human rights NGOs.<sup>1</sup>

In more and more countries, the work of human rights defenders has been disturbed by the increased need to protect themselves from

retaliation such as verbal or physical attacks, surveillance, threats, and smear campaigns. The measures against human rights defenders aiming at limiting their space in society come along with measures promoting so-called “traditional values”<sup>2</sup> and “illiberal democracies.”

States advocating “traditional values” and illiberal democratic values in reality aim at raising their own cultural norms and particularities above international law and standards, hence undermining universal human rights as a principle. Such policies are not illiberal, but make democracy ill.

An ill democracy – similarly to a country run by the principles of “traditional values” – is a country in which the State or non-State actors can suppress dissenting views to protect their own interests. Limitations put on the right to exercise core freedoms aim at suppressing those who raise critics

against authorities due to human rights policies that reduce the enjoyment of rights by certain categories of the population. They also aim at silencing those who request changes in public policies which are contrary to human rights obligations, and at delegitimising those who make human rights violations visible abroad or in international systems, including the European Court of Human Rights.

These States accuse human rights defenders of working against the national interest. Illiberal governments aim at isolating human rights defenders from the rest of society. This stigmatisation within society also makes it harder for organisations to recruit new skilled people or to involve experts to work with human rights organisations.

Such States also encourage and support less critical NGOs, including by using State funds. This weakens the essential work of independent NGOs, while

<sup>1</sup> Expression first used in “[Human rights groups face global crackdown 'not seen in a generation'](#),” *The Guardian*, 26 August 2015.

<sup>2</sup> The Russian Federation introduced the concept of “traditional values” at the United Nations Human Rights Council in 2009, and certain States in Europe began to argue that their democracy does not follow the “western” model of democracy.

legitimising the work of NGOs organised by the government and supportive of the government's policies (GONGOs). Political leaders such as members of government and parliamentarians establish their own organisations, which they run sometimes parallel to having their political leadership roles in society. Over time, GONGOs are favoured. They are also sent to international fora to spread their views.

Human rights NGOs in Croatia, Hungary, Poland and Serbia have been enjoying space to promote all human rights for all in the past years, living in countries that were building up their human rights protection systems, rule of law frameworks, and checks and balances. This has however rapidly changed recently, as we document in this report. The systems built up in Hungary and Poland made us believe for many years that we were able to amplify the number of countries in which we could freely and openly promote human rights.

Instead, countries that were European models of democratic transition came to be at the centre of Europe's concerns:

- All independent human rights bodies and mechanisms of the United Nations and the Council of Europe, when they were mandated to review Poland and Hungary, raised their concerns. We refer to many of these

findings in the present report.

- In February 2016, the European Commission started a dialogue with Poland under the Rule of Law Framework, resulting in an Opinion. The Commission then adopted two recommendations in connection with the Constitutional Court, in which it found that there was a "systemic threat to the rule of law in Poland."
- The European Parliament has adopted several resolutions on the situations in Hungary and Poland.

Both the Polish and Hungarian authorities systematically ignored and dismissed the findings of all external opinions as politically motivated, biased, and attempts to interfere in internal affairs. This includes rejection of the findings of Europe's most valuable independent expert body when it comes to "law making," the Council of Europe's European Commission for Democracy through Law known as the Venice Commission.<sup>3</sup>

Governments in power in those countries, like all illiberal governments, won majorities during elections.

Their electoral victories were often based on hateful campaigns against marginalised groups and minorities, and on promises of improved welfare, social benefits, pensions and standard of living. They claim that since they are in

power, "people are living better." They further claim that their electoral majority gives their policies legitimacy and that those policies are what the people were asking for.

Too often, to impose their policies, illiberal authorities abuse their parliamentary majority and disregard legislative processes, such as consultation.

This report is a unique collection of research, know-how and practices by human rights NGOs that have worked together for many years and inspired each other. We aim at being able to weaken the strength of illiberal trends in Europe and strengthen those standing up for fundamental freedoms and the rule of law in ill democracies – the report will hence be a tool for our continued engagement.

<sup>3</sup> "Poland's Kaczynski calls EU democracy inquiry 'an absolute comedy,'" Reuters, 22 December 2016.  
 "Despite Venice Commission review, Hungary passes foreign-funded NGO law," International Justice Resource Center, 13 June 2017.

# “Illiberal democracy” and “ill democracy”

Whilst the participating NGOs have struggled to define the kind of political regimes they were facing in Croatia, Hungary, Poland and Serbia, they decided that they could not simply refer to them as “illiberal democracies.”

The concept of “illiberal democracy” is not new. It emerged in the 1990s in reference to democratically elected governments that were “routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms,” as Fareed Zakaria put it at the time in what has become a reference piece on “illiberal democracies.”<sup>4</sup>

What is new is that governments in countries that were examples of successful democratic transition have now followed the illiberal governments Fareed Zakaria described – those in Peru, the Palestinian Authority, Sierra Leone, Pakistan and the Philippines, as well as Slovakia at the time already.

At the Bálványos Summer Free University and Student Camp in July 2014, Hungarian Prime Minister Viktor Orbán said “the new State that we are constructing in Hungary is an illiberal State, a non-liberal State.”<sup>5</sup> In Hungary and Poland in particular, the authorities have successfully framed “illiberal democracies” as a “conservative democracy,” as if the liberal democratic values would mean leftist policies. They suggest such leftist policies are

imposed by foreign agents, be it the European Commission or foreign NGOs and foreign donors.

The participating NGOs have decided to refer to “ill democracies” and “illiberal governments” or “illiberal authorities.” What illiberal governments do to the States is transform what were successful democratic countries into democracies that are sick. Those governments indeed threaten the very structural elements of functioning democracies, as we show in this report, such as the rule of law, separation of powers, and respect for minorities and fundamental freedoms. They pose as democracies simply by referring to elections. Elections alone do not make up a democracy though.

As expressed by Mehman Aliyev, Editor-in-chief of the Turan Information Agency, another option would be to not call such countries democratic anymore: “If you breach one criterion, you should be labelled authoritarian, not a liberal or illiberal democracy. A State should be stopped once it crosses this line.”<sup>6</sup> However, illiberal governments in such countries do not compare to the governments of Azerbaijan, Belarus or the Russian Federation, yet. We believe “ill democracy” is the best term in such an instance.

<sup>4</sup> Fareed Zakaria, “[The Rise of Illiberal Democracy](#),” *Foreign Affairs*, November–December 1997.

<sup>5</sup> Prime Minister [Viktor Orbán’s Speech](#) at the 25<sup>th</sup> Bálványos Summer Free University and Student Camp, 26 July 2014.

<sup>6</sup> Mehman Aliyev, Editor-in-chief of the Turan Information Agency, at the Assembly of Human Rights Houses in 2016. See: HRHF, “[How can we resist illiberal democracy and populism?](#)” 24 November 2016.





Popular mobilisation in April 2017 against an amendment to the higher education law in Hungary targeting the Central European University. Despite resistance, appeals, and condemnation, this amendment was adopted into law in June 2017. Photo: I stand with CEU.

# A case study of illiberal governments

Based on longstanding knowledge of human rights in the countries

## Aim of the case study

This case study focuses on Croatia, Hungary, Poland and Serbia and originates from a fact-finding mission of the Human Rights House Foundation to Croatia and Serbia from 4 to 7 July 2016.<sup>7</sup>

It was then discussed at the 2016 Assembly of the Human Rights Houses, hosted by the Human Rights House Belgrade, on 24 November 2016. Following the Assembly in Belgrade, a group of involved NGOs was put together to master the preparation of the case study, and ensure dissemination of the findings and advocacy.

The case study has been prepared in the hope that it will provide clarity on the path followed by illiberal governments in the countries examined. Except for Croatia, where the fragile Patriotic Coalition following the November 2015 elections fell apart six months later, the elected governments in these countries have been steadily building and consolidating illiberal systems

which threaten the very essence of democracy – countries which not long ago, were considered models of democratic transition.

As such systems are gaining traction, the case study intends first of all to describe the “illiberal democracy playbook” from a human-rights-based perspective. Across the four countries, we identify policies and practices which erode the rule of law, curtail human rights and fundamental freedoms, and disregard minorities.

Inspired by the success of Croatian civil society and independent media in 2016, and based on the experience of the participating NGOs, the case study brings together best practices for human rights NGOs to resist illiberal governments and be stronger in their work in ill democracies.

We do not have the ambition of being exhaustive – rather, we hope that the list of best practices can inspire others, and trigger further discussion and thinking on how NGOs can have an impact in countering ill democracies.

We hope the case study will have two outcomes:

1. Serve as a tool for civil society to show the intentions of illiberal governments and inspire
2. Be an advocacy tool for domestic audiences and in international fora, especially at the Council of Europe and the European Union.

## Methodology

The preparation of the case study was coordinated by the Human Rights House Zagreb, with the participation of the following NGOs: Centre for Peace Studies, Helsinki Foundation for Human Rights, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, Yucom – Lawyers’ Committee for Human Rights, and Human Rights House Foundation (HRHF).

All of the contributing NGOs are highly respected organisations in their countries and have sound expertise and longstanding experience in protecting and promoting human rights locally and regionally. Some have been highly successful in

<sup>7</sup> HRHF, “[How can we resist illiberal democracy and populism?](#)” 24 November 2016.



Discussion on illiberal democracies, autocracies, and populism at the Assembly of Human Rights Houses, held at Human Rights House Belgrade in November 2016. From left: Emin Milli (Azerbaijan), Danuta Przywara (Poland), Milan Antonijević (Serbia), Eszter Polgári (Hungary), Ivan Novosel (Croatia). Photo: Human Rights House Belgrade.

resisting illiberal governments, such as in Croatia, and others have long experience in working in an illiberal democracy, such as in Hungary. It is their work, relationships, and the ready exchange of information that forms the bedrock of the information contained in this report.

During the preparation of the case study, two seminars were organised at which the participating NGOs compiled information, shared sources, and discussed best practices:

- 3-5 May 2017: Seminar in Warsaw (Poland), hosted by the Helsinki Foundation for Human Rights.
- 7-9 June 2017: Seminar in Geneva (Switzerland), in conjunction with the 35th session of the Human Rights Council, hosted by the Human Rights House Foundation.

The case study is based on first-hand information and research provided by participating NGOs from the four countries, and offers diverse national perspectives and different realities. Information and examples from Croatia are mainly from 2016, that is, the period of the government led by the Croatian Democratic Union.

The case study contains fewer specific examples about the situation in Serbia, typically due to the very different nature of the political realities in the country. Findings show that despite highlighted similarities, the case of Serbia reveals a different form of illiberal government, trying to satisfy its European partners rather than antagonise them like Hungary and Poland. Information from the ongoing project “Guidelines for creating report on illiberal democracy trends in Slovenia,

Croatia, Latvia and Hungary,” shared by the Centre for Peace Studies, have been extremely helpful for this project. Secondary sources consulted for the report include ECtHR case-law, documents and reports produced by NGOs and intergovernmental organisations, such as OSCE, ODIHR, the Council of Europe and the UN, as well as academic research and information from media.

All information is sourced and the report has been drafted with the highest professional standards. Citations for all sources are provided. The cut-off date for information taken into account is 30 July 2017.

The case study is published in English and translated into Croatian, Hungarian, Polish, Serbian, and Russian.

# Human rights and the rule of law

The ill democracy playbook of manipulations and attacks against fundamental rights

Parliamentary elections in Hungary in 2010 and in Poland in 2015 brought landslide victories to Fidesz and the Law and Justice Party (PiS) respectively. These parties used their majorities in parliamentary elections to strengthen the executive and subordinate the legislative – bypassing the democratic processes of consultation, negotiation and consensus building – and to dismantle guarantees to the separation and limitation of power. While Fidesz – together with its coalition partner the Christian Democrats (KDNP) – obtained a two-third majority which allowed the new government to modify the constitution, the PiS majority in Poland did not. Instead, it set out to eviscerate the institutions that ensure constitutional safeguards and checks and balances, in particular the Constitutional Court.

In Croatia, elections in November 2015 yielded a hung parliament which left little space for action for the Croatian Democratic Union (HDZ). After a campaign strongly focused on the refugee crisis, HDZ won with a narrow majority of 59 seats in the 151-seat parliament,

over the ruling Social Democrats. In December, it formed a fragile coalition with the third placed MOST party, which ended with a non-confidence vote six months later.

In Serbia, successive elections have seen the steady rise to power of Aleksandar Vučić – communications minister under Slobodan Milošević and a former member of the Radical Party, which campaigned for a Greater Serbia. As the head of the Serbian Progressive Party (SNS), he served first as deputy prime minister in the Dačić Government in 2012, and as prime minister following the 2014 parliamentary election and the snap election called for in 2016, which both yielded majorities for the SNS. In the presidential elections in 2017 he obtained a landslide victory. Although traditionally a largely symbolic function, as President and head of the ruling party which holds a majority in parliament, Vučić has consolidated SNS control over the entire legislative and governing process. In terms of policies, Vučić has managed a balancing act between a commitment to the EU accession process and satisfying

a nationalist, pro-Russian line. In Serbia, there has been no attempt to attack the constitutional framework; the main challenges arise from inherited structural shortcomings, fragile institutions and the pace of reforms transposing the *acquis* (body of European Union law). A potentially critical moment will be that the accession process will require, at some stage, a revision of the constitution, and it is important to ensure that all safeguards will be in place, including strong and independent oversight and control mechanisms.

The present chapter examines how these governments, and their different configurations of power, have impacted the rule of law and human rights in their respective countries.

## Tyranny of the majority

Through abusing their majorities, illiberal governments manipulate legislative norms and impede the functioning of institutions, and threaten the independence of democratic pillars.

Majority rule is not without limits – in a democracy, it is kept in check by a system of institutions, including the rule of law and the separation of powers. In Poland and Hungary, by using fast track adoptions, changing procedures, disregarding expert opinions and failing to hold adequate consultations and debate in society, ruling parties used their majorities to dismantle pillars of the democratic State, which risks bringing about deep changes to the entire political system.

In Hungary, a supermajority has allowed the ruling party to adopt a new and weakened constitution, at the same time expanding the use of cardinal laws and ensuring its control over broad areas of public life – such as the criminalisation of homelessness, life-imprisonment without parole, and marriage as being between a man and a woman.

The Venice Commission, in its Opinion on the new constitution, noted that “The more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-third majority have of cementing its political preferences and the country’s legal order. When not only the fundamental principles but also very specific and “detailed rules” on certain issues will be enacted in cardinal laws, the principle of democracy itself is at risk.”<sup>8</sup>

In Poland, even though it did not touch at the constitution, the ruling party - using lower ranking laws such as acts - managed to cripple the Constitutional Court in its function of guarantor of the Constitution and the rule of law, allowing the parliament to push through sensitive new legislation such as a new media law and laws on the prosecutor and the judiciary, without effective scrutiny of their compliance with the Constitution.

### **Poland - The taking over of the Constitutional Court**

Almost immediately after the parliamentary elections of October 2015, the new majority started to push through legislative changes impacting the balance of powers and undermining the independence of the judiciary, in particular, of the Constitutional Court.

It is true that the constitutional crisis pre-dated the elections, as the outgoing government pushed through the appointment of judges to the Constitutional Court in a move that was criticised not only by the opposition but also by civil society.<sup>9</sup> However, the present majority built on this crisis, and since its election has adopted altogether six different pieces of legislation challenging the work of the Constitutional Court and securing the means of appointing new judges.

At its first session in November, the parliament reversed the amendment made by the previous parliament, and then adopted resolutions annulling the appointments of judges made before the elections and changed the deadlines for submission of candidates. During the parliamentary discussion, it was suggested that the new parliament needed to change the composition of the Constitutional Court, because of its “political bias” and that the change in the composition of the Constitutional Court was necessary for the parliamentary majority to conduct their political reforms. Five candidatures for new judges were submitted on 1 December 2015 and they were elected the next day.

On 15 December, another draft amendment to the Act on the Constitutional Tribunal introduced much wider changes concerning the functioning of the Court. Notably it required: that rulings had to be adopted at a two-thirds majority, which runs contrary to the Constitution; that all pending cases would have to be examined by a full panel of judges and if currently on the docket of smaller panels, would have to be re-assigned and re-initiated; and that disciplinary proceedings can be initiated against a judge upon a motion of the Minister of Justice or the President. It was adopted on 22 December, without any proper consultation process. Subsequently, an entirely

<sup>8</sup> Venice Commission, Opinion on the new constitution of Hungary, 20 June 2011, [CDL-AD\(2011\)016, para. 24](#).

<sup>9</sup> On 8 October 2015 the outgoing parliament, led by Civic Platform (PO) as the main party of the governing coalition, based on an amendment made to the Act on the Constitutional Tribunal shortly before, appointed five new judges to the Constitutional Court, three to replace judges whose tenure was expiring on 6 November (i.e. after the elections) and two whose terms were due to expire in December. At the time of the judges’ appointment, opinion polls showed that the Civic Platform was likely to lose the elections. Helsinki Foundation for Human Rights strongly protested against this amendment, underlining that these appointments would violate the Constitution.

new law on the Constitutional Court was adopted in July 2016 which further curtailed the court's independent functioning and eroded the principle of the separation of powers.

The Constitutional Court has consistently examined the constitutionality of all these acts, upon submissions by opposition parties and the Commissioner for Human Rights. Beginning with the amendment allowing the previous governing majority to appoint five judges in a row, in this case the Constitutional Tribunal ruled that the parliament has a right to appoint the exact number of judges in replacement of those whose tenures expired during the parliament. In March 2016, the Tribunal ruled in the case of the law on the functioning of the Tribunal adopted in December 2015. It found that the act was entirely unconstitutional, including infringements on the principles of the separation and balance of powers, the independence of courts and tribunals from other branches of power, the independence of judges, and the principle of integrity and efficiency of public institutions. In August 2016, the Tribunal also found several provisions of the Act of July 2016 unconstitutional. The government disregarded the Court's judgments of March and August 2016 and refused to publish them. In August 2016, the Prosecutor launched a criminal

investigation against the president of the Constitutional Tribunal for alleged "abuse of power" for not allowing three judges who had been appointed by the new legislature in December 2015 to take up their function.

In December 2016, three more acts were adopted on the status of judges and on the organisation of the court, which further facilitated the packing of the Court – the appointing of new judges that support the government – by PiS and the chance for the governing majority to appoint the new president of the Court. On 19 December 2016, the term of office of the previous president of the Court expired. The next day, the president appointed an acting president from among the judges nominated by the current parliament, who immediately organised a session of the General Assembly of Judges of the Constitutional Court, at which she was appointed president of the Constitutional Tribunal.

The Venice Commission issued two opinions on the constitutional legislation.<sup>10</sup> In its Opinion on the July 2016 Act, it concluded that "the Polish parliament assumed powers of constitutional revision which it does not have when it acts as the ordinary legislature, without the requisite majority for constitutional amendments. Individually and cumulatively, these shortcomings show that instead of unblocking the precarious situation

of the Constitutional Tribunal, the parliament and government continue to challenge the Tribunal's position as the final arbiter of constitutional issues and attribute this authority to themselves. They have created new obstacles to the effective functioning of the Tribunal instead of seeking a solution on the basis of the Constitution and the Tribunal's judgments, and have acted to further undermine its independence. By prolonging the constitutional crisis, they have obstructed the Constitutional Tribunal, which cannot play its constitutional role as the guardian of democracy, the rule of law and human rights."<sup>11</sup> Concerns were also expressed by the UN Human Rights Committee.<sup>12</sup>

### **Hungary: Reshaping the constitutional framework**

Using its two-thirds majority in parliament, the government ensured a new constitution – the Fundamental Law – was adopted in 2011. The preference for cardinal laws in the Constitution, including for issues usually left to ordinary legislation (it contains over 50 references to them), and the subsequent adoption of a large number of such laws results in significant gaps with regard to the rule of law. In its Opinion on the new constitution,<sup>13</sup> the Venice Commission expressed a number of concerns, cautioning also that the wide use of cardinal laws – which

10 Opinion on the Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, 11 March 2016 ([CDL-AD \(2016\) 001](#)), and Opinion on the Act on the Constitutional Tribunal, 14 October 2016 ([CDL-AD \(2016\) 026](#)).

11 Opinion on the Act on the Constitutional Tribunal, 14 October 2016 ([CDL-AD \(2016\) 026](#)), paras. 127-128.

12 Human Rights Committee, concluding observations on the seventh periodic report of Poland, adopted on 31 October 2016, [UN Doc. CCPR/C/POL/CO/7, para. 7](#).

13 Opinion on the new constitution of Hungary, June 2011 ([CDL-AD\(2011\)016, paras. 24-27](#)).

require a two-third majority in parliament – was problematic with regard both to the constitution and to ordinary laws. In particular it noted that a large number of issues which should have been left to ordinary legislation and majoritarian politics, such as family legislation, social policy, and taxation, are subject to cardinal legislation.<sup>14</sup>

Although the Fundamental Law enshrines the recognition of fundamental rights, their further elaboration is left to “Special Acts.” The Venice Commission expressed reservations about the broad or vague wording which provides a wide margin of interpretation, concluding that “As a result of such a construction, there seems to be a risk that the constitutional provisions on freedom and responsibility might be eroded by special Acts.”<sup>15</sup> It also stated that more precise indications should be provided by the constitution as to their content and stronger guarantees for their effective protection and enjoyment by individuals, in line with the international human rights instruments to which Hungary is a party.

## Power in fewer hands

Illiberal governments manipulate the rule of law, narrow the space for accountability, and threaten checks and balances.

Independent oversight and control mechanisms are key to ensuring accountability and checks and balances on State power, in particular, the judiciary.

In Hungary, the new constitution, subsequent amendments thereto and the adoption of a significant number of cardinal laws have gradually removed important checks on the executive branch and weakened the independence of the Constitutional Court and independent oversight.<sup>16</sup> Also, the Fidesz majority has placed its supporters in key positions in the administration, the security apparatus, the regulatory agencies and the judiciary.

Changes were undertaken to the composition of the Constitutional Court, and the mandate of the president of the Supreme Court was terminated prematurely. The European Court of Human Rights found that this premature termination of the president’s mandate had violated the right

of access to a court (art. 6), as the termination of his term of office resulted from the transitional measures of the new Fundamental Law – constitutional legislation that was not subject to any form of judicial review. The European Court also established a violation of freedom of expression (art.10) and that there was a relation between his termination and the opinions and criticisms that he had expressed publicly.<sup>17</sup>

The Venice Commission expressed concerns about the high level of independence of the prosecutor general reinforced by a strong hierarchical control over other prosecutors.<sup>18</sup> The current prosecutor general, who is a Fidesz-appointee, may stay in power even if Fidesz loses power. According to the new appointment rules, a new prosecutor general may only be appointed with a two-thirds majority. Without achieving this majority, the current prosecutor general stays in power.

It is worth noting that while the prosecutor cooperates with the European Anti-Fraud Office (OLAF) on old corruption cases involving high-level political actors, no new cases on corruption with such ties have been opened since 2010, although reportedly new corruption cases are regularly brought. The high

14 It referred, in particular to the following articles: I (3) on the protection of families; VII (3) on the detailed rules for Churches, VIII (4) on the detailed rules for the operation and financial management of political parties, IX on the detailed rules for the freedom of the press and the organ supervising media services, press products and the info-communications market, XXIX (3), on the detailed rules for the rights of nationalities living in Hungary and the rules for the elections of their local and national self-governments, XXXI (3) on the detailed rules for military service; 38 (1) on the requirements for the preservation, protection and responsible management of national assets, 38 (2) on the scope of the State’s exclusive properties and exclusive economic activities and the limitations and conditions of the alienation of national assets; 40 on the fundamental rules of general taxation and the pension system and 41 on the monetary policy. *Ibid.*, para. 24.

15 *Ibid.*, para. 59.

16 In its Opinion on the Fourth Amendment to the Fundamental Law of Hungary, the Venice Commission noted that it “changed the Constitution in a number of aspects, as concerns individual human rights, as concerns the ordinary judiciary and as concerns the role of the Constitutional Court of Hungary”. Opinion on the Fourth Amendment to the Fundamental Law of Hungary, 17 June 2013, ([CDL-AD\(2013\)012, para. 138](#)).

17 *Baka v. Hungary*, No. 20261/12, 23 June 2016, paras 120-122 and 151.

18 Opinion on Act CLXIII of 2011 on the Prosecution Service of Hungary and Act CLXIV of 2011 on the status of the prosecutor general, prosecutors and other prosecution employees and the prosecution career, 19 June 2012, ([CDL-AD\(2012\)008, para. 87](#)).

level of the previous government's corruption, and action to address it, is a strong element in the narrative upon which Fidesz builds its success among voters.

The new laws also established the National Judicial Office for the administration of law courts with extensive powers of its president over the court system, including to distribute caseload and apportion cases to different courts. In the absence of established criteria for the transfer of individual cases, the Venice Commission found that the discretionary powers of the president of the National Judicial Office and the system of transfer affected the right to a fair trial and the principle of the lawful judge.<sup>19</sup>

The mandatory retirement age of judges was lowered from 70 to 62 years, which forced 274 judges and public prosecutors into early retirement and made it possible for the government to replace almost the entire leadership of the judiciary. The case was referred to the European Court of Justice.<sup>20</sup> As a result, the Hungarian parliament adopted a new law aligned to European standards, and the judges were reinstated – albeit not in their old positions, so the practical effect was limited and the political goal had been achieved.

In Poland, the onslaught on the independence of the judiciary continues through a reform of

the justice system. Under the new Law on Prosecution of 28 January 2016, the functions of Prosecutor General and Minister of Justice have been merged, vesting the new function with broad power to appoint and dismiss prosecutors, to give instructions to prosecutors in individual cases and to decide to communicate information to the media pertaining to prosecutorial files. In his report on his visit to Poland, the Council of Europe Commissioner for Human Rights noted that “the attribution of such extensive powers to a politically appointed figure without the establishment of corresponding sufficient safeguards to avoid abuse of powers poses a considerable threat to human rights in the context of criminal law procedures, including the right to a fair trial, the presumption of innocence and the right to defence.”<sup>21</sup> The UN Human Rights Committee expressed similar concerns on this law, as well as on the proposed changes to the National Council of the Judiciary.<sup>22</sup>

On 12 July 2017, the parliament adopted a law giving the Minister of Justice direct control over the common courts by transferring the function to nominate the presidents of regional and appeal courts away from the judges' caucuses to the Minister of Justice. It also adopted a second law widening the political control over the National Council of the Judiciary and the appointment of

its members. The same day, another draft for a third law was submitted to the parliament, de facto abolishing the Supreme Court as it would dismiss or retire all the judges in function and confer the authority to nominate judges to the Minister of Justice – a final blow to the rule of law in Poland – which was adopted and confirmed by the Senate within a week. Throughout those days, massive demonstrations took place in Warsaw and other localities in Poland. On 24 July, the Polish President refused to sign the second and third laws.

The situation of the judiciary in Serbia is closely linked to the EU accession process. After introducing the National Judicial Reform Strategy in 2006, the reform of the judiciary following the launch of accession negotiations in January 2014 focused on alignment with European standards and meeting the acquis. In its annual progress report on Serbia, the European Commission noted that despite constitutional guarantees on independence, the constitutional and legislative framework still leaves room for undue political influence over the judiciary, including in the recruitment and appointment of judges and prosecutors.

Furthermore, public comments on investigations and ongoing cases, even at the highest political levels, continue to hamper judges'

19 See Opinion on Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organisation and administration of courts of Hungary, [CDL-AD\(2012\)001](#), 19 March 2012, paras. 23 et seq and [CDL-AD\(2012\)020](#), 15 October 2012, paras. 60 et seq.

20 See Judgment of 6 November 2012, [Commission v. Hungary, C-286/12](#).

21 Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Poland from 9 to 12 February 2016, CoE DOC. [CommDH\(2016\)23](#), para. 102.

22 Human Rights Committee, concluding observations on the seventh periodic report of Poland, adopted on 31 October 2016, [UN Doc. CCPR/C/POL/CO/7](#), para. 33. At the time of the review of Poland in October 2016 the law was at drafting stage.

independence.<sup>23</sup> Addressing the structure and functions of the High Judicial Council and State Prosecutorial Council is still outstanding, which also impacts the Constitutional Court. Despite reforms, public trust in the judiciary remains low.

In Hungary, new laws were enacted remodelling the mandates of regulatory agencies and monitoring bodies (media, data protection, ombudsperson and equality commissions), followed by the removal of the incumbents and new appointments loyal to the government.

In Croatia, the coalition government which came to power following the November 2015 elections multiplied political pressures on regulatory bodies, leading for example to the resignation of the head of the Council for Electronic Media. The Ombudsperson was also challenged and criticised. In May 2016, her annual report was rejected by the parliament, which a month later, also rejected the report of the Ombudsperson for Children.<sup>24</sup>

The Polish Ombudsperson is fully compliant with the UN principles relating to the Status of National Human Rights Institutions (Paris Principles)<sup>25</sup> and has a very strong mandate in law and practice, shaped by the professional profile of the successive incumbents

who consolidated the structure as inscribed in the Constitution.

However, the widening of the scope of duties was not followed up by commensurate increases to the budget. For example, after Poland implemented the EU Equality Directive and ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2013, the Ombudsperson was appointed as the Equality Body and organ responsible for monitoring the process of implementing CRPD but there was no substantial increase of funds. Besides attempts to undermine the independence of the institution, in particular through an act of March 2016 establishing procedures to waive independent institutions' immunity, the Ombudsperson faces increasing criticisms and negative public statements.<sup>26</sup> Regarding other equality bodies, the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was dissolved in April 2016 without any arrangements being made for a substitute institution.<sup>27</sup>

## Shrinking the democratic space

Attacks on freedoms of expression, assembly, and association restrict public participation. Intimidation, public discrediting and smear campaigns, political pressures as well as economic restrictions and obstructing access to funding are

all elements which threaten the safe and enabling environment required for these rights to be exercised. The democratic space in all four countries has experienced some or all of these forms of infringements. In Hungary and Poland, however, retrogressive legislation has been adopted that effectively cripples the exercise of these key fundamental freedoms. The ability for the media and human rights NGOs to assume their watchdog functions, and the right of citizens to access information and to participate fully in public life are cornerstones of a pluralistic, democratic society, and in that sense, can contribute to preventing illiberal trends and holding such governments in check.

### Freedom of expression

The discourse in Croatia on limiting media freedom pre-dated the 2015 elections, with calls that the public discourse must reflect national interests. Yet, the situation worsened after the elections, with massive shifts of editors, terminations of long-term journalist contracts, changes to contents and programmes, departures of journalists from the public broadcasting media, and sharp cuts to funding for independent media – of which a number had to shut down. In the first week in office, in January 2016, the Minister of Culture dismissed the Expert Commission for Non-Profit Media, and then, without consultation

23 Commission Staff Working Document: Serbia 2016 Report, [SWD\(2016\) 361 final](#), 9 November 2016, p. 13 and p.54 et seq.

24 Equinet European Network of Equality Bodies, "[Croatian parliament's rejection of 2015 Ombudswoman report represents political pressure on its independence](#)" 25 May 2016.

25 Adopted by UN General Assembly resolution 48/134 of 20 December 1993.

26 Report by the International Ombudsman Institute (IOI) [Following a Fact Finding Mission to Warsaw, Poland from 18 - 20 July 2016: Ombudsman Under Threat](#).

27 Human Rights Committee, Concluding observations on the seventh periodic report of Poland, [CCPR/C/POL/CO/7](#), para.17

or public debate, made a decision that this body is unnecessary and should be completely abolished.

The Commission's mandate should have had lasted until October 2016, and its tasks were to distribute funds to non-profit media on the basis of a public tender and to monitor their work. Pressure on independent media almost led to the disappearance of investigative journalism.

Since the election in Poland in 2015, a media takeover has taken place, bringing public media under political control of the government and infringing on its independence. The first media law was passed in December 2015 (the "small media law"), in haste and without consultation. The small media law provided that the terms of office of all members of the supervisory council of national public media expired on the day of this law's coming into force. The public media thereby became government-controlled, which led to criticism from the independent media and the opposition that public media would serve as a propaganda tool. Around 150 journalists, including trade union leaders, were dismissed, forced to resign or to accept less senior positions in the five months following the adoption of this law, and around 100 other journalists working in local positions in the public media have been affected by

a wave of dismissals and voluntary departures.

Following the adoption of another law in June 2016, the National Media Council was created, dominated by government party MPs, with powers that include appointing and dismissing the heads of the national media – Telewizja Polska (TVP), the national radio and the PAP news agency.

Economic measures were also taken targeting private media and independent outlets, including withdrawing of public advertisement and limiting access to distribution, thus cutting them off from their sources of income.<sup>28</sup> At the same time, there is large spending of public funds to promote public issues – those that the government wants to raise – through advertising in private media outlets. As a result, many private media refrain from criticism.

In December 2016, measures were announced to restrict media movement and journalists' access to parliament. Although in the face of protests, the authorities eventually refrained from implementing these restrictions. Yet for the following weeks there were reports that journalists still faced difficulties to access the parliament, including being turned away at the entrance by security guards. In January 2017, a journalist from *Gazeta Wyborcza*

was removed by the Marshal's Guard from the area surrounding the Sejm, when he reported the protest of activists of Citizens of the Republic of Poland ("Obywatele RP"). *Gazeta Wyborcza* believes that this was an obstruction of the press criticism (Article 44 of the Press Law Act) and notified the prosecution.<sup>29</sup> An investigation was opened and is still ongoing.<sup>30</sup>

In addition to these restrictions, Poland continues to criminalise defamation (article 212(2) of the Criminal Code) which has been the object of several cases brought to the European Court of Human Rights,<sup>31</sup> and has been criticised by the OSCE Representative on Media Freedom, among others. The UN Human Rights Committee also expressed concern about other laws imposing criminal responsibility for insulting State symbols, senior officials and religions, as well as a draft law that would impose up to three years of imprisonment on anyone who referred to the Nazi camps operated in occupied Poland during the Second World War as Polish.<sup>32</sup>

The Hungarian constitution provides for freedom of expression and the media. However, two new laws passed in 2010,<sup>33</sup> together with constitutional amendments and sets of bylaws, contribute to creating a highly restrictive environment for media in the country.

28 "Człowiec firmy państwowej mocno obniżył wydatki reklamowe w Polsce i TVN, a zwiększył w TVP1 i TVP2 (analiza)," 1 March 2017.

29 Reporter *Gazety Wyborczej* "wyproszony z terenu Sejmu, bo nagrywał poza wyznaczonymi miejscami.GW" zawiadomi o tym prokuraturę," 26 January 2017.

30 Amnesty International, FIDH (International Federation for Human Rights), Human Rights Watch, Open Society European Policy Institute and Reporters without Borders [Open Letter to the College of Commissioners regarding the situation in Poland](#), 16 February 2017.

31 See for example *Maciejewski v Poland*, *Koniuszewski v Poland*, and *Lewandowska-Malec v Poland*.

32 [CCPR/C/CO/POL/CO/7](#), para. 37.

33 Act CIV on the Freedom of the Press and the Fundamental Rules on Media Content and Act CLXXXV on Media Services and Mass Media.

Media regulation was consolidated under the supervision of a single entity, the National Media and Telecommunications Authority, whose president also chairs the Media Council tasked with nominating the executive directors of all public media, thus centralising radio, TV and central news agencies under government control. The funding and content production for all public media is centralised under the Media Service Support and Asset Management Fund, which is supervised by the Media Council. The law also regulates the content of broadcast media. The Media Council can initiate procedures to suspend the right to broadcast, including online media, and impose sanctions foreseen by the media law. Financial means including taxation are used to shut down independent media outlets, and restrictions are placed on political advertisement in campaign periods. The advertising market is also strongly dependent on government contracts.

Defamation remains a criminal offence. Moreover, article 9 of the constitution was amended to include that “the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation.” The new Civil Code adopted in 2014 contains provisions regarding the protection of “personality rights.” A study by the International Press Institute

notes that there has been an increase in legal actions by public officials and politicians who seek redress in the courts for attacks on their reputations and who seek to put an end to political and societal disputes by means of a court judgement, with the media and news outlets “caught in the crossfire” as they seek to report on controversies and provide a forum for diverging opinions.<sup>34</sup>

Journalists who publish articles critical of the government risk losing their jobs or are denied access to public events, and face the risk of defamation lawsuits, fines, dismissal, and shutting down of media outlets. As a result, self-censorship is growing among media professionals.<sup>35</sup> The media law package has been criticised for falling short of international and European standards and threatening the independence and freedom of the media, by the Commissioner for Human Rights of the Council of Europe,<sup>36</sup> the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,<sup>37</sup> and the OSCE Representative on Freedom of the Media.<sup>38</sup> Although amendments have been made to the laws, they still do not comply with international standards.

In Serbia, challenges remain in preserving and fostering space for political dialogue, debate and

expression of differing opinions in mainstream media and in social networks. In relation to the election campaign, the EU progress report on Serbia noted biased media coverage, undue advantage taken by the incumbent parties and a blurring of the distinction between State and party that led to distortions in the reporting on the campaign, while an effective mechanism for monitoring media conduct during the campaign was lacking.<sup>39</sup>

A new law on privatisation of media was adopted, but it has not led to greater transparency in financing and ownership structures, and there are reports of local media being bought up by tycoons, including with public funding. The only independent TV channel is currently under threat from the Ministry of Culture. Journalists and media largely practice self-censorship, as they are heavily reliant on public funding, and informal pressure on editorial policy is exerted through the distribution of advertising funds.<sup>40</sup>

Hate speech is often tolerated in the media and rarely addressed. Also, there has been no progress in investigating a series of cases of hacking attacks against websites that occurred since 2014.<sup>41</sup> Publication of personal data and assumptions that are detrimental to the presumption of innocence remain frequent.

34 International Press Institute, *Civil Defamation and Media Freedom in Hungary: trends and challenges in court practice in personality rights cases*, February 2017, p. 5.

35 Mérték Media Monitor, *The Reins on Freedom: Self-Censorship in the Hungarian Press*, 11 June 2012.

36 Opinion of the Commissioner For Human Rights: Hungary's media legislation in light of Council of Europe standards on freedom of the media, CoE DOC. [CommDH\(2011\)10](#), 25 February 2011, para. 3-6.

37 Hungary: [UN expert on press freedom concerned by media law](#), press release following the Special Rapporteur's visit to Hungary, 5 April 2011.

38 Miklós Haraszti, [Hungary's Media Law Package](#), Institut für die Wissenschaften vom Menschen/Institute for Human Sciences.

39 Commission Staff Working Document: Serbia 2016 Report, [SWD\(2016\) 361 final](#), 9 November 2016, p. 61.

40 *Ibid.*, p. 21.

41 *Ibid.*, p. 62.

Statements by State officials in relation to the investigative work of journalists have not been conducive to creating an environment in which freedom of expression can be exercised without hindrance. Information leaks to media outlets (such as about ongoing investigations) threaten the personal safety of journalists. Threats, violence and intimidation against journalists remain an issue of concern, including smear campaigns by pro-government media and members of the government. The independent online news site Balkan Investigate Reporting Network (BIRN) was criticised by the Prime Minister himself, and the pro-government media outlets TV Pink and Informer accused BIRN of being an enemy of the State.<sup>42</sup> Between January and July 2016, the Independent Journalists' Association of Serbia (NUNS) registered 33 incidents of assaults, threats or other pressure against journalists.<sup>43</sup> Some criminal charges have been filed but investigations and convictions are still rare. The killing of radio journalist Luka Popov in June 2016 drew international calls for an investigation, including by the OSCE Representative on media freedom. Police arrested three suspects. It is unclear whether the killing was connected to Popov's work as a journalist. The work of the commission set up to investigate the

murder of three journalists – Dada Vujasinovic in 1994, Slavko Curuvija in 1999, and Milan Pantic in 2001 – has not yielded any results or led to any convictions.<sup>44</sup>

During his visit to Croatia, the Council of Europe Commissioner for Human Rights expressed serious concern about the inadequate response by the authorities to the reported cases of physical attacks, death threats and intimidation against journalists. He said: "Journalists play the important role of a public watchdog in a democratic society and their safety has to be ensured by all States. Impunity for crimes committed against journalists needs to be effectively addressed and dissuasive penalties for such crimes have to be imposed. Public discourse which justifies attacks against journalists is dangerous and detrimental to media freedoms and democracy." He also expressed concern about a number of abrupt changes in management and editorial positions in the public service media, including the government's proposal to terminate the mandate of the head of the Agency for Electronic Media and to dismiss its members.<sup>45</sup>

### Freedom of association

In the four countries reviewed, the access to power of illiberal parties has led to a shrinking of

the democratic space. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association identified a number of common tactics. These include: restricting access to funding by requiring prior government approval; placing restrictions on and singling out foreign-funded NGOs; stigmatising or delegitimising the work of foreign-funded NGOs; and harassment of human rights NGOs through audits and tax inspections.<sup>46</sup> At the same time, organisations indebted to those in power or even organised directly by the government or governing party (so-called GONGOs) are promoted. With this, the authorities aim at legitimising the work of groups that are obedient to them, replacing independent civil society with these groups.

The ability to access funds – regardless of the origin of funding – has been widely recognised as an integral part of the right of freedom of association as defined in article 22 of ICCPR. This right is reaffirmed in article 13 of the UN Declaration on Human Rights Defenders,<sup>47</sup> the OSCE Guidelines on the Protection of Human Rights Defenders,<sup>48</sup> and recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe.<sup>49</sup> It has been repeatedly highlighted by the UN Special Rapporteur on the rights of

<sup>42</sup> Balkan Investigate Reporting Network, "[BIRN under fire](#)."

<sup>43</sup> Human Rights Watch, "[Western Balkans: Unchecked Attacks on Media](#)," 30 November 2016.

<sup>44</sup> Human Rights Watch, [World Report 2017 – Serbia/Kosovo events of 2016](#).

<sup>45</sup> Council of Europe Commissioner for Human Rights, "[Visit to Croatia: High time to create a tolerant and inclusive society](#)," 29 April 2016.

<sup>46</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, [UN Doc. A/HRC/23/39](#).

<sup>47</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998 ([UN Doc. A/RES/53/144](#)).

<sup>48</sup> "States should not place undue restrictions on NGOs to seek, receive and use funds in pursuit of their human rights work" and "must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding" ([OSCE Guidelines on the Protection of Human Rights Defenders](#), 10 June 2014, para. 73).

<sup>49</sup> Recommendation [CM/Rec\(2007\)14](#) of the Committee of Ministers to Member States on the legal status of non-governmental organisations in Europe, 10 October 2007.

freedom of assembly and association who also warned that in recent years, the protection of State sovereignty or of the State's traditional values against external interference has also been increasingly invoked to restrict foreign funding or to launch slander offensives against those receiving foreign funding, and recipients have been subject to defamation, stigmatisation and acts of harassment.<sup>50</sup> Furthermore, the UN Special Rapporteur on human rights defenders warned about restrictions on funding from abroad leading to organisations having to declare themselves “foreign agents,” or to seek prior approval to fundraise.<sup>51</sup>

Since 2010, the Hungarian government has progressively restricted the space of human rights NGOs. Increasingly, NGOs are targets of harassment and smear campaigns, while at the same time facing a more rigid legal environment and threats to their financial sustainability. On the legislative side, critical amendments were introduced to the Civil Code and the Non-profit Act, the latter laying out new conditions and requiring NGOs to revise and modify their by-laws, amend their statutes and re-register for public benefit status. Human rights NGOs are further put under pressure through administrative and financial means such as investigations into funding, increased auditing, and

tax inspections. Contracts of some organisations providing community or social services were discontinued, being perceived as hostile to the government.

In May 2014, the Hungarian government accused the EEA/Norway Fund of supporting political activity and launched an audit through the Government Control Office, although its mandate only covers the use of Hungarian public money. According to the official explanation, “a review of the programme revealed that the Ökotárs Foundation, a Hungarian NGO appointed by Norway to manage the grants in Hungary, had used the funds for political purposes. Additionally, the Ökotárs Foundation also engaged in unauthorised financial activities.”<sup>52</sup> Furthermore, the government tried to draw Norway into “solving the issue” with an overt accusation of interfering with Hungarian internal affairs,<sup>53</sup> requesting it to suspend the NGO programme and to enter into negotiations with the government for a new fund operator. Undersecretary of State Nándor Csepreghy called the foundations acting as the operator consortium of the EEA/Norway Grants NGO Fund “party-dependent, cheating nobodies,” and indicated that there were plans to entrust the State with operating the fund.<sup>54</sup> The Norwegian Minister of EEA and EU Affairs stated that he

was “deeply concerned about the actions of the Hungarian authorities in relation to civil society and their attempts to limit freedom of expression” and that the Hungarian authorities’ audit breached the agreements that had been entered into.<sup>55</sup>

On 8 September, police raided the offices of Ökotárs and another NGO; the courts subsequently found that these raids were unlawful. Shortly after, the tax numbers of the fund operators were suspended. Upon request of the Government Control Office, criminal proceedings were launched against the targeted NGOs in August 2014, followed by 16 months of investigations which revealed no irregularities or breach of law.<sup>56</sup> On 29 June 2016, the Supreme Court of Hungary decided in a lawsuit launched by the Hungarian Civil Liberties Union in 2014 that the Government Control Office disclose on whose instruction the audit and investigation into the NGOs was launched. Following that order, the Government Control Office was obliged to release official documents which revealed that the Prime Minister himself had ordered the investigation.

The UN Special Rapporteur on human rights defenders, in his report on his visit to Hungary, referred to a “futile and politicised investigation.” He expressed concern about breaches of due process as there was “clearly no

50 [A/HRC/23/39](#), paras. 8-27.

51 Report of the Special Rapporteur on the situation of human rights defenders, [UN Doc. A/HRC/25/55](#), para. 69.

52 [The Case of the Norway Grants and NGOs in Hungary](#), 21 February 2016.

53 Magyar Nemzet, “[Lázár levélben tiltakozik a külföldi beavatkozás ellen](#),” 8 April 2014.

54 “[Csepreghy: ‘Szelhámos gittgeyletek’ kezelik a norvég alapot](#),” 30 April 2014.

55 Ministry of Foreign Affairs of Norway, press release “[Norway concerned for civil society in Hungary](#),” 6 June 2014.

56 Eötvös Karoly Institute, Transparency International Hungary, Hungarian Civil Liberties Union and Hungarian Helsinki Committee, “[Timelines of governmental attacks against Hungarian civil society organisations](#),” 7 April 2017.

presumption of innocence on the part of the government, with senior government officials showing an openly biased approach to the NGOs and stigmatising them in the media,” and there was no apology from the authorities or public admission of the NGOs’ innocence.<sup>57</sup>

At the same time as the “Norwegian Funds” case was ongoing and eventually died down, the campaign against George Soros and Open Society Foundations, as well as NGOs it supports, was being stepped up and growing louder.

In an interview on 30 October 2015, Viktor Orbán said that the flooding in of migrants was enhanced by activists “who support everything that weakens the nation States,” supported by George Soros.<sup>58</sup> A few days later, István Hollik, an MP of the Christian Democratic People’s Party (KDNP – the coalition partner of Fidesz) sent an open letter to a number of NGOs supported by the Open Society Foundations, stating that George Soros regards it his task to eliminate the borders of sovereign countries so that refugees could have easier access to Europe, and asked the NGOs to clarify whether they supported George Soros’s ideas and accepted that by doing so, they incited crowds of people to disregard fundamental values laid down in Hungarian and international law.<sup>59</sup> Throughout 2016, this stigmatisation by government

officials in public statements and the media continued – that NGOs were “paid to demonstrate and advocate for certain causes” and for a “background power” represented by George Soros. In May 2016, a list of NGOs supported by Soros was made public, questioning the transparency of their funding. At a press conference on 10 January 2017, Szilárd Németh, Vice President of Fidesz and its parliamentary group, stated that “the Soros empire’s fake civil organisations” would have to be “swept out” of Hungary.<sup>60</sup> In fact, the series of governmental attacks against NGOs, which operate as checks and critics of State power and fight for reinforcing the rule of law and ensuring the protection of human rights, has been an unabated process.<sup>61</sup>

On 7 April 2017, a draft law “on the Transparency of Organisations Receiving Foreign Funds” was submitted to parliament. This set out, inter alia that organisations receiving foreign funds over a certain yearly threshold will have to register themselves and will have to label themselves as organisations receiving foreign funds on their website and in their publications, and foreseeing sanctions in case of non-compliance.<sup>62</sup> A week before that – on 28 March – an amendment to the higher education law was introduced targeting the Central European University. Despite resistance from human rights NGOs,

popular mobilisation, appeals from world academia, and condemnation by the international community, these laws were both adopted in June 2017.

The foreign funding organisations law – the first such law ever adopted within European Union Member States – has deleterious consequences for civil society in Hungary. It poses a threat to their survival, as if an organisation fails to register and meet the requirements under the law, it may be fined up to 900,000 HUF (approx. €3,000) and terminated. It also affects human rights NGOs and all other NGOs, and poses a threat for service providers – organisations working on social service delivery, humanitarian aid, and environmental protection – all of which depend on foreign funding. It creates an atmosphere of suspicion and opens the door to stigmatisation of such organisations, in particular against the backdrop of the government’s broader smear campaign against foreign-funded groups and rhetoric of “foreign interests.”<sup>63</sup>

The demonisation of human rights defenders and civil society – through references to receiving foreign funding and thus raising suspicion of acting on behalf of “foreign interests” – is not limited to Hungary alone.

57 UN Special Rapporteur on human rights defenders on his mission to Hungary, [UN Doc. A/HRC/34/52/Add.2](#), paras. 52-54.

58 Bloomberg, “Orban Accuses Soros of Stoking Refugee Wave to Weaken Europe”, 30 October 2015; see also the website of the Hungarian Government.

59 “Hollik István nyílt levélben fordult jogvédő szervezetekhez,” 6 November 2015.

60 Reuters, “Ruling Fidesz party wants Soros-funded NGOs ‘swept out’ of Hungary,” 11 January 2017.

61 Hungarian Helsinki Committee, [Timelines of governmental attacks against NGOs](#).

62 [Act no. ... of 2017 on the Transparency of Organisations Receiving Foreign Funds](#).

63 European Center for Not-for-Profit Law, [Hungarian law on the transparency of organisations supported from abroad: what is at stake?](#), 15 June 2017.

In Croatia, politicians of the Patriotic Coalition repeatedly made public attacks using the same rhetoric directed against organisations dealing with human rights, democratisation, women's rights and LGBT persons.

During the adoption in parliament of the annual report of the National Foundation for the Development of Civil Society, an MP from HRAST, member of the Coalition, stated that some people in civil society see the non-governmental sector as a “big business” and that Croatian civil society was deeply sick, alienated from citizens, and politicised (that is, in the hands of opposition parties). Citing as an example GONG, an NGO dealing with transparency, anti-corruption, democratisation and human rights, he underlined the fact that it was receiving funds from foreign sources. An MP from HDZ accused NGOs of acting against Croatian interests and presenting lies and semi-truths regarding events and persons from the Homeland War – questioning the legitimacy of NGOs receiving foreign funding, and calling for a “representation of national interests” requirement as an eligibility criteria for accessing public funds.<sup>64</sup>

While at the same time launching a slander campaign against NGOs, in particular those dealing with good governance and human rights, the ruling coalition adopted measures aimed at reducing funding for civil society and broadening its

discretionary power to oversee the allocation of funds. As a result, less support was provided to NGOs from the National Foundation for Civil Society Development, which is a public foundation that represents crucial operational support for civil society. This led to a decrease in already approved grants by 30% for 2016, which adversely affected the programme activities of NGOs. These financial cuts most severely hit social service provider organisations, in particular in rural areas, and those supporting persons with disabilities. At the same time, dialogue and cooperation completely stopped between the government and human rights NGOs. Since the last elections in September 2016, which ended the ruling majority of the Patriotic Coalition, relations and consultative processes have gradually taken up again, but the negative image of human rights NGOs still lingers on.

In Poland, differences are made in access to funding. There are three types of sources: EU funds, funds at national level through ministries, and local level funds. The government uses this to selectively facilitate or limit funding. For example, it denies funding from the national funds to organisations working on domestic violence and implementing the Istanbul Convention, and providing aid to migrants and refugees, as well as to NGOs critical of the government. There are also incidents of the government using auditing and tax

issues against such NGOs, as well as slander campaigns and threats of libel actions.<sup>65</sup>

In Serbia, harassment and campaigns in media against NGOs have been criminalised since 2009, but no criminal proceedings have ever been opened. Funding allocated from the State budget is not high but there is a lack of transparency and lack of data available on the allocation of funds. There have been incidents of corruption and allocation of funds to “fake NGOs” and GONGOs, which are promoted by the authorities, including in the monitoring of ongoing war crimes trials.

### Freedom of assembly

The right to freedom of assembly in all four countries is still enjoyed by citizens. However, in all of them civil society is concerned by authorities favouring assemblies sympathetic to those in power. Authorities also have a high level of tolerance towards assemblies inciting hatred and extremism. The latter was in particular noted in the case of Croatia.

In December 2016, the Polish parliament passed amendments to the law on assemblies.<sup>66</sup> The law introduces the problematic element of “cyclical assemblies” (“zgrupowań cyklicznych”) – a special designation granted by the government that offers facilities to organise assemblies that take place regularly to celebrate especially

<sup>64</sup> [Ilić poimence prozivao 'bolesnike' civilnog društva i razjario oporbu](#), 29 January 2016.

<sup>65</sup> Helsinki Foundation for Human Rights, [Information on the recent challenges faced by human rights defenders and civil society in Poland](#), November 2016.

<sup>66</sup> HRHF, [Poland must drop restrictive amendments to law on assemblies](#), 8 December 2016.

important events in Poland's history. This would mean that assemblies not recognised as "cyclical" would not be authorised to take place at the same time in the same location. This would thereby introduce a discriminatory measure favouring assemblies organised by the government or its supporters and by the Church. A further issue of concern in Poland is the yearly march organised by the far right on Independence Day.

In Hungary, the law on assemblies remains substantially unchanged since 1989 and has not been revised since. The problematic issue is how the police apply the law, in particular as regards banning and dispersing assemblies.

In Serbia, a new law on freedom of assembly has been adopted which is more liberal and allows for spontaneous gatherings.

## Rewriting history and culture

Revisionism impacts education, artistic expression, and cultural rights.

Populist narratives may differ according to national contexts, but they share the common feature that they are profoundly divisive, claiming to stand for "the people" – an "imagined community" supposedly wronged by those who are against "the people." While

nationalism may not necessarily be the driving ideological force, it is a strong platform for identity-based mobilisation, as demonstrated by the ethnocentric, sovereigntist and nativist rhetoric of populist parties. As Viktor Orbán declared in his speech at the Bálványos Summer Free University and Student Camp: "The Hungarian nation is not simply a group of individuals but a community that must be organised, reinforced and in fact constructed."<sup>67</sup> This implies the need for belief in a common narrative of the past. In this way, revisionist accounts and myths of a glorious and heroic past are constructed, in which "the people" were either victims (of enemies) or heroes (by overcoming these enemies).

Appropriating historical legacy provides fuel for nostalgia for past glory, the restoration of which is one of the cornerstones of populist rhetoric. "Re-polonisation" in Poland, for example, is used to describe policies from the takeover of the media to the nationalisation of the economy. As Jarosław Kaczyński, chair of PiS, told supporters in 2012: "It must be made clear... that our goal is a re-polonisation of Polish banks."<sup>68</sup>

According to PiS, "the Nation is a real community connected by ties of language and by an entire broad semiotic system, culture,

historical fate, and solidarity."<sup>69</sup> This semiotic system also includes a strong relationship to Christianity – in particular to Catholicism – and the endorsement of traditional values (family values and traditional gender roles), conferring thereby to the "nation" an organic cultural and historical identity before being a political entity.<sup>70</sup> In Hungary, this construct has even been incorporated in the new constitution adopted in 2011, which in its preamble contains numerous national, historical and cultural references, such as to King Saint Stephen, the Christian tradition and the Hungarian culture and language. The Venice Commission remarked that in the preamble, there are a number of potentially controversial statements and terms that "might raise concern," such as the declaration of invalidity of the 1949 constitution, from which legal issues could arise, and the "wide understanding of the Hungarian nation."<sup>71</sup>

The existence of a constructed narrative of the past also allows illiberal governments to garner popular support for certain issues or policies by attributing symbolic value to selected historical events to underscore past injustices. Viktor Orbán's rhetoric of diktat of the Treaty of Trianon (the 1920 peace agreement between Hungary and the allied powers) is such an example. Immediately after the 2010 elections, a law

67 Prime Minister [Viktor Orbán's Speech](#) at the 25<sup>th</sup> Bálványos Summer Free University and Student Camp, 26 July 2014.

68 Reuters, "[Re-Polonisation' puts banks under government scrutiny](#)," 26 September 2016.

69 Jarosław Kaczyński: "[Raport o stanie Rzeczypospolitej](#)." Tylko u nas fragmenty programowej publikacji Prezesa PiS, 3 August 2011.

70 Adam Balcer, "Beneath the surface of illiberalism: The recurring temptation of 'national democracy' in Poland and Hungary – with lessons for Europe," Heinrich Böll Stiftung, Warsaw, 2017.

71 Opinion on the new constitution of Hungary, 20 June 2011, [CDL-AD\(2011\)016](#), paras. 34 et seq.

was passed which established the commemoration of the of Day of National Unity (Nemzeti Összetartozás Napja) on the anniversary of the Treaty of Trianon.

In Serbia, official commemorative practices and media keep alive the memory of NATO bombing in 1999. Several analysts point out that the main narrative plot in the discourse and media coverage is perpetuating the concept of victimhood. Emblematic buildings in Belgrade – in particular the Generalstab – still lie in ruins, as debates continue on their appearance.<sup>72</sup>

In Hungary, simplistic references to historical figures and events are used to justify current policies, as demonstrated by Viktor Orbán speaking at the end of the so-called “national consultation” entitled “Stop Brussels.” He stated: “Saint László strengthened the Hungarian State which protected us from external attacks and domestic cabals, secured our country’s independence by conducting realpolitik among great powers. Stop Brussels. He defended Hungarians from the destruction of nomadic peoples. Stop migrants. Following the guidance of St. Stephen, he strengthened the identity of the Hungarian State and the Hungarian nation. Stop Soros.

Hungarians have been following this path and from this path we, today’s Hungarians, do not want to deviate.”<sup>73</sup> This appropriation of national historical memory builds on idealising the past, and at the same time practises relativism or even revisionism with regard to other, darker periods of a country’s history.

Historic revisionism, particularly regarding events during and after World War II, became increasingly common in Croatian media during 2015, especially regarding responsibility of Ustashe collaborators led by Ante Pavelić. (Ustashe was the Croatian fascist movement in power during WWII). This appeared not only on the fringes of the Internet, but also in mainstream papers such as *Večernji list* and *Slobodna Dalmacija*.<sup>74</sup>

After the elections, the ruling coalition named a far-right revisionist historian, Zlatko Hasanbegović, as culture minister. He is a former member of the Croatian Liberation Movement that openly extolled the Ustashe movement. He started to wage a “cultural war” on independent media and inter alia, endorsed the production of a revisionist documentary directed by a political ally, Jakov Sedlar, about the Ustashe World War II concentration camp. The film *Jasenovac: The*

Truth, claimed that “only” “20,000 to 40,000 victims” perished in Jasenovac, instead of the 83,145 names documented by Jasenovac Memoria Site,<sup>75</sup> further supporting extremists arguing that Jasenovac was not a “death camp,” but an ordinary concentration camp in which some prisoners died. Hasanbegović, who attended the film’s debut, commented: “Such films are useful because they speak about a number of taboo topics. This is the best way to finally shed light on a number of controversial places in Croatian history.”<sup>76</sup>

In April 2016, the Coordination of Jewish Municipalities decided to boycott the official annual commemoration at Jasenovac, because of the relativisation and revitalisation of Ustashe,<sup>77</sup> followed by the Serb National Council. Due to government inaction, independent commemorations initiated by Jewish, Serbian and anti-fascist organisations in 2016 have continued in 2017, especially after the government failed to remove a memorial plaque bearing the Ustashe slogan “Za dom spremni” – “Ready for the Home(land)” – installed by Croatian war veterans and right-wing politicians near the site of the concentration camp at Jasenovac in December 2016.<sup>78</sup>

72 Marija Mandić, “Official Commemoration of the NATO Bombing of Serbia. A Case Study of the Fifteenth Anniversary,” *Südosteuropa*, No. 4, December 2016.

73 Prime Minister’s website, “Orbán Viktor beszéde a nemzeti konzultáció záróeseményén,” 27 June 2017, as reported by Hungarian Spectrum, “Viktor Orbán turns up the volume.”

74 Freedom House, *Nations in Transit 2016 – Croatia*.

75 Jasenovac Memorial Site, [List of individual victims of Jasenovac concentration camp](#).

76 Balkan Transitional Justice, Balkan Insight, “Croatian Jews Outraged by Concentration Camp Film,” 5 April 2016.

77 “Židovi bojkotiraju Jasenovac zbog relativizacije ustaštva,” 4 April 2016.

78 Balkan Transitional Justice, Balkan Insight, “Fascist Slogan Near Croatia Concentration Camp Sparks Anger,” 5 December 2016.

## Croatia 2016

Six months of resistance - 20 protest actions\*

**Protests begin on the first day of the new government - 22 Jan**

### Government

#### Threatens

- freedom of expression
- independent media
- funding for civil society
- education reform

#### Promotes

- traditional values
- intolerance and hate speech

### Civil society

#### Initiates

- coalitions and joint initiatives
- protests and broad mobilisation
- awareness raising

#### Directs

- demands to those responsible
- appeals, criminal complaints, and petitions

**The government is dissolved on 25 July 2016**

\*Read more about the variety of actions, see page 38.

In Poland, besides a law imposing criminal responsibility for insulting State symbols, senior officials and religion (“insult to the Polish nation”), a draft law was prepared and endorsed by the cabinet in August 2016 that would impose up to three years of imprisonment on anyone who suggested Polish involvement in the Holocaust, including references to the Nazi camps being Polish. The UN Human Rights Committee expressed concern about these laws in relation to article 19 of the Covenant – on freedom of expression.<sup>79</sup>

While generally condemning anti-Semitism, the Fidesz rhetoric has allowed to water down Hungarian involvement in the Holocaust and promote a steady rehabilitation of the regime of Miklós Horthy, head of state (Regent) of Hungary between 1920 and 1944. Speaking in June 2017 at the inauguration of the Klebelsberg Memorial Centre – the villa of Kuno Klebelsberg, a known anti-Semite and education minister whose policies directly served the revisionist and chauvinistic claims of the Horthy government – Viktor Orbán stated that “the second and third decades of the twentieth century were an arduous ordeal in the history of the Hungarian nation. We owe a debt of gratitude to a few exceptional statesmen – Regent Miklós Horthy, Prime Minister István Bethlen and Minister Kuno Klebelsberg – for ensuring that history did not bury us under the immense weight of a lost world war, the 133 days of the Red Terror and the diktat of Trianon.”<sup>80</sup>

<sup>79</sup> CCPR/CPOL/7, paragraph 37.

<sup>80</sup> Website of the Hungarian government, “[Prime Minister Viktor Orbán’s speech at the inauguration of the Klebelsberg Memorial Centre and Guest House](#),” 23 June 2017.

Space for critical thinking, independent research and reporting and access to objective and accurate information are pre-requisites for informed participation in pluralistic and diverse societies, and allow to debunk myths. Populist illiberal governments distrust not only media but also academia and cultural and artistic spaces. At the same time, a key strategy is capturing the education system, curtailing the ability to make informed decisions as part of a longer-term objective to eliminate democratic processes by educating future generations less prone to dissent and willing to forfeit empowerment (Volksverdummung).

Regarding academic freedom, the situation in Hungary is particularly acute, where attacks were taking place long before the case against the Central European University. In fact, such attacks began in 2010, with corruption charges against philosophers and academics, excessive financing to government friendly institutions and drastic cuts to the critical ones, and key appointments in positions of oversight over spending for academic activity. Regarding curricula, budgets were decreased for social science, arts, economics and law while favouring sciences.

In Serbia, the main issues in higher education are law school gaps in human rights and reluctance of universities to strengthen their human rights programmes, and that

war crimes are examined from a national perspective in the curricula.

With regard to public primary and secondary education, public education in Hungary has been centralised and the structure changed. However, the financial and administrative responsibility for education remains with municipalities, with less funding from the central government. As a result, many municipalities have turned the administration of schools over to the Church, particularly in towns and villages where there is only one school. Heavy administrative pressures are put on teachers, against the backdrop of weak trade unions. Except for Serbia, where civic education exists as an alternative to religious education, the promotion of Christian religion and “traditional values” takes place in schools through the revision of curricula and schoolbooks. In Hungary, new ethics and bible studies have been introduced. In Croatia, funds have been cut for curricula on human rights, civic education, gender equality and peace education and shifted to programmes on traditional values, and in Poland, sexual reproductive health teaching has been abolished. A common feature in these revisions is also the reshaping of the historical narrative taught in schools. In Croatia, war veterans hold talks in schools. In Hungary, segregation in schooling is a severe problem, in particular against Roma. The

increasing number of religious schools leads, despite equality before the law, to discrimination in practice, with the majority being taught in the now predominantly Church-led schools.

## Project fear

A discourse that plays on fear leads to societal pressures and leverage, and the marginalisation of minorities.

“Populists govern by swapping issues, as opposed to resolving them. Purposeful randomness, constant ambush, relentless slaloming and red herrings dropped all around are the new normal. Their favourite means of communication is provoking conflict. They do not mind being hated. Their two basic postures of “defending” and “triumphing” are impossible to perform without picking enemies,” states Miklós Haraszti.”<sup>81</sup>

The “people” in the discourse of populist parties are portrayed as homogenous communities which in fact, exist by antagonism – populism separates society into “the pure people” versus “the corrupt elite,” arguing that politics should be “an expression of the *volonté générale*, that is, the general will of the people.”<sup>82</sup> The “Us” versus “Them” paradigm needs threat scenarios and enemies, whether from outside or within; conspiracies are “part and parcel in the discursive construction

81 Miklós Haraszti, “I watched a populist leader rise in my country. That’s why I’m genuinely worried for America,” Washington Post, 28 December 2016.

82 Cas Mudde, “The Populist Zeitgeist”, Government and Opposition, Vol. 39, No 3 (2004), p. 542-63.

of fear of right-wing populist rhetoric.”<sup>83</sup>

A very notable example of such conspiracy theories is the Smolensk plane crash in 2010 in which the Polish President Lech Kaczyński died, which gave rise to the “theory” that the Russian government brought down the President’s airplane in cooperation with the Polish government led at the time by the Civic Platform. On the 10th of every month – the anniversary of the crash – a vigil is held in front of the presidential palace, at which it is promised “to bring to justice” those responsible. In September 2016, a film came out about the crash, which follows the story of a journalist seeking to uncover the truth about what really happened in Smolensk. “I invite every Pole who wants to know the truth to watch this film,” Jarosław Kaczyński said after the screening. Film critics close to the government wrote: “Smolensk tells the story of Poland’s biggest national tragedy since the Second World War... Poles were deceived regarding the cause of death of their president and after that they were intimidated by the gradual obstruction of the truth behind the tragedy.”<sup>84</sup>

“They” takes different forms, in opportunistic moves to gain popular support and depending on the circumstances – it can be migrants, Jews, Roma, international

banks, Muslims and so on, who are portrayed as conspiring against “Us.” Those who refute such narratives within the country are the “traitors” and objects of slander without any presumption of innocence. In Hungary, refugee and migrant issues are used to denigrate the NGOs that support refugees; they are regularly publicly slandered and accused of working against national interests. Smear campaigns and witch hunts often precede and serve to justify changes in policy or legislation, garnering popular support by playing on real or perceived fears. As stated in a recent article by the Polish sociologist Stanisław Skarżyński, “PiS really understands one emotion - fear. It builds its policies on fear. It builds its voters on: refugees, violence, terrorism, gender. Europe, Germany, Russia. The entire programme of this party is reduced to one single word: fear.”<sup>85</sup>

Fidesz built its victory in 2010 largely on the effects of the financial crisis, waging a war of words on “foreign” and “international” banks as designated “enemies,” and at the same time, using this controversy to pursue “economic sovereignty” and placing a large portion of the banking sector under national ownership.

In August 2013, government friendly media (Heti Válasz) attacked Open Society Foundations and the

consortium which manages the Norway and European Economic Area Grants, and published the names of NGOs that receive funds from these foundations and accused them of serving “foreign interests.” These allegations, which were echoed by members of the government, heralded the beginning of a lengthy smear campaign which led to the attempted legal actions against the consortium and ultimately, the adoption of the foreign funding NGO law.<sup>86</sup>

Before the law on the Supreme Court was pushed through in the Polish parliament, Jarosław Kaczyński called the draft law part of the “long fight of PiS against the establishment” and said the following in an interview with the Polish online news portal Onet: “Courts are one of the post-communist strongholds in Poland. The Supreme Court, has a really good record in terms of protecting people serving the old system, but also many very dubious judgments.

At the same time, there is a surge of subversion and subjection with the external forces against Poland.”<sup>87</sup>

Fearmongering and scapegoating “illegal migrants” and Muslims have been powerful vectors to justify anti-migrant policies, in particular in Hungary but also in Poland, and to gain support for the governments’

83 Ruth Wodak, “The Politics of Fear: What Right-wing Populist Discourses Mean” (2015).

84 #Poland “Smolensk” film scene goes down in history,” 12 September 2016.

85 “PiS tak naprawdę rozumie jedną emocję - strach. Na strachu szyje swoją politykę. Strachy wyborców: uchodźcami, przemocą, terrorem, genderem. Europą, Niemcami, Rosją. Cały program tej partii sprowadza się do jednego hasła: bój się.” Wyborcza, “Wyjdź na ulicę, sparaliżuj miasto. Przygniatająca większość to jedyny sposób, żeby złamać Kaczyńskiego,” 20 July 2017.

86 [Timeline of governmental attacks against Hungarian NGO sphere](#), February 2017.

87 Według naszej oceny sądy to jedna z twierdz postkomunizmu w Polsce. Na czele jest tu Sąd Najwyższy, który ma naprawdę spory dorobek, jeśli chodzi o ochronę ludzi służących dawnemu systemowi, ale także wiele bardzo wątpliwych wyroków. Jednocześnie szerzy się tam lewactwo i podległość w stosunku do sił zewnętrznych wobec Polski.” Onet Wiadomości, “Kaczyński idzie po sędziów”, 13 July 2017.

resistance to abide by EU refugee policies and quotas.

However, in Hungary, the claims and statements go far beyond advocating for better immigration control. Power centralisation and an absolutely unique xenophobic hate campaign have led to a situation unprecedented in Europe, in which even the leaders of religious and charity entities who support the cause of refugees everywhere (including in Poland or other Eastern European countries) make anti-refugee statements. Also, the discourse goes much further than any far-right populism in Western Europe: the terminology used lacks even the most superficial appearance of political correctness and involves creating new linguistic categories.

For example, the Hungarian government propaganda introduced the word “migráns” (migrant) into public speech, filling it with an explicitly negative content, basically reducing it to an insult. Before early 2015, this word was only used by academics and did not exist in everyday Hungarian. The introduction and overuse of this term was coupled with a de facto ban of the word “menekült” (refugee) on government-controlled and government-friendly media, in order to favour the use of a negative term of foreign origin, rather than a term that may incite solidarity in certain parts of society.

The public discourse is dominated by

creating moral panic – that the very existence of the nation is threatened by an “Islamic invasion.” As Viktor Orbán said at the 27th Bálványos Summer Open University and Student Camp: “Migration poses a threat, increases terrorism and increases crime. Mass migration fundamentally changes Europe’s cultural make-up. Mass migration destroys national culture.”<sup>88</sup>

At the same time the anti-migrant rhetoric uses moral justifications. As Jarosław Kaczyński said in his speech at the PiS congress in July 2017: “We have not exploited the countries from which these refugees are coming to Europe these days, we have not used their labour force and finally we have not invited them to Europe. We have a full moral right to say ‘no.’”<sup>89</sup> Such tactics reap a certain success. In a Pew Research Center survey conducted in July 2016, which showed anti-refugee and anti-Muslim views were on the rise across Europe, Hungary and Poland scored highest out of the 10 countries surveyed on a number of questions. For Hungary, 76% of respondents believed that refugees increase the likelihood of terrorism, 82% that they are an economic burden and take away jobs and social benefits, and 43% that refugees commit more crimes than other groups (in Poland, 71%, 75% and 26%, respectively). Also, 72% of respondents in Hungary and 66% in Poland held negative views of Muslims, while 64% and 47% respectively held these

views against Roma.<sup>90</sup> Channelling xenophobia against one particular group, however, has broader deleterious effects as it admits exclusion as a social mechanism and can be freely used by illiberal governments to single out any other group.

An illustrative example of inciting hatred and fear is the campaign waged against George Soros by populist and illiberal parties – in his native Hungary but also beyond, bringing together xenophobic, anti-elitist and anti-Semitic tropes. For Jacek Kucharczyk, head of the Institute of Public Affairs in Warsaw, George Soros is “the perfect figure for explaining to hard-core voters why the world is the way it is... he promotes liberal values, has a Jewish background and is a billionaire. It is a witch hunt that is being promoted by authoritarian right-wing populists, and smacks of age-old anti-Semitic conspiracies.”<sup>91</sup> Attacks by government friendly media, party members and government leaders have exponentially increased against George Soros in the last months, accusing him of subversive activities and conspiring against national interests, not only in Hungary but also in Poland and other countries in the region. In Poland, the PiS parliamentarian Krystyna Pawłowicz, in an interview with the Catholic Radio Maryja, called him the “most dangerous man in the world” and said that his foundations

88 [Prime Minister Viktor Orbán's Speech](#) at the 25th Bálványos Summer Free University and Student Camp, 26 July 2014.

89 Visegrad Post, “[Poland has a moral right to say 'no' to migrants](#),” 3 July 2017.

90 Pew Research Center, [Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs](#), 11 July 2016.

91 The Jewish Chronicle, “[Anti-Soros campaign across Europe is drenched in antisemitism](#),” 16 May 2017.



Hungarian billboard Targeting George Soros. It shows the financier along with the words: “Don’t let George Soros have the last laugh.” The campaign reportedly spurred several anti-Semitic incidents. Photo: Ynodrág, Wikicommons.

“finance anti-Christian and anti-national activities.”<sup>92</sup> Jarosław Kaczyński accused Soros of trying to destroy traditional societies by forcing multiculturalism on them.

In Hungary, the anti-Soros stance has also contributed to stirring anti-Semitism. A massive campaign against Soros – officially, set up to promote the government’s anti-migration policies – took place in June 2017, when billboards, posters and TV ads estimated to

have cost about \$21 million flooded the country, showing a photo of a grinning Soros with the caption “Let’s not allow Soros to have the last laugh.” This unprecedented personal targeting has reportedly spurred several anti-Semitic incidents throughout the country, including graffiti added on the posters and slogans such as “Stinking Jew” or Stars of David, and the gluing of posters on the floors of streetcars so that people would step on Soros’s image. Such incidents occurred

not only in Budapest but around the country; in Zalaegerszeg, for example, the town’s Holocaust memorial was damaged and many of the posters defaced with anti-Semitic graffiti.<sup>93</sup> The billboards were removed the day before the World Aquatics Championships started in Budapest on 13 July 2017 – the official explanation being that it was because the “national consultation on migration,” which the billboards were a part of, had ended.<sup>94</sup> However, this was not the first time

92 VOA, “[Demonization of Soros Recalls Old Anti-Semitic Conspiracies](#),” 15 May 2017.

93 European Union of Jewish Students, “[Don’t let him have the last laugh” - Hungary’s troublesome targeting of George Soros](#),” 12 July 2017.

94 EU Observer, “[Hungary to remove controversial Soros billboards](#),” 12 July 2017.

that anti-Semitism arose in the context of denigrating George Soros. In 2015, when large numbers of migrants and refugees were arriving in Europe, a far-right nationalist at an anti-refugee rally in Poland set fire to an effigy of an Orthodox Jew as a crowd chanted slogans against Islam and the European Union. The man said the Jewish figure represented Soros.<sup>95</sup> In Budapest, the Jewish Aurora community centre, which received initial funding partially from a Soros foundation, was attacked in May 2017 by a group of far-right activists. The Centre also houses NGOs that work on Roma issues, LGBT rights, migrants, drug use and homelessness. The far-right activists defaced the outside of the building, spray-painting “Stop Operation Soros” on the pavement and plastering photographs of his face with a red cross struck through it on the doorway. “Time permitting, we will say hello again,” said an article about the attack posted on a far-right website. The centre appealed to police, but authorities claimed there was nothing they could do about it.<sup>96</sup>

The interpretation of “democracy” as the “demos” in its most basic form – the people – and as a consensual uniform society runs deeply against the understanding of society as unified in its diversity, which underlies present liberal democracies. Populists are fundamentally monist and reject

the pluralism which is inherent to democracy,<sup>97</sup> as well as the processes which are typical in a representative democracy. This majoritarian rule leads toward a plebiscitary transformation of politics, which weakens the legitimacy and authority of political institutions and unelected bodies. Referenda and “popular consultations” are used not to consult but rather to confirm the correctness of policies and strategies of the leaders.

In October 2016, a referendum was launched in Hungary on the issue of refugees, following the decision of the government to legally challenge the EU quota system for the resettlement of refugees in its Member States. The question placed by the government before its electorate was crafted emotively, in terms appealing to fears over national sovereignty: “Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of parliament?”<sup>98</sup> The campaign contained no factual explanation of the context, no statistics on arrivals or reference to the need for regional solutions to manage the crisis. On the contrary, the campaign openly labelled the “illegal migrants” as an existential threat to the security and cultural identity of Europe, with billboards across the country spreading false information such as: “Did you know? Since the beginning

of the migrant crisis more than 300 people died in terrorist attacks in Europe.” “Did you know? Brussels wants to settle the equivalent of a town of illegal immigrants in Hungary.”<sup>99</sup> Ultimately, participation in the referendum did not reach the 50% threshold needed to validate its results. However, 98% of those who voted validly did vote against the admission of refugees – which allowed Viktor Orbán to claim victory over the outcome, disregarding the fact that over half of voters had not participated.

In April 2017, the Hungarian government launched a so-called “national consultation” entitled “Stop Brussels.” This was purported to be a “questionnaire” on public opinion regarding Hungary’s relationship with the EU. It was widely criticised as misleading and manipulative, but presented by the government as an enormous success. Supported by a costly public campaign, a questionnaire was sent out containing six misleadingly drafted questions based on incorrect facts, which triggered the European Commission to publish a factual response to the claims made by the government in the “Stop Brussels” campaign.<sup>100</sup>

95 VOA, “[Demonization of Soros Recalls Old Anti-Semitic Conspiracies](#),” 15 May 2017.

96 The Guardian, “[A useful punching bag: why Hungary’s Viktor Orbán has turned on George Soros](#),” 22 June 2017.

97 Jan Werner Müller, [The wrong way to think about populism](#), Social Science Research Council Democracy Papers.

98 Stephen Pogány, “[Of Folk Devils And Moral Panic: Hungary’s Referendum On Mandatory EU Migrant Quotas](#),” Social Europe, 20 September 2016.

99 Visegrad Post, “[The striking placards of the Hungarian government for the referendum on migrant quotas](#),” 20 July 2016.

100 European Commission press release, “[Hungary: Commission takes legal action on Higher Education Law and sets record straight on ‘Stop Brussels’ consultation](#).”

## Weakening human rights

The concept of popular sovereignty – the majoritarian rule – underlying populist and illiberal thinking is intrinsically in conflict with the concept of individual rights, that the same rights apply to all, and that minorities' rights should be protected and promoted. Rights are selectively granted or denied to groups of the population. Likewise, the rule of law is perceived as a limitation on the collective will of the nation.<sup>101</sup> Popular sovereignty also challenges the system of checks and balances and the balance of powers. As Viktor Orbán stated in an interview in 2014: “Checks and balances is a US invention that for some reason of intellectual mediocrity Europe decided to adopt and use in European politics.”<sup>102</sup>

Major challenges arise with the adoption of retrogressive legislation, which weakens the promotion and protection of human rights, in particular when targeting certain groups such as migrants or the homeless, or infringing on acquired women's rights. Human rights, in the new Hungarian constitution, are recognised but considerably weakened by the reliance on “special laws” to develop the content of these rights, broad or vague wording, and the repeated absence of references to international and European standards.

Equality and non-discrimination laws exist in the four countries included in this study and are largely compliant with international and European standards. The main issues arise with regard to their implementation and practice, and their capacity to stem discriminatory discourse and hate speech and ensure accountability for such acts.

The Polish 2010 Anti-Discrimination Act does not afford protection against discrimination in all areas on all grounds (sexual orientation, disability, religion, age and political opinion). Furthermore, the Criminal Code does not refer to disability, age, sexual orientation or gender identity as grounds for hate crimes.<sup>103</sup> There is little accountability for hate crimes based on sexual orientation; LGBT organisations have been physically attacked without any effective investigation taking place or public condemnation.<sup>104</sup> Against the backdrop of official opposition to receive refugees, anti-migrant hate speech and violence is a growing concern.<sup>105</sup> The UN Human Rights Committee expressed concern about the reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the Polish authorities to such incidents.<sup>106</sup>

In April 2016, in his report on his visit to Croatia, the Council of Europe Commissioner for Human Rights expressed concern about the rise in discrimination, ethnic intolerance, and hate speech.<sup>107</sup>

In Serbia, as part of the EU accession process, erosion of acquired rights is not the main issue, but rather the slow implementation of what remains to be done to fully integrate and align international and European standards and to implement them. While progress has been achieved in putting in place mechanisms and legislation to ensure equality and combat discrimination, there are concerns about a continued rise in hate speech in the Serbian public discourse, amplified by wide media coverage. A report by the European Commission against Racism and Intolerance of the Council of Europe stated: “The current public discourse is reminiscent of the hate speech used before the recent wars in the region and surveys show high levels of underlying social distance between different parts of the population... Hate speech is increasingly disseminated via the Internet; football hooligans and their organisations also contribute to spreading hatred.”<sup>108</sup>

101 Cas Mudde and Cristóbal Rovira Kaltwasser, “Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America,” *Government and Opposition*, vol.48, 2012.

102 Bloomberg, “Hungary on Path to Shed Junk Grade and Shield Forint, Orbán Says,” 15 December 2014.

103 UN Human Rights Committee, CCPR/C/POL/CO/7, paras. 13 and 15.

104 Human Rights Watch, [World Report 2017 - European Union Events of 2016](#).

105 Ibid.

106 CCPR/C/POL/CO/7, para. 15.

107 Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe following his visit to Croatia, from 25 to 29 April 2016, CoE Doc. [CommDH\(2016\)31](#), para. 68.

108 European Commission against Racism and Intolerance, [Report on Serbia \(5<sup>th</sup> monitoring cycle\)](#), 16 May 2017, p. 9.

## Gender and traditional values

Illiberal governments have picked up the discourse of the far right and conservative anti-gender movements that claim that gender equality is an “ideology,” and introduce the misleading terms “gender ideology” or “gender theory” that distort the achievements of gender equality. The main targets are the alleged “propaganda” for LGBT rights, reproductive rights and biotechnology, and sexual and equality education. The role of the family in traditional value systems, including the role of the woman in the family, go hand in hand with the projected worldview of an ethnically homogenous, “moral” society.

Gender stereotypes, traditional outlooks on the role of women and men and homophobic attitudes had long prevailed in the region, but considerable progress in shifting mentalities and public opinions had been made in the last years. In that respect, where it occurs, the promotion of “traditional values” represents an important retrogression.

The new Hungarian constitution laid down a principle that protects the right to life from the moment of conception, and declares that marriage should only be between man and woman. At the same time, abortion has been legal since 1953 and the Hungarian public, according to polls, has a rather positive view of the right to choose – unlike in Poland.

According to the Hungarian Family Protection Act which came into force in 2012, the family is composed of a heterosexual couple and their children, or relatives in direct line. Tax regulations support this concept. The new Civil Code which came into effect in 2014 does not include the registered same-sex civil partnership, which is regulated in a separate Act and thereby does not define as “family.” Registered same sex partnerships were recognised in 2009, and enjoy rights and entitlements. However, these constitutional and legislative amendments have closed doors to any further discussion on same sex marriages.

In Hungary, the anti-gender discourse is closely linked to the general discourse on the need to preserve the Hungarian nation and its traditions from “external influences” and from the “domestic liberals” – fear-mongering language used against “gender ideology” described as a threat to Hungary. Gender equality is furthermore portrayed as a concept associated with communism.<sup>109</sup> Such a “traditionalist” construct has had a certain impact on women’s rights and gender equality.

Representation of women in public office deteriorated with the arrival of Fidesz to power; at present, there is not one single woman in the Hungarian government and women make up only 10% of parliament following the 2014 elections.

This is the lowest in Europe, and according to the Inter-Parliamentary Union, ranks Hungary 160th in the world in terms of the percentage of women in parliament.<sup>110</sup>

This contrasts with the situation in Poland, where the “anti-gender” debate pre-dates the coming to power of the Law and Justice majority. It derives its origins in the Catholic Church in Poland, which, besides its traditional stance on abortion and reproductive rights, has accused “gender ideology” of being responsible for a deepening crisis of family and society, and for societal flaws.

At the end of 2013, a campaign emerged within the Church to undermine gender theories. After its election in 2015, the government has supported the position of the Church through legislation and policies.

With regard to women’s rights, both Poland and Hungary pursue conservative policies that do not per se constitute human rights violations, but convey a rhetoric that obstructs women’s rights and gender equality. These policies are implemented without major resistance, due to lengthy paid maternity leave, limited early child care options, and labour laws protecting mothers, as well as gender pay gaps and work in lower paid sectors, coupled with social pressures.

<sup>109</sup> Friedrich Ebert Stiftung, [Gender as symbolic glue](#), p. 46.

<sup>110</sup> Inter-Parliamentary Union, [Women in national parliaments](#): world classification as at 1 September 2017.

# #czarnyprotest

Abortion has always been a contentious issue in Poland, but the situation deteriorated with the present government's support for "traditional values." In September 2016, a draft law was put before the parliament's Justice and Human Rights Committee for review, based on an initiative of pro-life groups. If adopted, it would forbid abortion in all circumstances, including rape, incest, and risk to the life of a woman. Furthermore, women seeking an abortion and doctors accepting to perform abortions would face criminal charges, and cases of miscarriages could be subject to investigation.

This sparked mass protests of unprecedented levels.

On Monday 3 October, some 7 million women and men went on strike and went out to protest, boycotting work and school, closing down restaurants, shops, government offices and university classes, and blocking access to the ruling party headquarters in Warsaw.

Dressed in black and armed with wire hangers, women and men took to the streets across Poland, with an estimated 30,000 in Warsaw's Castle Square. It was reported that in Czestochowa, a popular destination for Catholic pilgrimages, 60 city officials did not show up to work. The movement received support from media outlets, such as *Gazeta Wyborcza*, the magazine *Polityka*, and the TV news channel TVN24.

The "Black Monday" action was the culmination of an organised social media initiative, in which people wearing black posted pictures of themselves with the hashtag #czarnyprotest ("black protest") in the weeks following the announcement of the draft law.

The protest movement also attracted international attention, and rallies in support of the Polish women were organised in cities across Europe, including Berlin, London, Barcelona and Paris. Solidarity messages were received from Iceland – where in 1975 women had organised a similar strike to protest against gender discrimination – and from women's groups in Kenya.

03/10



At first, the government attempted to minimise their action; the Foreign Minister Witold Waszczykowski dismissed the protesters as women "having fun." However, faced with the intensity of the protests, the parliamentary committee reviewing the draft law recommended that it be rejected, and the PiS members who had referred the draft for review backtracked and withdrew it, less than two weeks after it was submitted. The writer and activist Agnieszka Graff argued that attempts to impose a total abortion had the opposite effect of building greater support for abortion rights in Poland.

In particular in Poland, the gender pay gap has widened among younger women. The European Commission noted young mothers' prolonged periods of labour market withdrawal, and the fully transferable parental leave which encourages women as second earners to stay out of the labour market, noting as well that the new child benefit "may have a negative effect on the labour market participation of parents, mostly women."<sup>111</sup>

Women's rights and feminist organisations do speak up but are rarely listened to – with exceptions, such as the "Black Protest" in Poland and the massive resistance sparked by the proposed abortion ban.

The situation of sexual and reproductive rights, in particular abortion, has always been a contentious issue in Poland, but the situation has deteriorated with the current government, in particular as regards family planning services and access to the morning-after pill. The number of clandestine abortions is high, as doctors often evoke a conscientious objection clause to refuse abortions,<sup>112</sup> with the result that access to legal abortion is unavailable in many institutions and areas of the country.

There have been numerous cases brought against Poland on this issue to the European Court of Human Rights,<sup>113</sup> but there has not been follow up to these judgments. The UN Committee on Economic, Social and Cultural Rights and UN Human Rights Committee both raised concerns and made recommendations in this regard.<sup>114</sup> The opposition to "gender" has also impacted progress on combating domestic and gender based violence. Hungary has not ratified the Istanbul Convention – basing its refusal on advice that it is about "gender." In Poland, the Convention is ostentatiously not implemented. At the same time, organisations working with victims of domestic- and gender-based violence, which never really received much support, have seen this support shrinking and their funding cut off, in a growingly hostile atmosphere.

In Poland, there is no form of same-sex civil partnership, nor is there an equality policy in place with regard to LGBT persons. Equality bodies and organisations working on LGBT rights are underfinanced.

In Serbia, in contrast, the comprehensive Anti-Discrimination Law adopted in 2009 contains provisions that explicitly prohibit discrimination on the basis of sexual orientation and/or gender identity, and has contributed to some progress in regard to LGBT persons. Challenges remain, particularly in combating hate speech, threats and physical violence. For example, there is no centralised official data record on the number of homophobic crimes. Also, the level of public prejudice against the LGBT population is still relatively high and policies are needed to change mind-sets, for example by removing discriminatory contents from textbooks.<sup>115</sup>

The country's new government is led by a prime minister who is openly homosexual. However, the effects in practice of such a nomination for LGBT persons in Serbia remain to be seen.

111 European Commission, Commission Staff Working Document - Country Report Poland 2017, [DOC SWD\(2017\) 86 final](#), 22 February 2017.

112 Article 39 of the Act on Medical and Dental Professions. As a result of a judgment of the Constitutional Tribunal of October 2015, there is no reliable referral mechanism for access to abortion following the exercise of conscientious objection.

113 See for example, *Tysiac v. Poland* (application no. 5410/03) and *R.R. v. Poland* (application no. 27617/04).

114 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Poland, adopted on 7 October 2016, UN Doc. [E/C.12/POL/CO/6](#), paras. 46 et seq. and [CCPR/C/POL/CO/7](#), para. 23 et seq.

115 Commission Staff Working Document: Serbia 2016 Report, [SWD\(2016\) 361 final](#), 9 November 2016, p. 63.

## Croatia: A timeline of resistance

*See also graphic on page 28*

Between January and July 2016, at least 20 public actions and protests were organised by Croatian civil society, in particular in reaction to the government's attempts to curtail freedom of the media and freedom of expression, and to decrease funding for civil society organisations and for public education.

Also, civil society consistently mobilised resistance against elements within the populist agenda of the governing coalition that threatened Croatian society, through historical revisionism and the promotion of “traditional” values.

**22 January** – Platform 112 organises a protest on St Mark's Square against “The Death of freedom of expression,” demanding the removal of the right-wing culture minister Hasanbegović known for his revisionist stance on fascism. This protest came on the day the new government was introduced.

**4 February** – “Kulturnjaci2016” organises a press conference on St Mark's Square denouncing the spread of hate speech and intolerance, public insults, and attacks on the freedom of association, freedom of expression and free speech. It issues an appeal calling for the resignation of Hasanbegović, following a petition among workers of the cultural and artistic sectors.

**8 March** – Two protests are held for International Women's Day, organised by Women's Network Croatia and a collective initiative “Take Responsibility for the Killing of Women,” against inadequate political representation, discrimination at all levels of public life, violence against women, and erosion of sexual and reproductive rights as part of the promotion of traditional values.

**1 April** – An initiative called “For Satire Ready” is formed, including members of civil society and the Croatian Journalists' Association. It organises a protest in defence of artistic freedom and against censorship of satire. This protest was triggered by the cancellation of the satirical TV show Montirani proces, and came as a response to systematic attacks on free speech, public denigration of media and journalists by the government, the taking over of the Croatian Television HRT, and the massive dismissal of HRT media workers, editors, journalists, and film directors.

**3 April** – The Minister of Culture issues a statement in connection with the assault on the writer and journalist Ante Tomić while he was attending a cultural festival in Split on 31 March. Hasanbegović recalled “the importance of being responsible for words spoken and written in public.”

“Kulturnjaci 2016” calls on the Prime Minister to dismiss Hasanbegović over the “shameful statement.”

**4 April** – The Coordination of Jewish Municipalities in Croatia, followed by the Serb National Council, announced it would boycott the official commemoration at Jasenovac Memorial Site accusing the government of failing to confront Ustashe revitalisation. It later organised independent commemorations at Jasenovac and a public gathering in Zagreb on the anniversary of the day the concentration camp was liberated.

**5, 6, 19 April** – Protests are staged by a number of civil society organisations against the intention of the government to adopt a regulation that would substantially decrease the 2016 income of the National Foundation for Civil Society Development and contains criteria for the allocation of funds to NGOs. Civil society heavily criticised the government for not engaging in a social dialogue.

As a result of the protests, the adoption of the regulation is postponed and finally takes place on 22 April in a telephone session.

**13 April** – With regard to public education, the initiative “Good” staged a protest against the lack of financial support for the comprehensive curriculum reform currently before the parliament and the lack of independence and expertise of the Croatian Education and Teacher Training Agency.

**21 April** – The Anti-Fascist League of Croatia, joined by Coordination of Jewish Municipalities in Croatia, Serb National Council, Roma National Council and the Federation of Anti-Fascist Fighters, organised a public gathering at the Square of Victims of Fascism in Zagreb, in remembrance of the Holocaust, including Serb and Roma victims, and to warn against the trend to relativise and promote Ustashe ideology supported by the government.

**27 April** – The initiative “Welcome” along with “Croatian Platform for International Citizen Solidarity” staged a protest on the occasion of the visit of Turkish President Recep Erdogan, accusing the government of receiving Erdogan under the pretext of economic investments and turning a blind eye to the human rights violations occurring in Turkey, including against refugees, and calling out the EU-Turkey agreement.

**2, 3 May** – The Croatian Journalists’ Association reported on “unacceptable attacks and personal insults” against several hosts of TV shows for allegedly insulting “national and religious sanctities.” On World Press Freedom Day, it organised a protest against the continued dismissal of journalists working in public service broadcasting and called for the resignation of the culture minister.

**9 May** – The initiative “For strong civil society” addressed an appeal to the government in defence of the existing model of support to civil society, and to protest the dismissal of the Committee for non-profit media, re-allocation of revenues intended

for the National Foundation, and postponement of re-electing the Foundation’s executive board. More than 430 organisations signed the appeal.

**21 May** – A protest was organised by several organisations under the name “Defend the Right of Choice” (Obranipravonaizbor), denouncing political manipulations with the aim to deprive women of their right to decide for their own lives, at the same time as the so-called March for Life (Hodžaživot) was taking place calling for restrictions on the right to safe abortion.

**1 June** – The initiative “Hrvatskamožebolje” (“Croatia can do better”) organised major protests in several cities, with 25,000 people in Zagreb (the biggest protest since the Radio 101 protest that took place 20 years ago) after the curricular reform was stopped. Protesters demanded the continuation of the reform and the resignation of the Education Minister Predrag Šustar.

**14 June** – A round-table discussion was held on reproductive rights organised by the Center for Education, Counseling and Research (CESI), Doctor’s Initiative to Regulate the Right to Conscientious Objection in Medicine, and Platform 112, addressing the emerging threats to women’s right of access to family planning and the intention of conservative, right-wing and Christian organisations to change Croatia’s abortion law.

**15 June** – “Worker’s Front” staged a protest calling for the First Deputy Prime Minister Tomislav Karamarko to resign (Karamarko, odlazi) and for the departure of the “gang of thieves,” as well the resignation of the minister of culture.

**16 June** – The initiative “Croatia can do better” organised another protest in support of comprehensive curricular reform and called for the resignation of everyone responsible for the reform’s non-implementation.

**13 July** – The Croatian Journalists’ Association issued a public statement strongly condemning an attack on Ljubica Letinić, journalist and editor of Croatian Radio. This includes denouncing an open letter as a case of politically motivated hate speech and defamation, and the fact that the shows he edited were taken out of the programme.

**14 July** – Protest organised by civic initiative “Sloboda trećima” (“Freedom to the Third” – programmes on Croatian Radio and Television) with the title “Na valovima slobodnog Trećeg” was held on the Square of Victims of Facism in the form of a public radio show warning about radical changes to Croatian Radio and Television 3 programmes.

**15 July** – The Anti-Fascist League filed a criminal complaint against the director of the film “Jasenovac – the Truth” for “public incitement to violence and hatred.”

# Practices and strategies to inspire civil society

Work methods, mobilisation, and interaction with decision-makers

## Putting human rights first

“Overall, human rights defenders in Hungary are able to operate safely,” concluded the United Nations Special Rapporteur on human rights defenders, Michel Forst, following his official visit to Hungary.<sup>116</sup> As the above analysis documents, human rights defenders in Croatia, Poland and Serbia face a very similar situation.

Human rights organisations in ill democracies indeed have a great asset: they still have access to the public and can use the streets, and successes in Croatia and Poland show that mobilisation remains possible.

However, one should not underestimate the challenges faced by human rights defenders working in such countries, as underlined by the Special Rapporteur: “The environment in which they

function is increasingly not a conducive one.”

Throughout the world inequality continues to grow.<sup>117</sup> The perception of many people in Croatia, Hungary, Poland and Serbia, as well as in many other parts of the world where countries have developed a middle-class, is that their governments have not worked for them. The human rights movement is not seen by these people as having an answer for them. As Philip Alston, UN Special Rapporteur on extreme poverty and human rights, recently put it:

“The focus of most human rights advocacy is on marginal and oppressed individuals and minority groups. However, the majority in society feel that they have no stake in this kind of human rights movement, and that human rights groups really are just working for ‘asylum seekers,’ ‘felons,’ and ‘terrorists.’”<sup>118</sup>

It would merit to be examined further whether illiberal policies and practices have effectively impacted the enjoyment of social and economic rights, and whether improvements have been made that live up to the promises of illiberal governments.

In this regard, the assessment made by Platforma 112, Overview of the First 100 Days of the Orešković Government, is an interesting illustration. It notes: “Socio-economic policies show no visible signs of the main structural reforms promised in the pre-election period... Announcements and pre-election promises of reforming and reducing public administrative units, as well as territorial restructuring, do not have clear political support, which continues to open space for inefficiency and clientelism.”<sup>119</sup>

There is a need to debunk feelings that illiberal policies will provide a

<sup>116</sup> UN Doc: [A/HRC/34/52/Add.2](#), para. 104.

<sup>117</sup> In [remarks delivered at the launching event of the “In It Together” report](#), on 21 May 2015, the Secretary General of the Organisation for Economic Co-operation and Development, Angel Gurría, said that “We have reached a tipping point. Inequality can no longer be treated as an afterthought. We need to focus the debate on how the benefits of growth are distributed.” He considers the “situation is economically unsustainable.”

<sup>118</sup> Philip Alston, “[Human rights under siege](#),” SUR 25 (2017).

<sup>119</sup> [Going Down: Overview of the first 100 days of the Orešković government](#), 29 April 2016.



The initiative “Hrvatska može bolje” (“Croatia can do better”) organised major protests in several cities on 1 June 2016, with 25,000 people gathering in Zagreb. Here, a protestor holds the sign: “A banner as good as this government.” Photo: Luka Tomac, Hrvatska može bolje.

better answer than human rights to socio-economic issues, as Platforma 112 did: “We need to start insisting that the catalogue of human rights includes – equally – both categories of rights.”<sup>120</sup>

The increased scrutiny of human rights NGOs, and growingly excessive regulations and restrictions against them, as well

as slander and public attacks, find resonance in people because of the perception that the human rights movement has not been working for them.

An additional challenge is the accusation of “partisanship” and “politicisation.” “NGOs are against the conservatives,” one can hear. The conservative space has been

claimed by illiberal politicians. This accusation thereby associates NGOs with the partisan and political opposition in Croatia, Hungary, Poland and Serbia.

The major challenge is how to delineate between partisan activity and the tasks of human right defenders – the watchdog function which provides the same defence

120 Ibid.

of human rights for all people notwithstanding their partisan affiliations or beliefs. In Poland and Serbia, NGOs have until now never reacted to the accusations of politicisation and bias against them.

Illiberal governments tend to increase polarisation. In a “perfect world,” civil society can play an evident positive role for all, and is recognised in doing so. The United Nations, through its resolutions on human rights defenders, has consistently called upon States and leaders in all sectors of society to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy, and rule of law, and to avoid stigmatisation.

Human rights NGOs have become political actors, yet they are not partisan, and they are anchored in the principles put forward in the United Nations Declaration on Human Rights Defenders,<sup>121</sup> including the principles of universality and indivisibility.

To counter accusations of “partisanship,” put forward under the label of “politicisation” by illiberal governments, NGOs increasingly need to be transparent, accountable and clear in their practices. We need to be clearer about our starting point – the universal and indivisible human rights we defend – even more so

as human rights NGOs engage in the public debate, and have to face politicians and illiberal governments promoting assaults on human rights. We also need to demonstrate that we ourselves function democratically, are accountable, and are able to stand firm to defend human rights values, principles, and legal standards.

The use of regional and international systems is thereby also explainable. States have decided to jointly set forth regional and international standards for the protection of human rights and the rule of law. This is what human rights NGOs abide by; we promote respect by States of ratified international human rights law, and we push for further work and stronger standards, as we cannot be satisfied by the minimum at best.

Illiberal governments often put forward the argument of interference by the international community and their silence on the shortcomings of previous governments. It is not “politicisation” to call out that illiberal governments advocating “traditional values” and illiberal democratic principles in reality aim at raising their own cultural norms and particularities above international law and standards, hence undermining the principle of universal human rights.

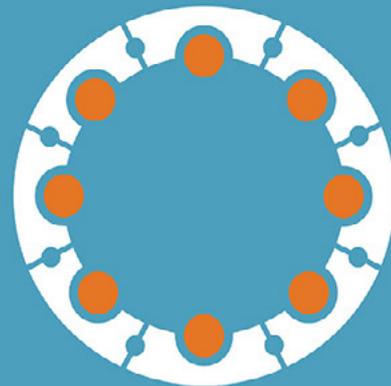
In this spirit, we need to reclaim our right to fully enjoy article 25 of the International Covenant on Civil and Political Rights, specifically the right and opportunity take part in the conduct of public affairs. Even without running for public office, everybody has this right, and States should indeed leave greater space for civil society to participate fully, freely, and without fearing retaliation in the public dialogue, especially during electoral processes, as argued by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai:

“The rights to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs. The exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues.”<sup>122</sup>

121 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the United Nations General Assembly on 9 December 1998 (UN Doc: A/RES/53/144).

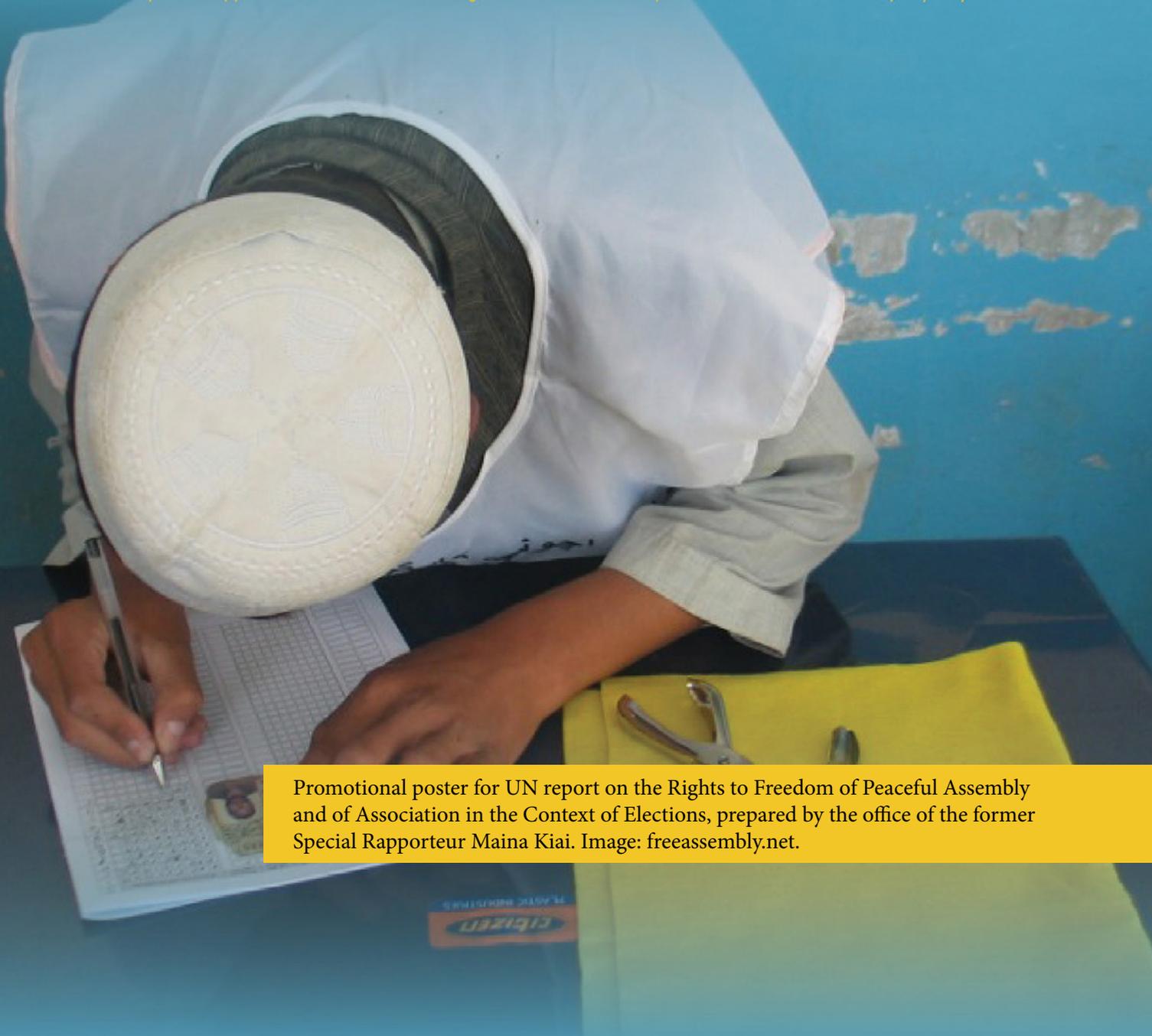
122 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the United Nations General Assembly (UN Doc: A/68/299), para. 6.

# ELECTIONS: VOTE YES FOR MORE CIVIC SPACE



“Election periods are a time for citizens to express their collective will and confer legitimacy on governments. People should be given more space – not less – to exercise their assembly and association rights. If they are not, it fundamentally undermines the legitimacy of the process. And that calls into question the legitimacy of the government itself.”

*United Nations Special Rapporteur Maina Kiai discussing his October 2013 report to the General Assembly (A/68/299)*



Promotional poster for UN report on the Rights to Freedom of Peaceful Assembly and of Association in the Context of Elections, prepared by the office of the former Special Rapporteur Maina Kiai. Image: freeassembly.net.



## Toolbox for civil society

This includes NGO sustainability, work methods, mobilisation, and interaction with decision-makers.

In the context of countries run by illiberal governments, it is key for NGOs to ensure their sustainability, develop their work methods, make greater efforts to mobilise the wider public, and to offer clarity on the way they interact with decision-makers.

We offer a list of practices and strategies that could inspire civil society organisations facing illiberal governments in this regard, based on some successes in the countries examined. Note that this is non-exhaustive.

### Sustainability

## Maintaining funding

Illiberal governments do not limit their action to controlling national funding but also aim at limiting the access of human rights organisation to private and public foreign grants.

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**Continue to defend international human rights standards on the right to access funding notwithstanding the geographic origin of the funding, as put forth in United Nations resolutions on human rights defenders.**

**Build a financial base that is broader than institutional donors, such as from direct individual donations and through crowdfunding of specific projects.**

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In summer 2016, Human Rights House Voronezh used Russian crowdfunding platform planeta.ru to raise funds for various needs of the organisation, such as to raise funds to provide legal help for people free of charge, to pay the rent, to cover administrative costs such as the salary of the secretary, and in small part to repair the building. The Human Rights House exceeded its goal of 290,000 RUB (about 4,050 EUR). Online crowdfunding is made possible by websites such as Kickstarter, Indiegogo, and Causes, which enable users to establish campaign pages for a particular project or cause, set a funding target, and then receive donations through the platform.

## Sustainability

## Promoting legitimacy

Illiberal governments, just like authoritarian governments in the Russian Federation and elsewhere, attack human rights NGOs on the origin of their funding, attempting to delegitimise them.

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**Campaign on the fact that illiberal governments committed themselves internationally not to impose restrictions on potential sources of funding to human rights activities. Hence, no law should criminalise or delegitimise human rights activities based on the geographic origin of funding.**

**Document how foreign funding contributed to build up the country, thanks to support to the government and to civil society, including by showing what internationally funded programmes have allowed civil society to do over the years.**

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An example that inspired the authors of this case-study is Peace Now's report examining the funding sources and transparency of nine organisations defending the pro-settler policies of the current government in Israel, in light of the law limiting access to foreign grants. The study found that 94% of the donations to these organisations in the years 2006–2013 were non-transparent, meaning that there is no possibility to identify their original donor. The study also finds that the majority of the funding to the organisations examined originated from private individuals abroad, arriving mainly through US organisations with a tax-deductible donations status.

## Sustainability

## Contingency planning

Illiberal governments are ready to use any tool they have at their disposal to channel public funding towards organisations and media loyal to them. The sense that civil society critical of the government enriches society is not present in illiberal minds.

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**Establish private philanthropic entities for human rights work that will raise funds directly from citizens, therefore decreasing dependency on funding exclusively from public donations and foreign-based donors.**

**Organise solidarity among NGOs, by creating joint solidarity funds to overcome short-term financial difficulties (such as cash flow problems between project cycles), and initiatives for staff sharing in times of temporary financial shortages.**

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In Croatia, the Foundation for Human Rights Solidarna was established in 2015 by 55 Croatian human rights activists and civil society organisations, as an answer to the “gradual implosion of public funding for human rights advocacy” and the “rising needs for ad hoc citizen actions against illiberal trends.”

## Work methods

### Transparency of decision making

Illiberal governments aim at delegitimising human rights NGOs and social movements, by attacking their positions and their organisation.

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**Make decision-making processes within a social movement or a structured human rights organisation available to the public, providing clarity on the role of the different organs.**

**Offer clarity on “where you come from” and on what grounds your positions are based, as a manner to show your legitimacy.**

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The Human Rights House Foundation with the Human Rights Houses has adopted a joint Code of Conduct, detailing their joint values and the principles of conduct they will abide by, such as:

- Safety and protection of human rights defenders comes first
- Respect all human rights of all individuals without discrimination
- Ensure transparency and accountability
- Practice good governance

## Work methods

### Good, accountable governance

Illiberal governments pretend that human rights NGOs are not accountable and actually act on behalf of foreign interests, use foreign donors to enrich themselves personally, and do not contribute to society.

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**Ensure that your decision-making bodies are functional and follow the principles that your movement or organisation promotes, including with regard to gender equality and good governance.**

**Follow a transparent governance method and run accountable operations, including by having independent auditing of accounts.**

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Transparency International openly assesses its own accountability on its website, with dedicated pages laying out their governance, funding and finances, impact monitoring, and evaluations. The organisation participated in establishing “Accountable Now,” a global platform that supports civil society organisations to be transparent, responsive to stakeholders and focused on delivering impact.

## Work methods

## IT security

Illiberal governments take measures to increase data surveillance and generally show less respect for privacy and less respect for the protection of privileged information, for example that expressed in client-lawyer confidentiality.

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**Make sure your organisation is equipped to secure data and that all staff are trained for secure electronic communications, and more broadly understand how to secure data in the digital age as well as physically in office.**

**Plan your expenses for information technology for your organisation, including in short-term projects, in order to avoid having to replace the hardware of your organisation at once.**

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Front Line Defenders published a manual “Digital Security & Privacy for Human Rights Defenders” that provides guidance on how to understand and think about security and privacy issues in human rights work. The manual also provides guidelines on how to successfully build an organisational IT security policy, regarding: online communications and correspondence; data storage and archiving; online identity theft and profiling; and ways to curtail the threats of internet censorship, surveillance and monitoring.

## Work methods

## Empowering personnel

Illiberal governments put high pressure on human rights defenders, whether they volunteer or work for an NGO or participate in a movement. Although not directly risking their lives, human rights defenders working in such countries can face exhaustion and struggle with burnout.

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**Support your activists and staff in facing this high pressure through team building, fundraising for external coaching, and empowering them by recognising their uniqueness and value.**

**Build up a strategy within your organisation to address mental health and wellbeing of your activists and employees.**

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The Hungarian Helsinki Committee offers counselling to staff members who work with clients such as traumatised refugees and victims of police abuse, as these staff members are subject to increased stress. Counselling is also available on a case-by-case basis to other staff members. In the same spirit, openDemocracy launched an online series to discuss the mental health and well-being of advocates, too often neglected by human rights organisations, funders, and advocates themselves.

## Mobilisation

### Participating, mobilising

Illiberal governments provoke reactions within people beyond the human rights community, as they attack key pillars of the rule of law, question national history and culture, and assault minorities.

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**Make sure your organisation is reaching out to constituencies beyond its own members and is inclusive in the way it promotes answers to illiberal policies, especially by participating in mobilisations and movements, and delegating staff to unity committees, even if the organisation does not endorse the entirety of the joint message.**

**Be present, participative, and inclusive, beyond simply monitoring from a distance.**

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In Poland, the Helsinki Foundation for Human Rights has shown the strength of the #CandleLightRevolution, taking place in July 2017 as a reaction to the laws attacking the Supreme Court and the National Judiciary Council. Without taking credit, it shows on social media platforms that it is participating, and links the work of its partner international NGOs with ongoing protests.

## Mobilisation

### Cooperation among NGOs

Illiberal governments use the heterogeneity of civil society against the human rights movement, by playing the division and competition of NGOs. Whether NGOs work on different rights, have more of a watchdog function or have a service-providing mission, greater cooperation leads to greater understanding of each other's strategies and greater learning from each other, and makes the organisations less alone in facing very similar threats.

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**Increased cooperation between NGOs is a way of finding a trusted group in which strategies can be shared, discussed and tested. Make sure you have identified such a group of NGOs and know with whom you can share information, as well as the organisations you cannot trust for such close cooperation.**

**Make sure you have a trusted space for dialogue to agree on different strategies, and to agree to disagree.**

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In Croatia, following the decision to drastically cut public funding for NGOs' programs and projects, "Inicijativa za snažno civilno društvo" (Initiative for Strong Civil Society) organised a series of public actions to raise awareness of the harmfulness of the government's policy and show solidarity among different NGO groups.

In Hungary, a joint coalition of several dozen NGOs called Civilization works for the recognition of civil society as an important factor in democracy.

## Mobilisation

**Coalition building**

Just as illiberal governments attempt to divide human rights NGOs, they also attempt to divide civil society by playing specific interests against human rights, typically pretending to protect domestic workers against a foreign workforce.

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**Human rights NGOs must find mechanisms to cooperate with worker movements and unions, environmental organisations, and activists, and have open communication with such structures to be able to discuss and share their agendas without distrust.**

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Platforma 112 is a coalition of 71 Croatian civil society organisations active both nationally and locally in fields of human rights, democratisation, peace building, combating corruption, and the protection of public resources and environmental protection. Platforma 112 has operated as a collaborative advocacy platform since 2011 by supporting common advocacy initiatives, and advocating for socially just public policies. Since 2011, before general elections, Platforma 112 promotes NGOs' calls for the political parties and organises election debate around them.

## Mobilisation

**Promote role of defenders**

Illiberal governments attempt to stigmatise and delegitimise human rights defenders, saying that human rights defenders in fact do not work for all human rights for all but for particular or foreign interests. However, illiberal governments continue to promote themselves as human rights promoters in the international system, typically by sponsoring resolutions on human rights defenders.

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**Hold your government to account on their international commitments to express public support for human rights defenders. Signal any discrepancies between the government's international commitments and its slander of human rights defenders at home.**

**Push governments to adopt national guidelines on the protection of human rights defenders, ideally containing a measure allowing for periodic reporting on the situation of human rights defenders, for example by the national human rights mechanism.**

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Norway and Switzerland both adopted guidelines for the protection of human rights defenders, with national implications. Under the European External Action Service's leadership, the EU has also adopted such guidelines, though they are limited to engagement with third countries and in multilateral human rights fora.

## Interaction with decision makers

### Strategic litigation

As illiberal governments try to take control over the judiciary, human rights organisations have to provide strategic opportunities to the judiciary to affirm the importance of the respect of the rule of law, checks and balances, fundamental freedoms and human rights.

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**Pool resources to find strategic cases that can make a difference in the country and attract media attention. An overview of potential cases is needed within a coalition of trusted NGOs.**

**Ensure you have strong litigation possibilities and cooperate with international independent experts to support your positions in amicus briefs submitted to courts.**

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In Poland, the Helsinki Foundation for Human Rights runs a strong strategic litigation programme, choosing strategic cases allowing to create jurisprudence, such as the case of Paweł Sołtys, who was fired from public radio after the media reform that placed it under government control in January 2016.

In Hungary, 23 NGOs turned to the Constitutional Court in a joint submission to challenge the Civil Society Act that violates their right to association, their right to freedom of expression, and their good reputation.

## Interaction with decision makers

### Transparency in interactions

Illiberal governments accuse human rights NGOs of pursuing a partisan agenda, favouring certain ideas and political parties. They use this accusation to claim NGOs are not legitimate in their findings – when such findings show that illiberal policies violate human rights.

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**Identify members of the parliament belonging to the governing majority who are receptive, and proactively reach out to them.**

**Share the same documentation and findings with the governing coalition as with the opposition. If you do not share with certain parties, make clear that this is due to their infringement of human rights.**

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In Hungary, an open document is kept by the Civil Liberties Union recording all interactions held with politicians. Opinions are shared with all members of parliament irrespective of their party affiliation.

The Hungarian Helsinki Committee sued and won against the ruling Fidesz party for untrue statements. Fidesz claimed that the HHC forged statistical data on migration, which was a factually false statement according to the Hungarian Curia (highest court).

## Interaction with decision makers

**Invest in translations**

Illiberal governments specialise in reaching out to the people, by saying they are the only ones truly caring about all people.

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**Make sure to systematically translate your work into national language(s), even if the reporting is made to be submitted to an international body, as a way to give access to all your findings and arguments to all people in your country.**

**Ensure the quality of your translation and proofreading, as a way to make sure your work is of the same quality in all languages in which you publish it, whether on paper or in media.**

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The Human Rights House Foundation systematically supports professional translation costs of Human Rights Houses and their member NGOs.

## Interaction with decision makers

**Early warning methods**

Illiberal governments do not work employ inclusive legislative processes, which allow for transparent consideration of draft legislation and input by civil society. More often than not, they rush new legislation through parliament quickly. Similarly, such governments make policy changes without public information and consultation.

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**Make sure you have an observatory mechanism that allows you to identify policy changes and react quickly to legislative steps taken by the authorities.**

**Link such new steps with previous policy and legislative changes in order to document and inform about the wider trend and the direction the authorities are pursuing.**

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The Hungarian Helsinki Committee prepares and regularly updates timelines on important developments to keep the wider audience updated.

The Hungarian Civil Liberties Union will run a hotline for journalists and citizens that provides information about the law during the electoral campaign, making it easier for them to interpret the legislation.

## Interaction with decision makers

### Balancing risk and impact

Illiberal governments use legislative procedures that lack transparency and restrict access to official bodies to certain NGOs. The more these governments do this, the more human rights NGOs have to question themselves on their ability to protest within such official institutions, such as the parliament.

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**Make a risk assessment before any demonstration within a public institution, including analysing the repercussions for other civil society groups and for your activists, and the impact on decision-makers.**

**Most likely such a demonstration will be a “one off.” Make sure that you have an innovative demonstration method, which is peaceful, to attract wide media coverage, and that your argumentation is easy to understand for the public, thereby legitimising this “last resort” demonstration.**

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In Croatia, on 10 May 2016, representatives of 435 NGOs queued in front of the government to deliver an “Appeal for the Preservation of the Croatian Model of Civil Society Development.” This action was in solidarity with social-service-providing NGOs, which would suffer the greatest harm from the funding cuts.

In Hungary, members of the Civilization campaign attended the committee hearing of the NGO Act and silently protested its adoption with banners.

## Interaction with decision makers

### Defend NGO autonomy

Illiberal governments attack the autonomy of NGOs by questioning their right and legitimacy to work on certain issues.

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**Have a mission statement explaining the issues you work on, the members, specific expertise, and organisational history.**

**Stand behind the idea that human rights NGOs can choose freely and independently the issues they wish to work on and their strategies for doing so. Defend the international standards guaranteeing NGO autonomy.**

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The Human Rights Council resolution on human rights defenders of March 2013 states that legal provisions affecting human rights defenders must be clearly defined, determinable, and non-retroactive, and reporting requirements should not inhibit the functional autonomy of NGOs.

# Laying foundations for civil society to resist

We know the path to authoritarianism

All of the illiberal governments examined in this case study came to power through free elections. Three of them are European Union Member States. The impact of their changes depends on the size of their electoral successes, such as the large constitutional majority of Fidesz in Hungary, compared to the fragile government of the “Patriotic Coalition” in Croatia.

The Serbian government is demonstrating its commitment to the European Union accession process and to promising to implement the structural changes which the *acquis* requires, such as reforms of the judiciary. Yet, at the same time, it is promoting an illiberal populist discourse for domestic consumption, and consolidating power by strengthening the position of the President.

In Poland, the elections yielded a sufficient majority to effectively dismantle the Constitutional Court and subsequently push through legislation.

Beyond these differences related to national specificities, the analysis of the illiberal governments in the four countries brings to light a number of disturbing similarities. Put together, they reveal a pattern of common elements that erode human rights and undermine the rule of law and the balance of powers, making their democracies ill.

These elements include:

- Using majorities in parliament to introduce constitutional changes and legislation, and governing based on a “tyranny of the majority”
- Targeting of the independence of the judiciary and institutions of independent oversight through functional and structural changes
- Capturing of institutions through massive dismissals and the placement of “loyals” in key strategic positions to ensure their submission to the ruling government
- Use of financial tools against institutions and organisations such as budget cuts, cutting off from financial sources, and taxation, in order to break their resistance
- Shrinking of the democratic space, in particular through laws and policies curtailing freedom of expression, association, and assembly and aimed at quelling opportunities for dissent
- Public discrediting and slandering of dissenting voices, and use of libel laws
- Appropriation and manipulation of historical narratives shaping public discourse
- Promoting “traditional values” and “national interests” in the name of majorities and to the detriment of women, minorities and vulnerable groups.

Our findings for this case study are based on what we have

documented in the four countries. However, the elements described above are not new or unique but part of one and the same playbook: they are the same policies that are copied from one country to another, adapted to fit the respective national contexts.

Where illiberal governments come to power, there is a constant of deterioration:

- In Hungary, eight years of illiberal government has deeply shaken the fundamental tenets of democracy.
- In Poland, in just two years since coming into power, the government has undertaken such policies at an accelerated pace.

If it is true that, at present, Hungary and Poland are not Azerbaijan or Belarus, or the Russian Federation, it should be noted that the elements described above are to be found in all of these countries. The attacks developing in Hungary and Poland – on the law and practice of the judiciary and on independent media and civil society – have already been successfully carried out in these authoritarian States.

They are, in that respect, the looking glass through which to contemplate what the future holds. Experience has also shown us that once embarked on such a course, there is little space for turning back. A next step in our

work will be to study how these same policies were used, in the past, in the countries in the region that have crossed the threshold into authoritarianism, such as Azerbaijan, Belarus and the Russian Federation. We indeed need to identify successful ways to resist such trends – the practices for civil society contained in this case study is a first step in this direction.

While all stakeholders need to react at their level to restore what illiberal governments have broken, more immediately they need to stop further deterioration, which would lead ill democracies to not be democracies at all anymore.

There is an urgent need for a firm and unequivocal stand from decision-makers when such governments overstep red lines, and practising “zero tolerance” when it comes to threatening the fundamental elements of democracy.

Political parties at the European level need to equip themselves to address the ruling majorities in European countries. Undermining the rule of law and the balance of powers, and eroding human rights, is not on any of the European parties’ platforms.

When such developments happen, illiberal governments need to be held accountable by their own parties, not protected purely for partisan reasons.





Riot police react with force to widespread protests against the “social parasite law” in Belarus. Hundreds of protestors and observers were detained in spring 2017. Photo: Спадар Бурак / Wikimedia Commons.

The inability of the European People's Party (EPP) to address developments in Hungary over the years, because the ruling majority is formed by an EPP member, must trigger all parties to set a strategy to monitor developments in countries in which they hold majorities, and ensure human rights do not become the losing end of a partisan game.

Firm reactions are needed early on in order to stem the tide of illiberalisation and to avoid situations of “too little, too late” in the face of governments that actively change and manipulate the constitutional order, disrupt the balance of powers, and dismantle institutions.

The risk is that these trends lead to profound systemic transformations that will be difficult to reverse. In this respect, the recent decisions to step up action by the European Commission are a welcome development – including the statement by Frans Timmermans that not acting on the Polish government's anti-democratic actions would be a “dereliction of duty.”<sup>123</sup>

The European Union must establish an early warning system. There is sufficient knowledge and experience to identify trends and warning signals to inform early action. The European Union could rely more on United Nations mechanisms, its special procedures

or treaty bodies, as well as the Human Rights Commissioner of the Council of Europe. All of them have warned about developments in Hungary and Poland for some time now. The present case study can serve as a contribution to this process.

A strong and independent civil society plays a crucial role in countering these trends and upholding the fundamental rights that underpin democratic societies. At the same time, human rights NGOs are the primary targets of illiberal and authoritarian governments.

The precarious situation of NGOs and human rights defenders in Azerbaijan, Belarus and Russia is well documented, including their stigmatisation, marginalisation, and criminalisation, and the atmosphere of threat, including to their physical security. In the countries reviewed, instruments and practices are being put in place that are progressively tightening the noose around civil society. If this trend is not reversed, NGOs will face more harassment, financial restrictions, smear campaigns, legal and administrative abuse, stigmatisation, and isolation, while the public space will be cluttered with GONGOs.

On their own side, NGOs in the studied countries will need to increase their attention

to economic and social developments, and to growing inequality. Illiberal governments thrive on the argument that they make the life of their people better. It merits to be examined whether illiberal policies and practices have effectively impacted the enjoyment of social and economic rights and whether improvements have been made that live up to their promises. In the field of access to public health services, for example, expenditure as a percentage of GDP in Poland, Croatia, and Hungary remains below the European Union average of 7.2%.

124

Overall, access to medical services, long waiting periods and the quality of some services remain an issue. A next step for human rights NGOs will be to document how illiberal governments are fulfilling social policies selectively, with the aim of underpinning electoral narratives and satisfying their respective constituencies, rather than grounded in a rights-based approach. This selectivity damages the principles of universality and interconnectivity of human rights, and follows the model of authoritarian governments.

These evolving conditions will create new challenges for donors and those that support NGOs. The recent and ongoing attacks against human rights NGOs in Poland and Hungary have rendered NGOs more vulnerable and at risk of

123 [Opening and closing remarks](#) of First Vice-President Frans Timmermans on the Rule of Law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 31 August 2017.

124 Croatia 6.6%; Hungary 5.3%; Poland 4.7%. [Eurostat: Government expenditure on health](#).

marginalisation. Protection work will be needed, as will increased direct support and resources for human rights NGOs and for them to maintain their networks. Support mechanisms should include human rights NGOs from these countries, in order to document positively their work and offer public support and recognition, to counter the negative narratives spread against them, and to prevent their isolation and burnout.

HRHF and Human Rights Houses have documented how donors can continue to effectively pursue their aim of promoting human rights in an environment of restricted access to international grants for human rights NGOs.<sup>125</sup> The practices suggested in that report will rapidly be needed in the countries studied here.

The best practices brought together here are not exhaustive, and build largely on the experience on the ground of our partners in successfully addressing challenges as they arise. As situations evolve, so will civil society. We will continue our work on our own best practices and examining how to maximise these in the national contexts. This case study should therefore be seen as laying the foundations for work in progress, which will open paths for the future, inspire further work, and empower all stakeholders to act.

We know the path to authoritarianism because we have seen it happen in too many countries, such as Azerbaijan, Belarus and the Russian Federation. Now is the time to stand firm with Hungary and Poland to avoid further deterioration, hold Croatia to its promises upon joining the European Union, and seek from the Serbian authorities that they translate their commitments on human rights and the rule of law for their people and do not keep them for accession negotiations with the European Union.

From emerging democracies in transition, illiberal governments have rapidly transformed Hungary and Poland into ill democracies, attempted to do so in Croatia, and are slowly and carefully entertaining an illiberal platform in Serbia. We must ensure that we prevent further deterioration, which could lead such countries to not be democracies at all anymore. They are not comparable to Azerbaijan, Belarus or the Russian Federation, yet.

125 Human Rights House Foundation, "Funding civil society: How adaptable international donors can support organisations under increasing restriction," Oslo and Geneva, October 2017.



## **With Gratitude to our Donors**

We would like to thank donors and supporters of the Human Rights Houses and their members. HRHF offers our sincere thanks for the generous contributions we receive. Our work to protect, empower and support human rights defenders and their organisations would not be possible without it.



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Friends of civic freedom have to remember what is at stake here: the fate of universal human rights and ultimately, the guarantees of peace.

**Miklós Haraszti**

Miklós Haraszti is a Hungarian author, academic, and human rights promoter. Currently, he is the UN Special Rapporteur on the situation of human rights in Belarus.

